

GYMPIE REGIONAL COUNCIL STANDARD TERMS & CONDITIONS OF PURCHASE ORDER

1. GENERAL

Unless otherwise stated on the front of this Purchase Order, the following terms and conditions will apply. Where there is any variation between these terms and conditions and the terms and conditions contained in any letter, quotation, tender, other communication or document of the Seller, these terms and conditions shall prevail in all cases.

“Supplies” means all, but not limited to, goods, materials, plant, machinery, works, services, labour, installation or technical advice, provided against this Purchase Order.

“Buyer” means the Gympie Regional Council.

“Seller” means the person, supplier, company, firm, organisation or corporation named on the front of this Purchase Order from whom the supplies have been ordered.

2. TERMS OF PAYMENT

Payment shall be made 30 days from invoice date except those that shall apply for payments related to the Building and Construction Industry Payments Act (2004), small business where payment represents a wage, and negotiated early payment discounts:

- 2.1. The price being in accordance with this Purchase Order.
- 2.2. All works and/or services, materials and equipment being received and accepted by the Buyer as satisfying the Purchase Order.
- 2.3. All amounts payable pursuant to this Purchase Order are expressed inclusive of GST.

3. GST PROVISIONS

Any invoice for payment under this Agreement must be a Tax Invoice within the meaning defined in the Goods and Services Act 1999, as amended. The Buyer is not obliged to make any payment under this Agreement unless the Seller has provided a Tax Invoice in respect of that payment.

4. NON ACCEPTANCE OF ADDITIONAL CHARGES

All prices stated on the front of this Purchase Order are to include delivery and any other charges for the supplies to the nominated delivery point. No other additional charges will be payable by the Buyer.

5. DELIVERY

Delivery is to take place as soon as practicable and no longer than 24 hours after placement of the Purchase Order unless stipulated on the Purchase Order and is to take into account weekends and public holidays.

Materials receipted means all materials shall be delivered to the Buyer at the risk of the Seller and no liability for payment will be placed on the Buyer until the goods have been approved as received in good and fully operational condition as required by the Purchase Order.

If material is found to be unacceptable to the Buyer, the Seller shall reimburse the Buyer, those costs associated with returning the material and any monies already paid for those goods deemed unacceptable.

All goods must be Free into Store (F.I.S.) unless otherwise stated on the Purchase Order

Delivery of materials to Council’s John Street or Kilkivan Depots will only be accepted between: 7.00am to 3.00pm Monday to Friday

Deliveries to Tin Can Bay or Monkland Depots are by prior arrangement only as these sites may be unattended.

6. INDEMNITY OF PATENT RIGHTS

The Seller shall indemnify and keep indemnified the Buyer against all actions and claims arising out of the use of exercise of any invention by reason of the purchase, possession or use of the supplies or part thereof.

7. INDEMNITY AND INSURANCE

The Seller shall indemnify the Buyer from any loss, damage, liability, costs, expenses or claims suffered by or brought against the Buyer arising from any supplies provided by the Seller under this Purchase Order (including where appropriate the erection, installation, repair or operation of any plant or equipment) whether in respect of injuries or death of any person, including employees of the Buyer and Seller or of damage to any property. The Seller shall indemnify the Buyer or its personnel from any negligent act or omission provided that the suppliers liability will be reduced proportionately to the extent any such loss caused the Buyer’s negligent act or omission in connection with the supply. Where requested by the Buyer, the Seller shall produce without delay, copies of relevant insurance policies including but not limited to: public liability insurance, accident and sickness insurance, professional indemnity insurance and a certificate of WORKCOVER registration.

8. LEGISLATIVE AND STATUTORY REQUIREMENTS INCLUDING OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS

The Seller shall comply with all legislative and statutory requirements in the delivery of the supplies.

Where relevant, the Seller will provide supplies in accordance with the relevant Workplace Health and Safety legislation as in force from time to time.

GYMPIE REGIONAL COUNCIL STANDARD TERMS & CONDITIONS OF PURCHASE ORDER

Where the Seller has quality and OH&S systems in place, the supplies provided will conform with those systems and the Seller will provide documentary evidence of such conformance to the Buyer as and when requested.

The Seller shall be responsible to obtain and comply with the Buyer's OHS&W internal requirements when the Purchase Order includes works and services on the Buyer's property.

9. RETURN OF OVERSUPPLIES

The Buyer shall return all oversupplies against this Purchase Order at the Seller's expense.

10. INSPECTION, TESTING AND ACCEPTANCE

Acceptance shall not be deemed to have occurred until the Buyer has been given a reasonable opportunity to inspect, test and accept the delivered supplies.

11. RISK, TITLE AND OWNERSHIP OF SUPPLIES

Title and/or ownership of supplies shall not vest with the Buyer until payment has been made to the Seller. The risk for any supplies shall remain with the Seller until delivery has been made to the Buyer in accordance with the terms and conditions of this Purchase Order.

