

# TERMS OF BUSINESS (GOODS AND SERVICES)

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## 1 DEFINITIONS

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In these Terms of Business, except to the extent the context otherwise requires:

**BIF Act** means the *Building Industry Fairness (Security of Payments) Act 2017* as amended and any of its regulations.

**Contract** has the meaning given to the term in **clause 4**.

**Delivery Point** means the place for delivery of the Goods as set out in each Purchase Order or as otherwise notified by WRC.

**Goods** means the goods described in the Schedule and which are to be provided by You as set out in a Purchase Order.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

**GST, Supply, Taxable Supply, Registered and Tax Invoice** have the same meaning as in the GST Act.

**PPSA** means (as applicable to the Terms of Business) the *Personal Properties Security Act 2009* (Cth).

**Price** means the amount payable for the Goods and the Services the subject of a Purchase Order, determined in accordance to the fees and rates set out in the Schedule.

**Purchase Order** means an order or request, whether oral or written, made by WRC to You, under the Contract.

**Services** means the services described in the Schedule and which are to be provided by You as set out in a Purchase Order.

**SIR** means the Supplier Information Request as completed by You and submitted to WRC.

**Site** means the site where the Delivery Point is situated or where the Services are to be performed.

**Taxes** includes any and all sales, use, personal, property, real property, value added, consumption, stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever, together with any penalties, fines or interest or similar additions, imposed, levied or assess by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the Goods and Service but excludes GST.

**Term** means the period starting on the date We execute the Terms of Business and ending on the date specified in the Schedule.

**You and Your** means the organisation, individual or partnership to whom WRC directs a Purchase Order.

**Your Staff** means Your employees, agents, contractors and subcontractors (and employees, agents and contractors of those contracts and sub-contractors).

**Us and We** means both You and WRC.

**WH&S** means work health and safety.

**WH&S Law** means the *Work Health and Safety Act 2011* (Qld) and its regulations.

**WRC** means Whitsunday Regional Council ABN 63 291 580 128.

## 2 THE CONTRACT

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2.1 The Contract commences on the date We execute the Terms of Business and, subject to it being terminated under **clause 18**, remains in force during the Term.

## 3 AGREEMENT TO SUPPLY

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3.1 You will supply to WRC the Goods or the Services as set out in each Purchase Order issued by WRC from time to time.

3.2 Each Purchase Order issued by WRC will constitute a separate binding contract between Us on the terms set out in the Contract and the Purchase Order. Where there arises any inconsistency or ambiguity between provisions in the Purchase Order and the

provisions of the Contract, the provisions in the Purchase Order will prevail.

3.3 The issue of any Purchase Order for the Goods and the Services is subject to the terms and conditions of the Contract to the exclusion of any terms and conditions proposed by You.

3.4 WRC may issue Purchase Orders as it, in its absolute discretion, requires and does not guarantee or represent any volume of Goods or Services will be obtained from You.

3.5 WRC may purchase goods and services that are the same or similar to the Goods and Services from other parties during the Term.

## 4 CONTRACT DOCUMENTS

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4.1 The Contract between Us consists of:

- (a) these Terms of Business; and
- (b) the SIR completed by You,

and if there is any inconsistency between these documents, they will be read in the order of priority as set out above.

## 5 PRICES

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5.1 You agree to supply the Goods and Services for the Price.

5.2 Subject to **clause 10**, the Price is inclusive of all Taxes excluding GST.

5.3 The Price is to be inclusive of all handling, courier and postage fees and stamp duty.

5.4 The Price is fixed and is not subject to any adjustment except as set out in the Contract or the Purchase Order.

## 6 SUPPLY ARRANGEMENTS

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6.1 You agree to supply the Goods and/or perform the Services in accordance with:

- (a) any specifications, or description provided or referenced in the Contract and the Purchase Order; and
- (b) any relevant Australian standards, laws and regulations.

6.2 You must not supply alternative products to the Goods without WRC's prior written approval.

6.3 WRC may, on 30 days notice to You, change the specifications and/or standards applicable to the Goods and/or Services to be supplied by You pursuant to a Purchase Order. Where such change increases or decreases Your costs in supplying Goods and/or Services, an equitable adjustment will be made to the Price to reflect such increase or decrease in the cost of supply.

