
PURCHASING TERMS AND CONDITIONS

1 AGREEMENT

- (a) The parties agree that the terms and conditions of the Agreement apply, and will continue to apply to the Goods and/or the Services, notwithstanding any subsequent purchase order, terms and conditions on an invoice, or any other terms and conditions, issued by the Supplier regarding the Goods and/or the Services.
- (b) Any review, comment, approval or non-approval by Douglas Shire Council (DSC) of the Goods, the Services or any document provided by the Supplier does not relieve the Supplier of its obligations or liabilities under the Agreement.

2 GOODS

Clause 2 applies if any Goods are ordered by DSC.

2.1 Performance

- (a) The Goods supplied by the Supplier must:
 - (i) match the description of the Goods ordered by DSC and comply with any specifications or plans supplied by DSC for the supply of the Goods;
 - (ii) correspond with any sample which the Supplier provided to, or showed to, DSC prior to or after an order is issued by DSC;
 - (iii) comply with any laws, regulations, licences, permits, approvals and Australian Standards applicable to the Goods;
 - (iv) be new, of merchantable quality and free from defects in materials and workmanship; and
 - (v) be free from all liens, charges and encumbrances of any kind.
- (b) The Supplier must provide all installation instructions, maintenance and operating manuals, engineering data, spare parts lists and other information as reasonably required for the installation, operation and maintenance of the Goods at the time of delivery of the Goods.

2.2 Delivery

- (a) Delivery will have occurred only when the Supplier has:
 - (i) delivered the Goods to the Site and (unless otherwise agreed with DSC) unloaded the Goods at the part of the Site designated by DSC; and
 - (ii) received a delivery receipt from DSC's Site personnel for the Goods delivered.
- (b) The Supplier must properly pack and protect all Goods to ensure that they are not damaged during delivery to and unloading and storage at the Site.

2.3 Title and risk

- (a) Risk in the Goods passes to DSC upon delivery of the Goods in accordance with clause 2.2(a), subject to risk passing to the Supplier when the Goods are made available by DSC for the purposes of clause 2.4(a).
- (b) Title to the Goods passes to DSC on payment or delivery (whichever occurs first) and the Supplier warrants that it is able to pass good title to the Goods to DSC.

2.4 Defective Goods

- (a) If DSC determines that any Goods are unsatisfactory, defective, or fails to meet any specifications or other requirements of the Agreement (**Defective Goods**), the Supplier must do any one or more of the following, at its own cost, as determined by DSC in its absolute discretion:
 - (i) re-take possession of the Defective Goods and refund the Price for the Defective Goods to DSC;
 - (ii) deliver replacements of the Defective Goods; or
 - (iii) repair the Defective Goods.
- (b) Any loss or damage that DSC has incurred as a result of the supply of the Defective Goods will be a debt due and payable to DSC.

2.5 International conventions

Neither the *Sale of Goods (Vienna Convention) Act 1986* (Qld) (or similar legislation in any other Australian jurisdictions) nor any international conventions or recognised customs in relation to rules that may otherwise apply for or in respect to the international sale of goods, have any application to any matter in connection with the Agreement.

3 SERVICES

Clause 3 applies if any Services are ordered by DSC.

3.1 Performance

The Services completed by the Services must:

- (a) match the description of the Goods ordered by DSC;
- (b) be performed with skill, care and diligence and by appropriately qualified, skilled and trained personnel;
- (c) comply with any laws, regulations, licences, permits, approvals and Australian Standards applicable to the Services;
- (d) be fit for the purpose or purposes described in the Agreement or which DSC has made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which services of the same kind as the Services are commonly procured.

3.2 Supply of items

Any items which the Supplier uses or supplies in connection with the Services must:

- (a) be of merchantable quality;
- (b) comply with any applicable Australian Standards and any other standards specified in the Agreement; and
- (c) be fit for the purpose or purposes described in clause 3.1(d).

3.3 Non-compliant Services

- (a) If DSC is not satisfied that the Services comply in all respects with the requirements of the Agreement (**Defective Services**), the Supplier must do any one or more of the following, at its own cost, as determined by DSC in its absolute discretion:
 - (i) within a reasonable time, take such steps as are necessary to ensure that the Services comply with the Agreement; or
 - (ii) refund to DSC any payments made by DSC in respect of the Defective Services.
- (b) Any loss or damage that DSC has incurred as a result of the Defective Services will be a debt due and payable to DSC.

