1. DEFINED TERMS AND INTERPRETATION

1.1 "**City**" means City of Swan. "**Contractor**" means the person described on the Purchase Order as the Contractor. "**Date Required**" means the date identified as the Date Required on the Purchase Order. "**Delay Event**" means any circumstance beyond the reasonable control of, and not caused by the City or the Contractor, which prevents or impedes the due performance of the Contract and the consequences of which could not have been reasonably prevented or avoided by the City or Contractor, including but not limited to strikes; lock-outs or other industrial disputes; failure of a utility service or transport network; act of God; war; riot; civil commotion; compliance with any law or governmental order, rule, regulation or direction; outbreak of disease or infection or COVID-19. "**Document**" means all documents identified under the Comments section of the Purchase Order. "**Goods**" means the goods, products and materials identified under the Product section of the Purchase Order. "**Materials**" means all goods, products and materials that form part of the Works / Services. "**Purchase Order**" means the City's purchase order issued to the Contractor and these terms and conditions. "**Special Condition**" means all special conditions identified under the Comments section of the Purchase Order. "**Total**" means the total cost for the Goods or Works / Services identified in the Purchase Order. "**Works / Services**" means the works or services identified under the Description section of the Purchase Order.

1.2 In these terms and conditions, references to the singular include the plural and visa versa.

2. CONTRACT

2.1 The Contract comprises the Purchase Order and all Documents and Special Conditions. In the event of any conflict or discrepancy, the order of precedence to determine the conflict or discrepancy is the Special Condition, the Document and then the Purchase Order.

3. QUOTATION AND OTHER TERMS

3.1 Any quotation or offer may only be accepted by the City issuing the Purchase Order.

3.2 By commencing the manufacture, supply or delivery of the Goods or commencing the Works / Services, the Contractor is deemed to have accepted the Purchase Order and any other purported terms provided by the Contractor are rejected by the City.

3.3 The Contractor and the City agree that the Contract constitutes the entire agreement of the parties and takes precedence over any other terms, purported terms or representations made.

4. WARRANTIES

4.1 The Contractor warrants that:

a. the Goods and Materials meet the description and specifications stated in the Contract, are fit for the purpose for which they are supplied, meet all appropriate Australian Standards, are free from any defects, do not pose any danger, do not contain any hazardous material and are not subject to any encumbrance or the registration of any security interest; and

b. the use of the Goods and Materials and performance of the Works / Services does not and will not infringe any intellectual property rights.

5. OBLIGATIONS

5.1 The Contractor must:

a. prior to commencement of the supply of the Goods or performance of the Works / Services register as an approved supplier of City;

b. supply the Goods or perform the Works / Services by the Date Required and in accordance with the Contract;

c. perform the Works / Services with professional skill and care expected of an experienced contractor in the Contractor's industry and meet all appropriate Australian Standards;

d. if any Goods or Materials were manufactured by a third party, ensure that any warranty in respect of those Goods or Materials provided by that third party is lawfully passed on to the City;

e. from the commencement of the Contract under the satisfactory completion of the Contract, effect and maintain workers' compensation and employers' indemnity insurance and public and product liability insurance (with a limit of liability for the public and product liability insurance of not less than $10,000,000.00 in respect of any one claim and be unlimited in aggregate);

f. upon request, provide to the City a complete copy of each insurance certificate required by subclause 5(e);

g. comply with all laws; and

h. indemnify the City for any and all loss, damage, costs (including but not limited to legal costs), expenses and liabilities that the City suffers or incurs by reason of the Contractor's negligence, breach of the Contract or breach of any law.

5.2 The Contractor must not:

a. vary, subcontract or assign any part of the Contract without the City's prior written approval; and

b. encumber or register any security interest over the Goods or Materials.

6. PAYMENT

6.1 To be valid, the Contractor's invoice must:

a. be issued to the City after performance of the Contract and not exceed the Total;

b. be in writing, identify the Purchase Order number and be submitted to the City by email to creditors.account@swan.wa.gov.au; and

c. comply with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

6.2 Subject to clauses 6.3 and 6.4, the City must pay the Contractor the undisputed amount claimed by the Contractor in any valid invoice within 35 days of the City receiving the valid invoice from the Contractor.

6.3 All payments made by the City are on account and the City may dispute any paid invoice at any time by notice in writing to the Contractor. Upon request, the Contractor must repay the amount of any overpayment made by the City.

6.4 The City may set-off from any payment due to the Contractor any and all loss, damage, costs, expenses and liabilities that the City suffers or incurs by reason of the Contractor's negligence, breach of the Contract or breach of any law or amount of any overpayment by the City.

7. BREACH, TERMINATION AND DISPUTES

7.1 The City may terminate the Contract if a Delay Event occurs.

7.2 Either party may terminate the Contract if the other party:

a. is in breach of the Contract (**Breach**); and

b. fails to rectify the Breach within 7 days of receiving written notice of the Breach.

7.3 Upon termination of the Contract:

a. the City's liability to the Contractor is limited to the amount reflecting that part of the Goods supplied or the Works / Services provided to the City but not yet paid by the City to the Contractor; and

b. the Contractor must transfer all title in the Goods and Works / Services for which the City has paid the Contractor.

8. OTHER TERMS

8.1 No waiver of the Contract is binding unless agreed in writing by the party granting the waiver and any waiver granted only extends to the particular requirement or breach waived and will not limit or affect any other right or obligations.

8.2 The Contract is governed by the laws of Western Australia and all parties submit to the jurisdiction of Western Australia to resolve any dispute.

8.3 Clauses 4.1, 5.1d., 5.1h., 6.4 and 7.3 survive the termination of the Contract.