6.4 The period for the delivery of the Goods and performance of the Services will be set out in the Purchase Order.

6.5 You:

- (a) will be fully responsible for ensuring that You and Your Staff supply the Goods and perform the Services on the Site safely; and
- (b) accept responsibility for compliance with the WH&S Law during the Term.

6.6 If required by WRC, before entering the Site, You must prepare and submit a WH&S Management System to WRC for approval which, as a minimum, must address the issues specified by WRC to You (**WH&S Management System**).

6.7 The WH&S Management System must be the minimum requirement to demonstrate compliance with all duties of an employer specified under the WH&S Law.

6.8 You must submit a copy of Your WH&S Management System documentation that must include as a minimum requirement:

- (a) WH&S policy & objectives;
- (b) organisational structure and responsibilities;
- (c) relevant risk assessments & controls (sample);

- (d) relevant safe working procedures (index);
  - (e) WH&S training and induction processes and records (Certificates of competencies (ticket as an electrician) and licences (truck drivers));
  - (f) WH&S inspections & auditing procedures;
  - (g) WH&S consultative processes;
  - (h) incident reporting & investigation procedures; and
  - (i) performance monitoring mechanisms.
- 6.9 WRC may, in its sole discretion accept in writing the submitted WH&S Management System or notify You of the reasons for not accepting it. If WRC notifies You that the WH&S Management System submitted by You is not accepted, You will amend and resubmit it to WRC for approval within the time set by WRC.
- 6.10 You acknowledge and agree that:
- (a) WRC is not obliged to check or monitor the WH&S Management System or Your compliance with the requirements of the WH&S Law;
  - (b) neither WRC's acceptance of a WH&S Management System, anything said by WRC or any of WRC's personnel in relation to a WH&S Management System, or the random audits referred to in this **clause 6** relieves, limits or otherwise effects your responsibilities under the WH&S Law, the Purchase Order and the Contract;
  - (c) WRC has obligations under the WH&S Law;
  - (d) You must (at your own cost and without any entitlement to any claim of any kind whatsoever) comply with reasonable directions (including stop work directions) given by WRC so as to enable WRC to comply with its obligations under the WH&S Law;
  - (e) You must (at your own cost and without any entitlement to any claim of any kind whatsoever) immediately comply with directions on safety issued by any government, governmental, semi-governmental or other relevant authority; and
  - (f) You will supply the Goods and provide the Services in such manner as to not place WRC in breach of its obligations under the WH&S Law.
- 6.11 A pre-start meeting between WRC and You will occur before any work commences on Site to discuss any relevant WH&S issues and reporting mechanisms. Further meetings will be conducted as warranted and identified and these meetings will all be documented.
- 6.12 You must ensure that Your staff:
- (a) comply with any site specific safety requirements for the Site, the WH&S Management System accepted by WRC and WRC's own safety system;
  - (b) attend a Site specific health and safety induction prior to starting work on the Site;
  - (c) ensure that all machinery, tools, plant and equipment used by You and Your Staff is maintained so as to comply with Your obligations under the Purchase Order and the Contract;
  - (d) program and co-ordinate the supply of the Goods and the performance of the Services so as to minimize the effect on WRC's business operations; and
  - (e) at all times ensure that where appropriate personal protective equipment (PPE) as deemed necessary by statutory requirements or by WRC's PPE Management Policy is worn.
- 6.13 You must notify WRC as soon as possible after the occurrence on Site of any notifiable incident under the WH&S Law.
- 6.14 You must, in relation to the supply of the Goods or the performance of the Services, provide WRC with copies of all notices and correspondence of whatsoever nature concerning the WH&S Law within 1 Business Day of the dispatch and/or receipt by You of any such notice or correspondence.
- 6.15 WRC may carry out random audits to ensure that all Services being performed are carried out in accordance with any Site specific safety requirements, WRC's safety management system and the WH&S Management System.
- 6.16 If after resubmitting a WH&S Management System to WRC more than twice under **clause 6.6**, You fail to have Your plan accepted by WRC, it is deemed to be a material breach of the Purchase Order and the Contract which You have failed to remedy, and WRC may immediately terminate the Contract or the Purchase Order under **clause 18**. You will have no claim whatsoever against WRC arising from such termination.
- 6.17 You indemnify WRC and agree to keep WRC always indemnified against:
- (a) claims by any person against WRC in respect of personal injury or death or loss of or damage to any property;
  - (b) loss of or damage to property of WRC; and
  - (c) all costs, expenses, fines, losses or damages arising out of enforcement of the WH&S Law.
- 6.18 You will, on request, provide to WRC a record of the total hours worked by Your Staff on the Site.
- 6.19 You will:
- (a) undertake a site hazard identification to systematically identify and assess hazards;
  - (b) establish and maintain a register (or form) of on-site hazards in which You will record each identified hazards, the date it was identified and the measures taken to control the hazard; and
  - (c) You will make the register (or form) available to WRC for inspection.
- 6.20 Specific indication for hazardous work must be outlined e.g., hot work – using a hot work permit, hazardous substances, confined spaces permit, asbestos, excavation, trenching, height work and working with explosives.
- 6.21 You must prepare and submit risk assessments and relevant control strategies prior to commencement of the Services. The completed risk assessment and control strategies will be reviewed and approved by WRC prior to the commencement of the Services. Relevant generic risk assessments and controls will be acceptable.
- 6.22 You must ensure that all workplace staff are competent in the work being undertaken. You will provide the employees and sub-contractors with information about hazardous work processes or material and supervision. All employees are to have a general induction and the contractor is to produce records of their construction industry induction ticket. Each person visiting the Site is to receive a Site-specific induction.
- 6.23 You are required to report any serious bodily injuries or dangerous events to the relevant authority within the specified time frame. In addition, You must promptly notify WRC of any accident, injury, property or environmental damage, which occurs during the carrying out of the work.
- 6.24 All lost time incidents are to be immediate notified to WRC. You must within 3 days of any such incident provide a report giving complete details of such incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future.
- 6.25 The provision of the Goods and the Services which do not comply with the requirements of the WH&S Law, or which places WRC staff and public at risk constitutes a material breach of the Purchase Order and the Contract under **clause 18**.