4 COMPLETION

- (a) The Supplier must:
 - (i) deliver the Goods by the Completion Date; and/or
 - (ii) complete the Services by the Completion Date, and, in any case, expeditiously and without delay.
- (b) DSC may, at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for the benefit of DSC and may be exercised in its absolute discretion.
- (c) DSC may direct the Supplier to deliver the Goods and/or complete the Services on a date earlier than the Completion Date (**Acceleration**), and the Supplier must comply with that direction at no cost to DSC, unless the Supplier can demonstrate that it is not possible to do so. If compliance with such a direction causes the Supplier to incur greater or less costs to that which it would have otherwise incurred if the direction had not been given, the Supplier must (at its own cost), within 7 days of an Acceleration direction, provide to DSC a detailed quotation to complete the Acceleration, supported by measurements or other evidence of cost (**Acceleration Proposal**). DSC will consider the Acceleration Proposal after its receipt and issue a written direction to the Supplier which either accept or rejects the Acceleration Proposal. If DSC accepts an Acceleration Proposal, the Supplier's sole claim for the Acceleration is limited to costs expressly set out in the Acceleration Proposal and the Supplier will have no other claim. Any Acceleration by the Supplier prior to receipt by the Supplier of written acceptance to the Acceleration Proposal from DSC will not affect the Price and the Contractor will not have or make any claim.

5 SITE MATTERS

- (a) Entry to the Site by the Supplier and the Supplier's officers, employees, agents, contractors, servants and others (**Personnel**) engaged to supply the Goods and/or complete the Services is at their own risk. To the extent permitted by law, DSC will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Site.
- (b) When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site notified to the Supplier by DSC.

6 STATUTORY DECLARATION

The Supplier agrees that:

- (a) at any time, DSC may request the Supplier to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by DSC) from a current director of the Supplier confirming that the Supplier is solvent and not subject to any event set out in clause 12(b)(ii); and
- (b) the Supplier must provide such completed and signed statutory declaration within 3 Business Days of such a request.

7 VARIATION

- (a) DSC may direct the Supplier at any time to vary, amend, increase, decrease, omit, change the time of or suspend delivery of, or change the quality, character or extent of the Goods and/or the Services (**Variation**). No Variation will invalidate the Agreement.
- (b) DSC will not be in breach of the Agreement if it reduces the quantity or scope of the Goods and/or Services ordered and thereafter either engages a third party to supply those Goods and/or perform those Services.
- (c) If the parties cannot agree on the price or Completion Date for a Variation, where the Variation has not arisen from any default of the Supplier or for its convenience, DSC will determine a reasonable increase or decrease to the Price and the Completion Date.

8 INVOICING AND PAYMENT

- (a) DSC will, subject to the terms of the Agreement (including, without limitation, clause 7(b)), pay the Supplier an amount not exceeding the Price.
- (b) If the Supplier wishes to claim an amount in excess of the Price, the Supplier must obtain DSC's prior written approval for any increase in the Price. DSC will not be liable to pay the Supplier more than the Price, unless prior written approval is obtained from DSC for the excess amount. This process must be repeated for any excess amount.
- (c) The Supplier may only invoice DSC after the delivery of the Goods in accordance with clause 2.2(a) and/or the completion of the Services. Invoices must include the contract / order number provided by DSC (if any), the budget number provided by DSC (if any), the name of DSC's representative who ordered the Goods and/or Services, a detailed description of the Goods supplied and/or Services performed, the Price payable by DSC and any other information reasonably required by DSC.
- (d) Subject to clause 7(e), DSC will pay the amount of invoices issued by the Supplier under clause 7(c) within 30 days from the end of month, except where DSC disputes the invoice, in which case:
 - (i) DSC will pay the undisputed part of the invoice (if any);
 - (ii) if the resolution of the dispute determines that DSC is to pay an amount to the Supplier, DSC will pay that amount upon resolution of that dispute.
- (e) DSC may reduce any payment due to the Supplier under the Agreement by any amount for which the Supplier is or may be liable to DSC, including costs, charges, damages and expenses. This does not limit DSC's right to recover those amounts in other ways.

9 GST

- (a) Capitalised terms in this clause 8 have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) The consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
 - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (c) If either party has the right under the Agreement to be reimbursed or indemnified by another party for a

cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.

10 INDEMNITY

The Supplier indemnifies DSC from any claims, actions, proceedings, costs, expenses, losses and damages (including legal fees on an indemnity basis) incurred in connection with:

- (a) the supply of the Goods and/or performance of the Services;
- (b) any loss of or damage to real or personal property caused by the Supplier or its Personnel;
- (c) personal injury or death caused by the Supplier or its Personnel;
- (d) a breach of the Agreement by the Supplier.

11 INSURANCE

- (a) The Supplier must effect and maintain the insurance policies at its own cost:
 - (i) public liability insurance for an amount no less than \$10 million (except where a lesser amount is agreed with DSC);
 - (ii) workers' compensation insurance as required by law;
 - (iii) third party comprehensive motor vehicle insurance; and
 - (iv) if any design Services are ordered by DSC, or the Supplier is designing bespoke Goods for DSC, professional indemnity insurance with a limit of liability of not less than \$5 million (except where a lesser amount is agreed with DSC) is to be maintained until six years after the Completion Date.
- (b) The Supplier must provide DSC with evidence of such insurances whenever requested by DSC.

