

### 1. Definitions

“**Contract**” means the agreement in writing between the Supplier and Council for the supply of Goods under the Contract and includes all information contained within the Request for Quotation.

“**Council**” means Liverpool City Council.

“**Delivery**” means the transfer of possession of Goods to Council at the nominated location.

“**Goods**” means the goods or materials nominated for supply under the Contract.

“**Notice**” means formal written communication to be given to any party under the Contract and must be in English. A Notice may be issued by hand, post or electronic transmission and will be deemed to be received:

- (i) if by hand, on the date of delivery,
- (ii) if by prepaid post on the second business day after posting;
- (iii) if by facsimile or email, when the senders facsimile or email system confirms the notice or communication has been transmitted in its entirety to the facsimile number or email address of the addressee, as the case may be.

“**Supplier**” means the person or company who’s Offer for the supply of Goods has been accepted and its executors, administrators and successors.

“**Request for Quotation**” means the process undertaken and includes the documentation used in order to invite Suppliers to provide a price or prices to supply the Goods in accordance with the Contract.

### 2. Supply of Goods

- 2.1 The Supplier will deliver the Goods in full to the location(s) and at the time(s) stated in the Contract.
- 2.2 If it becomes evident to the Supplier that the delivery of Goods will be delayed, the Supplier will promptly notify Council.
- 2.3 If delivery is delayed Council has the discretion to extend the date of delivery but is not obliged to do so or Council can cancel the Contract at no cost to Council.

2.4 Unless otherwise stated, the Supplier is responsible for all packaging, freight, insurance, transport and other charges related to the delivery of Goods.

2.5 Upon delivery the Supplier must provide Council with all relevant operating manuals, warranties and documentation.

### 3. Inspection and Tests

3.1 Council is entitled to inspect and test all Goods supplied. Where Goods fail such inspections, Council is entitled to reject the Goods and the Supplier remove the Goods within a reasonable timeframe at its expense. If the Supplier fails to remove the rejected Goods within a reasonable timeframe, Council can return the Goods at the Suppliers expense.

### 4. Warranties

4.1 The Supplier warrants:

- (i) all Goods be new, fit for purpose, operate satisfactory, be free of defects and comply with the Contract. If no standards are specified in the Contract, the Goods must comply with the appropriate current standard published by Standards Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation.
- (ii) goods are properly, safely and securely packaged and labelled for identification and safety.
- (iii) the Goods for a minimum period of 12 months from delivery of collection of Goods (whichever is applicable) or such longer period as may be specified by the manufacturer.

4.2 Council must not be required to accept or pay or be liable for any Goods that do not comply with the Contract and shall be entitled to cancel the Contract and return the Goods at no cost to Council.

4.3 The Supplier will repair and replace any defective Goods within a reasonable timeframe at no cost to Council.

### 5. Assignment and Subcontracting

5.1 The Supplier must not assign any part of the Goods under the Contract without the prior written approval of Council.

5.2 The Supplier will provide to Council in writing all information required in order to consider giving such consent.

5.3 No subcontracting of any rights or obligations of the Supplier under this Contract will relieve the Supplier from any liability or obligation under this Contract or at law.

## 6. Variations

6.1 Council may direct in writing the Supplier to increase, decrease or delete any part of the Goods or change the character or quality of any Goods.

6.2 A variation shall be valued by agreement between Council and the Supplier or failing agreement, by Council

## 7. Workplace health and safety

7.1 For the purposes of this clause:

‘Act’ means the *Work Health and Safety Act 2011 (NSW)*, as amended from time to time;

‘Notifiable Incident’ is a notifiable incident as defined in the Act, from time to time.

‘Regulation’ means the *Work Health and Safety Regulation 2011 (NSW)*, as amended from time to time.

7.2 The Supplier will:

- (i) comply with and discharge all obligations imposed on the Supplier by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking; and
- (ii) discharge the duties of a person who conducts a business or undertaking under the Regulation.

7.3 The Supplier will indemnify Council against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, Council as a result of or in connection with:

- (i) any breach of this clause by the Supplier;
- (ii) any breach by the Supplier of its obligations under the Act, the Regulation

or any other regulation in connection with health and safety;

- (iii) any enforcement of obligations imposed on the Supplier under the Act, the Regulation or any other regulations.

7.3 If a Notifiable Incident occurs at the workplace the Supplier must:

- (i) immediately notify Council of the notifiable incident; and
- (ii) take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs.
- (iii) Exercise its notification obligation to the regulator.

## 8. Invoicing and Payment

8.1 The Supplier must provide invoices to Council within seven (7) days of delivery or collection of the Goods (whichever is applicable). Council will not accept an invoice for payment unless it is a valid tax invoice, complies with these Conditions of Contract and the requirements of GST legislation. The invoice must state:

- (i) the correct ABN;
- (ii) the purchase order number;
- (iii) description of goods;
- (iv) volume;
- (v) unit cost; and
- (vi) any other information reasonably required by Council.