## **7 DELIVERY**

- 7.1 The Price is inclusive of the costs of delivery of the Goods and/or Services by You to the Delivery Point, including any packing necessary for the safe, proper and suitable transport and storage of the Goods, unless excluded in the relevant Purchase Order.
- 7.2 The Goods must be delivered in good condition and without damage caused by delivery. You must immediately replace any damaged Goods, at no additional cost to WRC.

- 7.3 You will provide a detailed delivery docket with every shipment which delivery docket must contain as a minimum, the following information – WRC's Purchase Order number and Purchase Order item number, date, Your details (including the name and telephone number of the packer), quantity dispatched, item description and part number and details of any items in back order. One delivery docket is to be packed with the Goods, the other is to be enclosed and attached to the outside of the consignment.
- 7.4 All of Your correspondence (including without limitation quotations, offers and Tax Invoices) must state where packing is returnable and the amount of deposit charges, if any. All returnable packing:
- (a) must be clearly marked as such;
  - (b) must bear a return address; and
  - (c) will be returned freight forward at WRC's convenience by transport selected by WRC, unless otherwise stated in the relevant Purchase Order.
- 7.5 You will be liable for any difference in freight charges arising from a failure to follow any transport instructions in a Purchase Order or to properly describe the Goods transported.
- 7.6 No deliveries effected outside the normal working hours of WRC will be accepted unless by prior arrangement with WRC.
- 7.7 Unless otherwise agreed, offloading will be carried out by WRC. However, where packing units within a consignment are larger than the Australian Standard pallet size and/or weigh more than 1 tonne, You must make delivery arrangements with WRC at least 2 days prior to delivery.
- 7.8 We will reasonably assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers of the Goods.

## 8 IMPORT LICENCES

If it is necessary for the performance of a Purchase Order for either of Us to hold or obtain any import licence, consent, by-law exemption, or authority then either or both of Us, as appropriate, are obliged to apply for such import licence, consent, by-law exemption or authority. If such licence, consent, by-law exemption, or authority is refused then the Purchase Order will be treated as being discharged and neither of Us will be under any liability to the other.