12 TERMINATION

- (a) DSC may terminate the Agreement for any reason in DSC's absolute discretion on seven days' written notice to the Supplier.
- (b) DSC may terminate the Agreement immediately if the Supplier:
 - (i) fails to remedy any breach of the Agreement within seven days of being directed in writing to do so by DSC; or
 - (ii) becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller, makes a statement or conducts itself in a manner from which it may reasonably be deduced that the Supplier is insolvent, stops or suspends (or threatens to stop or suspend) payment of all or a class of its debts, or anything analogous to these events.
- (c) Subject to clause 12(d), if DSC exercises its rights under clause 12(a), the Supplier will only be entitled to its reasonable direct costs incurred up to the date of termination provided that, in the case of Goods, DSC receives title to any Goods that are paid for in accordance with this clause 12(c). The Supplier will not be entitled to any loss or profit or other compensation.
- (d) If DSC exercises its rights under clause 12(a) and the Supplier at the time of termination:
 - (i) is subject to an event set out in clause 12(b)(ii);
 - (ii) has not provided a statutory declaration in accordance with clause 6; or
 - (iii) has provided the statutory declaration in accordance with clause 6 and such statements are determined by DSC (acting reasonably) to be untrue, false or misleading (as applicable),then DSC will not be liable to make any payment under clause 12(c) to the Supplier.
- (e) If DSC exercises its rights under clause 12(b), the Supplier will not be entitled to any claim against DSC.
- (f) If DSC terminates, or purports to terminate, the Agreement and it is subsequently held to be invalid, void or otherwise unenforceable then DSC will be deemed to have terminated for convenience under clause 12(a) as at the same date and time as the original notice of termination (subject to time limits in clause 12(a)). The Supplier's sole entitlement will be a payment (if applicable) under clause 12(c) and the Supplier waives any claim it has, or would have had, but for this clause 12(f), arising out of or in connection with any termination, or purported termination, by DSC under clause 12(b) or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

13 INFORMATION

- (a) The Agreement and any information provided by DSC to the Supplier are confidential and must not be disclosed by the Supplier without the prior written consent of DSC.
- (b) The copyright in any material given to the Supplier by DSC remains the property of DSC and may only be

used by the Supplier for the purposes of the Agreement.

- (c) The Supplier grants DSC an irrevocable, royalty free, transferable licence, including the right to sub-licence, to use any material provided to DSC in connection with the Agreement for the use and enjoyment of the Goods and/or Services, including (without limitation) any modification, repair or alteration of the Goods.
- (d) The Supplier warrants that the Goods and/or the Services will not infringe any patent, trademark or copyright in Australia or any other country.

14 OTHER

- (a) The Supplier must at its own expense obtain all requisite permits, approvals and licences and comply with all laws and regulations in connection with the Agreement.
- (b) The Supplier must keep DSC fully informed in respect to the Supplier's performance of the Agreement and provide to DSC, as requested by DSC, progress reports.
- (c) The Supplier must at its own cost supply all labour, tools, equipment and materials necessary for the supply of Goods and/or the performance of the Services.
- (d) The Supplier performs its obligation as an independent contractor and not as an employee, agent, joint venture or partner of DSC.
- (e) The Supplier must comply with all reasonable directions of DSC.
- (f) The Agreement may not be amended, altered, supplemented or cancelled without the prior written consent of DSC.
- (g) Where the Supplier comprises more than one person or entity, each of them will be jointly and severally liable for the full performance of the Supplier's obligations under the Agreement.
- (h) Notwithstanding the existence of a dispute, the Supplier must continue to perform its obligations under the Agreement.
- (i) The Supplier must not assign or subcontract its rights or obligation under the Agreement without the prior written consent of DSC.
- (j) A right under the Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- (k) Where any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.
- (l) The Supplier and DSC agree that the laws in force in the State of Queensland apply to the Agreement and both submit to the exclusive jurisdiction of the Queensland courts.
- (m) If any day on or by which a person must do something under the Agreement is not a business day, then the person must do it on or by the next business day.
- (n) No provision of the Agreement is not to be constructed against the interests of DSC because DSC prepared the Agreement.

15 DEFINITIONS

In the Agreement:

Agreement mean the agreement between DSC and the Supplier for the supply of the Goods and/or performance of the Services, comprising these Terms and Conditions and any earlier agreement (written or otherwise) between the parties in respect the Price, the Goods and/or the Services, the Completion Date and the Site.

Completion Date means:

- (a) in the case of Goods, the date or dates nominated by DSC for the delivery of the Goods in accordance with clause 2.2(a); and/or
- (b) in the case of Services, the date or dates nominated by DSC for the completion of the Services.

Goods means the goods ordered by DSC (if any).

Price means the price or prices agreed between DSC and the Supplier for the Goods and/or the Services.

Services means the services ordered by DSC (if any).

Site means:

- (a) in the case of Goods, the location for the delivery of the Goods in accordance with clause 2.2(a), as agreed between DSC and the Supplier;
- (b) in the case of Services, the location where the Services are to be performed, as agreed between DSC and the Supplier.