

## Shire of Wyndham East Kimberley – Purchase Order Conditions of Contract

### DEFINITIONS

- Conditions of Contract:** means these conditions of contract as detailed.
- Confidential Information:** means all of the Shire's information which:
- (a) is disclosed or otherwise made available to, or acquired directly or indirectly by, the Supplier at any time;
  - (b) relates to the Shire's or any Local Government's past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information); and
  - (c) is in oral or visual form, or is recorded or stored in a Document,  
and includes this Contract, but does not include information which:
  - (d) is or becomes generally and publically available other than as a result of a breach of this Contract;
  - (e) is in the possession of the Supplier without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or
  - (f) has been independently developed by the Supplier or acquired from a third party not the subject to a duty of confidence to the Shire.
- Goods:** means any goods, plant, materials, supplies, equipment or other items set out in the Purchase Order.
- Intellectual Property Right:** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, semi conductor, circuit and other eligible layouts, copyright and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time.
- Loss:** means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.
- Purchase Order:** means the Shire's purchase order form for the Goods and/or Services. The Purchase Order subsequently becomes the Contract.
- Services:** means any services set out in the Purchase Order, including the delivery of any goods and performance of services ancillary to the Services.
- Shire:** means the Shire of Wyndham East Kimberley, 20 Coolibah Drive Kununurra, WA, 6743.
- Supplier:** means the persons/organisations as detailed on the Purchase Order.
- Wilful Misconduct:** means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of the Conditions of Contract.

### CONDITIONS

1. Where the Purchase Order relates to Goods or Services the subject of a separate contract between the Supplier and the Shire, the terms of the separate contract also apply to the extent of any inconsistency with these Conditions of Contract unless the Shire has clearly stated otherwise on the Purchase Order;
2. Unless expressly agreed to in writing by the Shire, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions even where they have been provided to the Shire or signed by a representative of the Shire, will apply or have any legal effect in connection with the supply of the Goods and/or the performance of the Services;
3. The Supplier must ensure that it and the Supplier's Personnel, in performing the Supplier's Obligations under the Contract:

- a. comply with all applicable Laws, any standards and procedures made available by the Shire to the Supplier, and any reasonable instructions given by the Shire;
  - b. do not interfere with the Shire's activities or the activities of any other person at the delivery point or any place the Supplier provides the Services;
  - c. carry out and perform the Supplier's obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
  - d. unless otherwise set out in the Purchase Order, supply all plant, resources and equipment necessary to perform the Services; and
  - e. provide all such information and assistance as the Shire reasonably requires.
4. The Supplier and its personnel in the supply of goods and/or services are obliged to adhere to the Shire's [Statement of Business Ethics](#) and these Conditions of Contract;
  5. The Purchase Order shall be deemed to have been made in the state of Western Australia and shall be subject to the laws of that state;
  6. The Supplier must supply the Goods and/or Services as detailed on the Purchase Order and upon payment the goods and property in the goods shall pass to the Shire;
  7. The Supplier warrants that the Supplier's personnel engaged to perform the Services have all the necessary skills, training and qualifications to carry out the Services;
  8. The Supplier must not change the Goods and/or Services, including an addition, reduction or omission to any part of the Goods and/or Services except in accordance with a written direction of the Shire in which case the Supplier must comply with that direction and the contract price will be adjusted by an amount agreed in writing by the parties;
  9. The Supplier must ensure that:
    - a. all Goods or Services conform to the description of the Goods or Services set out in the Contract;
    - b. all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;
    - c. if the Supplier provided the Shire with a demonstration of the Services or represented that a result could be achieved by the Services before the Principles issues the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be);
    - d. any Goods are new and of merchantable quality; and
    - e. the Supplier must ensure that the Shire has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must, at its cost, pursue any manufacturer's warranties on the Shire's behalf).
  10. Acceptance of the Goods and/or Services occurs on the earlier of:
    - a. a representative of the Shire notifying the Supplier in writing that the Goods and/or Services have been accepted; or
    - b. the lapse of 14 days after delivery of the Goods to the delivery point without the Shire notifying the Supplier in writing that the Goods have been rejected.
  11. The Supplier agrees that the Shire may:
    - a. deduct from moneys due to the Supplier any money due or which may become due from the Supplier to the Shire under, or in connection with, the Purchase Order; and
    - b. withhold payment of any amounts payable under the Purchase pending resolution of any dispute.
  12. The Shire's standard payment terms are 30 days following receipt of invoice, provided the Goods and/or Services have been received and accepted by the Shire;
  13. The Supplier's invoice must quote the Purchase Order number and must include the Supplier's ABN and separately identify the GST amount;
  14. If GST is imposed on any supply made by the Supplier in connection with the Purchase Order, the Supplier may recover from the Shire, in addition to the Purchase Order price, an amount equal to the GST payable in respect of that supply. The Supplier must first provide the Shire with an Invoice before the Shire will pay the GST amount to the Supplier;
  15. A Purchase Order can be terminated by the Shire if the Supplier fails to deliver the Goods and/or Services as specified, by the agreed delivery date, or it can be terminated by agreement;
  16. Where the Purchase Order is for Goods, the Supplier must effect and maintain with a reputable insurer goods insurance covering insurance of the Goods against all risks to the point of delivery at the delivery point and, if the Goods are rejected by the Shire, from the time the Supplier collects the Goods from the Shire, for an amount not less than the full replacement costs of the Goods.
  17. Where the Purchase Order is for Services, the Supplier must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of Service provision:
    - a. public and products liability insurance covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less

than \$20 million in respect of each and every claim, unlimited as to the number of occurrences for public liability; and

- b. workers compensation insurance as required by Law, including cover for common law liability for an amount of not less than \$50 million for any one occurrence.
- c. where the Supplier is providing professional services, professional indemnity insurance of not less than \$2 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the Completion Date or the earlier termination of the Contract.

The Supplier must provide to the Shire, within 3 business days of a written request, certificates of currency for each of the insurance policies required under clauses 15(a) or 15(b) (or both, as applicable).

18. The Supplier shall indemnify and keep indemnified the Shire and the Shire's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
  - a. any breach of any warranty or any of the other terms and conditions of these Conditions of Contract by the Supplier or the Supplier's Personnel;
  - b. any Wilful Misconduct or a negligent act or omission of the Supplier or the Supplier's Personnel; and
  - c. any claim made by a third party against the Shire or the Shire's Personnel, to the extent that the claim arose out of the act or omission of the Supplier or the Supplier's Personnel,

Except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Shire or the Shire's Personnel.

Neither party is liable to the other for Consequential Loss.

19. The Supplier must not use any Confidential Information or disclose any Confidential Information other than to any of the Supplier's Personnel who need the information to perform the Services or deliver the Goods, to the Supplier's legal advisers or where required by Law.
20. The Supplier warrants the following in respect to Intellectual Property Rights and Intellectual Property (IP):
  - a. the Supplier IP remains vested in the Supplier and the Shire IP remains vested in the Shire.
  - b. the Shire will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.
  - c. the Supplier grants to the Shire a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licenceable licence (with the right to grant sub-licenses on the same terms) to use the Supplier IP to the extent necessary to use the Goods and the Services.
21. Any Goods conveyed to any Shire premise are to be done so in accordance with current Chain of Responsibility legislation which is contained in the *Road Traffic (Administration) Act 2008*, *Road Traffic (Vehicles) Act 2012* and *Load Restraint Guidelines 2004 Second Edition*.