## 9 INSPECTION AND TESTING

- 9.1 WRC or its designated agent may inspect, test or expedite all work on the Goods and the Services. You must make this a condition of any sub-contracted work. Any subcontracting, inspection, testing and expediting done by the WRC or its designated agent will not relieve You of any obligations contained in the Contract and Purchase Order.
- 9.2 Notwithstanding any prior payment, the Goods and the Services are subject to inspection and testing by WRC (including for the Goods, after arrival and unpacking at the Delivery Point). If the Goods are to be installed or incorporated into a plant or premises, such inspection and testing may be carried out after installation or incorporation and under operating conditions.
- 9.3 If upon or after any inspection or test any of the Goods or the Services are found to be defective or fail to meet the specifications or any other requirements of the Purchase Order and the Contract, WRC may return the Goods to You at Your expense or require the rejected Goods to be immediately resupplied or the Services to be re-performed, at its discretion.
- 9.4 Upon return of any unsatisfactory or defective Goods, You must reimburse WRC for any amounts paid by WRC on account of the Price of returned Goods, and any reasonable cost incurred by WRC in connection with the delivery or return of the Goods.
- 9.5 All Goods which have been notified to You as rejected, are held by WRC at Your risk.
- 9.6 Any loss or damage that WRC has incurred as a result of any defect in the Goods or the Services will be a debt due and payable to WRC.

## 10 TERMS OF PAYMENT

- 10.1 If any Supply made pursuant to or in connection with a Purchase Order is a Taxable Supply. WRC will pay the GST in respect of that Supply to You, where the GST is calculated in accordance with the GST Act.
- 10.2 You will issue WRC a Tax Invoice for Goods and Services supplied on the basis and in the form as advised by WRC from time to time which must:
- (a) include prices and payments stated and made in Australian dollars;
  - (b) state WRC's Purchase Order number;
  - (c) show the total amount payable and the GST payable calculated in accordance with the GST Act.
- 10.3 A Tax Invoice shall be forwarded to the address stated on the Purchase Order. Failure to do so may result in delay of payment to You.
- 10.4 WRC will pay You within the period stated in the relevant Purchase Order and, if no period it stated, within 30 days of receiving your Tax Invoice.
- 10.5 If any Tax Invoice or any part of any invoice is disputed, WRC will not pay the disputed invoice or in part, unless a new Tax Invoice is issued for the undisputed amount (if any) only. The parties must settle the disputed invoice or part in accordance with **clause 20**.
- 10.6 Where WRC's Purchase Order number is not quoted, a Tax Invoice will be returned to You for amendment which may delay payment.
- 10.7 You and WRC acknowledge and agree that each Supply made by You pursuant to or in connection with a Purchase Order and the Contract is made:
- (a) on a progressive or periodic basis;
  - (b) for consideration that is to be provided on a progressive or periodic basis; and
  - (c) each progressive or periodic component of the Supply is to be treated as a separate Supply.
- 10.8 WRC will respond to any 'payment claim' for the purposes of the BIF Act (if applicable), within the maximum time permitted for issuing a 'payment schedule' under the BIF Act.
- 10.9 The issue of a payment schedule under the BIF Act will not prejudice or in any way affect any of WRC's rights under **clause 10**, or WRC's ability to assess an invoice submitted by You.
- 10.10 WRC may reduce any payment due to You under the Terms of Business by any amount due to or claimed by WRC from You. This does not limit WRC's right to recover those amounts in other ways.

## 11 WARRANTY

- 11.1 You warrant and represent to WRC:
- (a) the accuracy and correctness of all performance data, measurements, specifications and details quoted in catalogues, brochures, descriptive literature, quotations, offers or tenders provided or shown to WRC before entering into the Contract or issue of a Purchase Order;
  - (b) You have free and unencumbered legal and equitable title to the Goods sold and delivered to WRC; and
  - (c) as at the date of the Contract, You are not aware of any actual or threatened claim for infringement of patent, copyright, design, or trade mark, or for the breach of any obligation of confidence, arising out of the manufacture, sale or use of the Goods or the performance of the Services.
- 11.2 You must notify WRC in writing promptly upon becoming aware at any time of any actual or threatened claim referred to in **clause 11.1(c)**.
- 11.3 You warrant that the Goods supplied, delivered and installed under a Purchase Order and the Contract will:
- (a) be fit for purpose;
  - (b) be free from all defects;
  - (c) be of the current manufacture and highest grade;