12. SUPPLIES TO BE IN ACCORDANCE WITH AGREEMENT STANDARDS

The supplies shall be of the qualities and standards specified in the Purchase Order and shall conform in all respects to any sealed patterns, specifications, plans, drawings, samples and other particulars specified on this Purchase Order. All supplies provided against this Purchase Order, where relevant, shall comply with applicable Australian Standards.

In the event of change to the Buyer's logo, design or specification for exclusive stocked items, the buyer agrees to purchase from the Seller any exclusive stock either in store, in transit or currently in production as per the mutually agreed volumes as ordered by the Buyer.

13. GUARANTEES/WARRANTIES

The Seller shall guarantee that all supplies provided against this Purchase Order conform to the standards specified on the Purchase Order, are of merchantable quality and are fit for the intended purpose for which they are sold. The Seller shall further guarantee all supplies provided against this Purchase Order against all defects arising from faulty materials, workmanship or design for a period of twelve (12) months from date of acceptance, after delivery by the Seller and any defective supplies shall be immediately repaired or replaced at Seller's cost, which

cost shall also include any transport, packaging and any other associated charges. The total price stated on the Purchase Order shall be inclusive of GST.

14. FIRM PRICE

All prices stated on the Purchase Order are firm and are not subject to variation for any reason whatsoever.

15. DUTY

The Seller must pay all duty imposed under the Duties Act 2001 on the Supplies.

16. TERMINATION

In the event of a breach by the Seller of any of the terms and conditions of this Agreement, the Buyer may at its option and without prejudice to any of its rights or remedies, cancel all or any undelivered supplies upon reasonable notice in writing to the Seller.

17. FORCE MAJEURE

No failure or omission to carry out or observe any of the stipulations or conditions of this Agreement shall, except as herein expressly provided to the contrary, given rise to any claims against either party or be deemed to be a breach of the Agreement, if such failure or omission arises from any cause reasonably beyond the control of either party.

18. ENVIRONMENTAL SUSTAINABILITY

The Seller shall deliver the supplies in accordance with the Buyer's Standard Environmental Conditions.

19. INTELLECTUAL PROPERTY RIGHTS

The Seller warrants that the provision of supplies or services do not infringe any intellectual property rights.

The Seller shall indemnify and keep indemnified the Buyer against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim in respect to infringement of any intellectual property rights.

The Seller grants to the Buyer an unconditional irrevocable licence to use any information or data supplied, advised or reported under this Agreement.

20. ACCOUNTS FOR PAYMENT

All invoices and accounts for payment must be submitted electronically in PDF format to Gympie Regional Council, Accounts Payable Section via email to creditors@gympie.qld.gov.au unless arranged otherwise.

21. ASSIGNMENT

The Seller must not assign or subcontract any of the rights or obligations of the Seller under the Agreement (either for the supply of the Deliverables or otherwise) without the prior written consent of the Buyer. Any consent given by the Buyer:

- 21.2. may be conditional; and
- 21.3. will not relieve the Seller from any of its liabilities or obligations under the Agreement.

The Seller is liable to the Buyer for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Seller.

22. NEGATION OF EMPLOYMENT AGENCY ETC

The Seller must not represent itself or allow itself to be represented as being an employee or agent of the Buyer.

The Seller will not, by virtue of the Agreement, be or become an employee or agent of the Buyer.

Nothing in the Agreement is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Agreement.

23. INDUSTRIAL DISPUTES

The Seller must not involve the Buyer in any industrial dispute arising between the Seller and any employee of the Seller.

24. DISPUTE RESOLUTION

The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Agreement.

If a dispute arises between the parties regarding the Agreement, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.

A Dispute Notice must be referred to a panel consisting of a representative of the Seller who is authorised to settle the dispute and the Authorised Officer.

Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.

If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

Notwithstanding the existence of the dispute, each party must continue to perform its obligations under the Agreement.

Nothing in this Clause 24 shall prejudice the right of a party to institute proceedings to enforce payment due under the Agreement or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 24 or any matter arising under the Agreement.

25. TEMPORARY SUSPENSION OF SUPPLY

The Buyer may give written notice to the Seller requiring the Seller to suspend the progress of the whole or any part of the supply of the Deliverables for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Buyer because of any change in the nature, scope or timing of the Deliverables.

The Buyer may, by giving written notice to the Seller, require the Seller to recommence all or any part of the supply of the Deliverables suspended by written notice given under Clause 25.

Where the Seller is required to suspend the supply of the Deliverables pursuant to Clause 25:

- 25.1. the Buyer and the Seller must negotiate in good faith as to reasonable compensation payable to the Seller; and
- 25.2. any previously agreed date for completion of the supply of the Deliverables will be postponed by a period equal to the duration of the suspension; and
- 25.3. the Seller must promptly take all steps necessary to minimize the loss suffered by the Seller as a result of the suspension.
- 25.4. The Buyer must reimburse the Seller for any additional reasonable costs incurred by the Seller which are directly attributable to the suspension of the supply of the Deliverables. If the Buyer and the Seller do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 24.