8.2 Council will pay the invoiced amount within 30 days of receipt of a valid tax invoice;

## 9. GST and PAYG Withholding

9.1 Payments for any taxable supplies under the Contract include GST.

9.2 The Supplier must issue a tax invoice or adjustment note (as the case may require) within five (5) business days after each of the following occurring in relation to that taxable supply:

- (i) the Supplier submitting a claim for payment that is not in the form of a valid tax invoice;

- (ii) Council certifying an amount for payment different to the amount claimed; or
- (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- 9.3 Whenever Council reasonably considers itself bound by law to do so, Council will be entitled to withhold from any payment otherwise due to the Supplier, amounts calculated and to be withheld in accordance with the law.
- 10. Insurance**
- 10.1 The Supplier warrants that it will hold and maintain for the duration of the Contract the following insurances to cover its obligations under the Contract:
- (i) Workers' Compensation insurance in accordance with the *Workers' Compensation Act 1987 (NSW)*;
- (ii) Public Liability insurance for a minimum amount of \$10 million in respect of each claim unless otherwise specified in the Order;
- (iii) Product Liability insurance for a minimum amount of \$10 million in respect of each claim unless otherwise specified in the Order; and
- (iv) any other insurance as specified by Council.
- 10.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 10.3 The Supplier must, if requested by Council promptly provide a certificate of currency for each insurance policy.
- 11. Termination by convenience**
- 11.1 Council may terminate the whole or part of the Services at any time, by Notice to the Supplier.
- 11.2 Council shall pay the Supplier the fees and expenses reasonably incurred by the Supplier in carrying out the Services under the Contract to the date of termination.
- 11.3 Council will not be liable for payment to the Supplier for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- 11.4 Council will not be liable to pay for any Services performed after the termination date as specified in the Notice.
- 12. Breach of Supplier**
- 12.1 Breach of the Contract occurs when the Supplier:
- (i) fails to deliver the Goods within the period specified by Council; or
- (ii) has neglected or omitted to carry out any instructions of Council; or
- (iii) has intimated that it is unwilling or unable to complete the supply of Goods by the Delivery date; or
- (iv) has committed an act of bankruptcy, becomes insolvent or Council reasonably considers that the Supplier is likely to become insolvent;
- 12.2 Council may, by giving five (5) days Notice, terminate the Contract and engage with others to Supply the Goods. Council shall prepare a certificate on its completion setting out the costs of the new Suppliers and all costs and losses incurred by Council. If the amount in the certificate is greater than the amount payable to the Supplier under the Contract, then the Supplier is liable to pay the difference to Council.
- 13. Disputes**
- 13.1 If a dispute arises out of or relates to this Contract, or the breach, termination, validity or subject matter thereof, or to any related claim in restitution or at law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to litigation.
- 13.2 The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC.
- 13.3 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 13.4 The terms of the Guidelines are hereby deemed incorporated into this Contract.

13.5 This clause shall survive termination of this Contract.

## **14. General Provisions**

### **14.1 Entire Agreement**

14.1 In the event that Council and the Contractor have legally executed a written contract for the provision of the Services (“the Formal Contract”) that differs from this Contract, the terms of the Formal Contract shall prevail over the terms of this Contract to the extent of any inconsistency.

14.2 Subject to clause 14.1 above, this Contract:

- (i) Is the entire agreement between the parties about its subject matter; and
- (ii) In relation to its subject matter, supersedes any prior;
  - a) understanding or agreement between parties; and
  - b) communication, condition, warranty, promise, inducement, indemnity or representation imposed, given or made by a party.

### **14.2 Waiver**

14.2.1 Any failure by a party at any time to enforce a clause of this Contract, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party’s rights.

14.2.1 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

14.2.2 A waiver by a party of a breach of any part of this Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

### **14.3 Severability**

14.3.1 If any part of this Contract is determined to be invalid, unlawful or unenforceable for any reason than that part, to the extent of the invalidity, unlawfulness or unenforceability will be severed from the rest of this Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

### **14.4 Code of Conduct**

14.4.1 The Supplier is bound by Council’s Code of Conduct policy including all Conflict of Interest provisions found on Council’s webpage located at <http://www.liverpool.nsw.gov.au/council/policies-and-forms/policies-and-procedures-of-council>. Any breach of this policy may result in termination of the Contract as determined by Council.

### **14.5 Compliance with the GIPA Act**

14.5.1 When requested in writing by Council, the Supplier must provide Council with immediate access to any information in its possession that Council may be required to release under the *Government Information (Public Access) Act 2009* at no expense to Council.

14.5.2 The Supplier must supply the information in the format as requested by Council.

### **14.6 Governing Law**

14.6.1 This Contract is governed by and construed in accordance with the laws of New South Wales and Council and the Supplier submit to the non-exclusive jurisdiction of the courts of New South Wales.