- (d) be delivered in a timely manner;
  - (e) comply with the specifications and warranties provided;
  - (f) comply with Australian Standards and the law;
  - (g) where not manufactured by You, meet the current specifications of the manufacturer of the relevant Good; and
  - (h) be new unless otherwise agreed with WRC.
- 11.4 You warrant that any Services provided under a Purchase Order and the Contract will:
- (a) be performed by qualified and trained personnel;
  - (b) be performed with due care and skill;
  - (c) be fit for purposes for which those types of services are commonly bought and any other purposes which WRC tell You about;
  - (d) comply with Australian Standards and the law; and
  - (e) comply with the specifications and warranties, as provided.
- 11.5 Without limiting any other terms or warranty under a Purchase Order and the Contract, You warrant that all Goods and/or Services You supply will perform their function, without fault, during Your warranty period (as set out in the Purchase Order) or 12 months, whichever is longer.
- 11.6 Where a defect in the Goods or Services supplied under a Purchase Order and the Contract occurs within 12 months of the Goods or Services having been accepted by WRC, or within Your warranty period (as set out in the Purchase Order), whichever is the longer, You will, when called upon to do so by WRC, at Your own cost and with all due diligence, replace at the Delivery Point the defective or damaged Goods or Services with Goods or Services complying with the requirements of the Purchase Order and the Contract, or otherwise make good the damage or defect if convenient to WRC, to comply with the Purchase Order and the Contract.
- 11.7 Any repaired or replaced Goods provided by You or any re-performed Services are subject to the same warranties as the original Goods or Services, from the date of repair, replacement or re-performance and the warranty period (as set out in the Purchase Order) or 12 months, whichever is longer, will recommence from such date.

## 12 INDEMNIFICATION

- 12.1 Subject to **clause 12.3**, You will indemnify WRC from and against all claims, demands, suits, liabilities, causes of action, losses, expenses, damages or penalties, including without limitation court costs and reasonable legal fees for injuries (personal or bodily), or property damage, to the extent arising or resulting from, or caused by:
- (a) the negligence of You or Your staff, or the breach of the Contract by You or Your Staff; or
  - (b) defective Goods or Services.
- 12.2 You agree to extend the benefit of the indemnity in **clause 12.1** to WRC's officers, directors, employees, agents, consultants and representatives.
- 12.3 Your liability in relation to property damage under **clause 12.1** is limited to \$20 million unless otherwise specified in the Purchase Order.

## 13 INTELLECTUAL PROPERTY

- 13.1 You assign to WRC all Intellectual Property Rights which may arise in respect of, or as a result of, the performance of the Services and WRC grants to You a non-transferable, royalty free licence to use those Intellectual Property Rights in the performance of the Services.
- 13.2 You will pay all royalties and expenses, and be liable for all claims, in respect of the use of patent rights, trade marks or other protected intellectual property rights, for or in connection with any Goods or Services supplied under a Purchase Order and the Contract, and will indemnify WRC against all claims which may arise as a result of the use of these.

- 13.3 WRC will indemnify You against all claims arising from infringement of patent rights, trade marks or other protected intellectual property rights, where such infringement results from compliance by You with WRC's instructions in relation to a design prepared by WRC.

## 14 CONFIDENTIALITY

- 14.1 We must keep each others confidential information confidential and may only disclose that information to the extent required:
- (a) to perform the Contract and the Purchase Order;
  - (b) by law or a government body or authority; or
  - (c) in connection with legal proceedings.

## 15 RISK AND PROPERTY IN GOODS

- 15.1 Subject to **clause 15.3**, risk in the Goods remains with You and does not pass to WRC until the Goods are delivered to, inspected by, and accepted by, WRC at the Delivery Point. The signing or acknowledgement of receipt of the Goods does not constitute acceptance of the Goods by WRC.
- 15.2 WRC will be deemed to have inspected and accepted the Goods when WRC puts the Goods to their ordinary and intended use.
- 15.3 Where WRC selects and contracts with a transporter of the Goods directly, then if stated in a Purchase Order, risk in the Goods will pass to WRC immediately after the Goods have been loaded onto the transporter's vehicle.
- 15.4 Title in the Goods delivered passes to WRC at the same time risk passes under **clause 15.1** or **15.3** as applicable, regardless of whether all amounts have been paid by WRC to you.
- 15.5 Where You supply replacement Goods, risk and title in the replaced Goods passes to WRC upon replacement.
- 15.6 Where Goods have either been lost or damaged in transit while at Your risk, You will, with take all necessary immediate action to either replace the Goods or arrange repairs, whichever is mutually acceptable to Us. WRC will sign all carriers' delivery documentation 'subject to check' (STC) and is responsible for notification to You within 3 days of receipt, in the case of damage, or 10 days from receive of advice, in the case of loss in transit.

## 16 PERSONAL PROPERTY SECURITIES ACT

- 16.1 If WRC determines a 'security interest' as defined in the PPSA (**Security Interest**) arises under a Purchase Order and the Contract, then the You must do anything requested by WRC (at Your cost) including executing documents, to ensure the Security Interest is registered, perfected and enforceable, including that through registration WRC obtains the highest ranking priority possible for the Security Interest and You must assist WRC to exercise any right in connection with a Security Interest.
- 16.2 To the extent permitted by law:
- (a) You waive any right that You may have under the PPSA to receive anything from WRC, including a notification that the Security Interest has been registered; and
  - (b) until title passes to WRC in accordance with a Purchase Order and the Contract, You agree that You will not do anything to prejudice any Security Interest in favour of WRC, including that You will not permit a third party to register any Security Interest or obtain an interest in the Goods nor allow or permit anything to be installed in or affixed to the Goods which are supplied to WRC under a Purchase Order and the Contract.

## 17 INSURANCE

You must hold all insurances that a prudent supplier of the Goods and/or Services would hold, including without limitation a comprehensive public and products liability insurance providing cover in respect of each and every claim to an amount of not less than \$20 million or as otherwise specified in a Purchase Order.

## 18 TERMINATION

- 18.1 If You breach the Contract or Purchase Order, WRC may give notice requiring the breach to be remedied within 30 days. If the breach is

- not so remedied, WRC may serve a further notice terminating the Purchase Order or the Contract with immediate effect.
- 18.2 WRC may cancel a Purchase Order or terminate the Contract by notice in writing to You at any time for its sole convenience, regardless of whether you are in breach or not.
- 18.3 On cancellation or termination in accordance with **clause 18.2**, WRC will pay You the amount of any outstanding Tax Invoices issued in accordance with the Purchase Order or the Contract for the Goods delivered and Services performed up to the date of cancellation of the Purchase Order or termination of the Contract and You will have no other claim, action, demand or proceeding as a consequence of cancellation or the termination.
- 18.4 On termination of a Purchase Order or the Contract for any reason, each of Us will return any property of the other (including any confidential information). However, We may each retain one copy of any documentation or software related to the Services or the Goods.
- 18.5 WRC may immediately terminate the Purchase Order or the Contract by written notice if You are unable to pay Your debts or has a receiver, administrator, administrative receiver or liquidator appointed, or calls a meeting of its creditors or is unable to pay debts as they fall due or for any other reason ceases to carry on business, or if any of these events appear reasonably likely to occur.
- 18.6 You agree that:
- at any time, WRC may request that You to provide a signed statutory declaration (in a form and containing such detail as reasonably required by WRC) from You confirming that You or Your company is solvent and not subject to any event set out in **clause 18.5**; and
  - You must provide WRC with such completed and signed statutory declaration within 3 Business Days of such a request.
- 18.7 **Clauses 6, 7, 10.7, 11, 12, 13, 14, 16 and 18** survive termination or expiry of a Purchase Order or the Contract.

## 19 FORCE MAJEURE

- 19.1 Neither of Us will be held liable for breach of a Purchase Order or Contract or any losses, damage or injury incurred to the other wherever performance of a Purchase Order or the Contract is prevented by circumstances which are deemed to be outside Your or WRC's reasonable control and not caused by:
- any circumstance which results from Your wrongful act or wrongful omission or Your failure to act in a prudent and proper manner;
  - a circumstance or its effects which could have been prevented, overcome or remedied by You exercising reasonable precautions and the standard of care and diligence expected of an experienced and competent supplier;
  - breakdown or unavailability of Your plant and equipment; or
  - any failure by You to reach agreement with any third party necessary to enable You to perform Your obligations under the Purchase Order or the Contract,
- (‘force majeure circumstances’)
- 19.2 In the event that either party is unable wholly or in part to perform its obligations under the Purchase Order or the Contract as a result of the occurrence of force majeure circumstances, such party will immediately give notice to the other of the details of such occurrence, and both parties will make arrangements and adjustments to the Purchase Order or the Contract as necessary. Unless otherwise agreed in writing, upon cessation of the event affecting performance of the Purchase Order or the Contract, both parties shall as far as practicable complete performance of their respective obligations under the Purchase Order and Contract.

## 20 DISPUTE RESOLUTION

- 20.1 Before resorting to external dispute resolution mechanisms, We must attempt to settle any dispute under a Purchase Order or the Contract by negotiation, using the procedure in **clause 20.2**.

- 20.2 We must refer any dispute initially for resolution to a representative nominated by You, and a representative nominated by WRC, who will endeavour to resolve the dispute within 14 days.
- 20.3 If We can not resolve the dispute under **clause 20.2**, then either of Us may, in our discretion, commence mediation by giving notice to the other and referring the matter to Resolution Institute requesting the appointment of a mediator and conduct of a mediation in accordance with **clause 20**. The mediation will be conducted in accordance the Resolution Institute Mediation Rules (as in force at the time). We must comply with those rules and guidelines in connection with all matters relating to the mediation, cooperate fully with the mediator and pay an equal share of the mediator's fees and expenses.
- 20.4 Either of Us may commence court proceedings relating to any dispute arising under a Purchase Order or the Contract, except to enforce any mediation settlement or where mediation has failed to resolve the dispute.
- 20.5 WRC may raise such defence or matters as it sees fit in response to any dispute raised under **clause 20** by You and will not be bound by the matters contained in any payment schedule under the BIF Act.

## 21 PRIVACY

- 21.1 WRC may need to collect personal information about You and Your Staff to create a supplier account. WRC can only process Your invoices once this account has been correctly set up. WRC will not disclose personal information about You or Your Staff to any external parties unless the disclosure is:
- required by law (e.g. the Australian Tax Office);
  - is authorised by law (e.g. to protect our interests or where we have a duty to make such disclosure); or
  - You have consented for WRC to disclose the information about You.
- 21.2 You warrant that You comply with all obligations under the *Information Privacy Act 2009* (Qld).

## 22 SERVICE OF NOTICES AND PURCHASE ORDERS

- 22.1 Unless otherwise specified in a Purchase Order or the Contract, any notice given under a Purchase Order or the Contract must be in writing and may be served by either of Us on the other by hand delivery or pre-paid post to the address of the other, or by facsimile to the other's nominated facsimile number, or by email to the other's nominated email address. Notices will be deemed served:
- if by hand delivery, when it is delivered;
  - if by pre-paid post, on the third business day after posting (seven if posted to or from a place outside Australia);
  - if by facsimile, on receipt by the sender of a transmission report by the machine from which the facsimile was sent, indicating that the facsimile was sent in its entirety to the facsimile number of the recipient; and
  - if by email in accordance with the *Electronic Transactions Act 1999* (Cth).
- 22.2 All claims issued under the BIF Act must be served on WRC at the follow address, and otherwise in accordance with **clause 22.1**:
- Whitsunday Regional Council  
83-85 Main Street  
Prosperine Qld 4800

## 23 GENERAL

- 23.1 No amendment to a Purchase Order or the Contract has any force unless it is in writing and signed by both of us.
- 23.2 Neither of Us may assign nor purport to assign a Purchase Order or the Contract or any right under a Purchase Order or the Contract without the prior written consent of the other which consent may not be unreasonably withheld.
- 23.3 The covenants, conditions, provisions and warranties contained in a Purchase Order or the Contract do not merge or terminate upon completion of the transactions contemplated in the Purchase Order

or the Contract but to the extent that they have not been fulfilled and satisfied or are capable of having effect remain in full force and effect.

- 23.4 The Contract together with any Purchase Orders issued by WRC form the entire agreement between Us for the Goods and Services.
- 23.5 We must do all things and execute all further documents necessary to give full effect to the Purchase Orders and the Contract and refrain from doing anything that might hinder the performance of the Purchase Orders and the Contract.
- 23.6 Each Purchase Order and the Contract is governed by the laws of Queensland and both of Us party irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland.
- 23.7 Any part of a Purchase Order or the Contract that is held to be unlawful or unenforceable by a court of competent jurisdiction is severed from the Purchase Order or the Contract and the remaining provisions will continue to operate.
- 23.8 Neither of Us will be taken to waive any right under a Purchase Order or the Contract except if the waiver is given in writing and is signed by both parties.
- 23.9 You must at Your own expense obtain all requisite permits, approvals and licences and comply with all laws and regulations in connection with any Purchase Order and the Contract.

## **24 SET OFF**

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- 24.1 Without limiting WRC's rights under any part of a Purchase Order or the Contract and notwithstanding any payment by WRC under a Purchase Order or the Contract, WRC may deduct from any moneys due to You any sum which is payable by You to WRC whether or not WRC's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to WRC's right to payment arises out of the Purchase Order or the Contract, any other purchase order or contract between Us, or is independent of any such contracts. Nothing in this **clause 24** shall affect the right of WRC to recover from You the whole of such moneys or any balance that remains owing.

## **25 INTERPRETATION**

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In the Contract and each Purchase Order, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to party to the Contract and the Purchase Order;
- (c) a reference to a party to the Contract or the Purchase Order or any other document or agreement includes its successors and permitted assigns;
- (d) a reference to an item in a clause, schedule, annexure or appendix is a reference to an item in a clause of or schedule, annexure or appendix to the Contract and references to the Contract include its schedules and annexures;
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (f) wherever the words 'include' or 'including' are used in the Terms of Business, those words will be interpreted in all cases as if they were proceeded by the further words 'but not limited to' or the appropriate grammatical derivative.
- (g) a reference to a document or agreement including the Contract or a Purchase Order includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (h) in the interpretation of the Contract, headings are to be disregarded.

You agree that You will supply the Goods and Services in accordance the Contract and any Purchase Order issued by WRC, from time to time.

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Supplier's Name: \_\_\_\_\_

Signature: \_\_\_\_\_

For and on behalf of the Supplier



Whitsunday  
Regional Council

## Work, Health & Safety Policy Statement

Whitsunday Regional Council is committed to providing a safe and healthy working environment for workers, contractors and visitors to our workplaces.

Adopting and promoting the provisions of the Work Health and Safety Act 2011 and its associated Regulation, Codes of Practice and Standards is paramount and significant importance is placed on the areas of hazard / risk management, training and injury prevention strategies to achieve best practice and to ensure organisational objectives are achieved.

We understand that creating and maintaining a safe and healthy working environment is a major part of our safety obligations and to achieve this all employees have a responsibility to actively demonstrate and promote a positive safety culture. Employees with management or supervisory responsibilities are accountable for the health and safety of workers and visitors in their respective work areas.

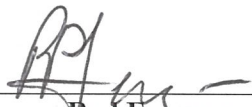
In conjunction with this policy, safety procedures, standard operating procedures and work instructions will be prepared in consultation with relevant workers and implemented systematically.

We expect that all workers, contractors and visitors to our workplaces adhere to Council's Safety Management System, and that they make a conscious effort to reduce the risk of injury to themselves and others.

We will provide adequate resources to manage and maintain workplace health and safety throughout Council, with the focus on consultation and training. To ensure that this is successful, it is critical for all workers to participate to obtain the skills necessary to eliminate and or minimise the possibility of injury and / or event.

Workplace Health and Safety is important and we all have an obligation to ensure that we have a safe and healthy working environment and we encourage you to actively participate so that we may achieve this goal.

To maintain effectiveness, Council's Safety Management System is under continual development and supports Council's vision "to be a sustainable and progressive region achieved by unified and innovative leadership for the benefit of our diverse community, visitors and the environment". I encourage you to be part of the process to actively promote safety within Whitsunday Regional Council. Next review date: June 2022

  
Rod Ferguson  
Chief Executive Officer

08/09/2021.  
Date