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## CITY OF SWAN GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS

(Part 3 of Request Document)

### 3.1 Governing Law

The Contract shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

### 3.2 Definitions

3.2.1 In the Contract, except where the context otherwise requires:

**Contract Price** means the monetary consideration stated in the Contract for the sale of the Goods to the Principal whether expressed as a lump sum or price per unit or by weight or volume or otherwise.

**Contractor** means the party named in the Contract as the seller of the Goods.

**Date for Delivery** means:

- (a) where the Contract or Order specifies a date for delivery, that date; or
- (b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

**Goods** means the goods, the subject of the Contract or such of them as shall be described in the Order.

**Local Government** means any local government established under the Local Government Act 1995 or the Principal.

**Officer** means any officer or person authorized by the Principal to act on its behalf for the purpose of the Contract.

**Order** means a purchase order from the Principal to the Contractor requiring the supply of specific Goods.

**Principal** means the City of Swan.

**Specification** means any technical specification, drawing and schedule forming part of the Contract.

- 3.2.2 Unless the context otherwise requires, the singular includes the plural and vice versa. The Clause headings of the General Conditions of Contract shall not in any way affect their interpretation. Any one gender includes all genders.

### **3.3 Evidence of Contract**

- 3.3.1 The Contract shall be evidenced by the Special Conditions of Contract, General Conditions of Contract, Specifications, Quotation or Tender, Letter of Acceptance and all things referred to therein.
- 3.3.2 The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.
- 3.3.3 Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

### **3.4 Notices**

- 3.4.1 Any notice or other communication under the Contract shall be in writing and signed and shall be given or served by:
- (a) hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
  - (b) facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.
- 3.4.2 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

**3.5 Contractor to Have Informed Itself**

3.5.1 The Contractor shall be deemed to have:

- (a) examined carefully and to have acquired actual knowledge of the contents of all documents and any other information made available in writing by the Principal to the Contractor for the purposes of quoting/tendering; and
- (b) obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its tender and which was obtainable by the making of reasonable enquiries; and
- (c) satisfied itself as to the correctness and sufficiency of its tender and that the Contract Price covers the cost of complying with all its obligations under the Contract.

3.5.2 Failure by the Contractor to have done all or any of the forgoing shall not relieve the Contractor of its obligation to perform the Contract in accordance with the terms of the Contract.

**3.6 Complying with Statutory Requirements**

The Contractor shall comply with the requirements of all applicable Acts, statutes and laws and all ordinances, rules, regulations, by-laws, orders and proclamations, throughout the performance of the Contract. If a requirement is at variance with a term of the Contract the Contractor shall notify the Principal in writing. If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

**3.7 Assignment and Subcontracting**

3.7.1 The Contractor shall not without the prior written approval of the Principal:

- (a) assign the Contract, or any part thereof or any payment thereunder. Approval to assign shall be on terms and conditions determined by the Principal.
- (b) subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

**3.8 Indemnity**

- 3.8.1 The Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal or employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the sale or delivery of the Goods by the Contractor or its employees, agents or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.
- 3.8.2 Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

**3.9 Patent Rights/Copyright and Other Intellectual Property Rights**

The Contractor warrants that neither the Goods nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right and shall indemnify the Principal against any action, suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

**3.10 Specified Brands**

Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

**3.11 Quality of Goods**

- 3.11.1 All Goods delivered shall conform to the Specification and to samples provided (if any) specified in the Contract.
- 3.11.2 Where no standards are specified in the Contract the Goods shall comply with the appropriate and current standard of the Standards Association of Australia

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and if there is no such standard then with the appropriate and current standard of the International Standards Organisation.

- 3.11.3 If no samples or standards are specified, Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use.

### **3.12 Supply of Goods by Order**

- 3.12.1 The Contractor shall fulfil all Orders for Goods placed by the Principal during the term or currency of the Contract.

- 3.12.2 Where the Contract is for the supply of Goods by reference to:

- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed **EXCEPT** such of the Goods as may be ordered by the Principal.
- (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
- (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.

- 3.12.3 The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.

### **3.13 Packaging**

The Contractor shall ensure that all Goods are properly, safely and securely packaged and labeled for identification and safety.

### **3.14 Delivery of Goods**

- 3.14.1 The Contractor shall deliver the Goods in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.

- 3.14.2 Upon it becoming evident to the Contractor that delivery of the Goods is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify

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the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

- 3.14.3 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

### **3.15 Expenses of Delivery**

Unless otherwise provided in the Contract, the Contractor shall pay all packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of Goods and the return of Goods wrongly supplied and all packaging.

### **3.16 Receipt and Acceptance of Goods**

- 3.16.1 Delivery and receipt of Goods, shall not of itself constitute acceptance of the Goods by the Principal, with acceptance being subject to the approval of the Officer.
- 3.16.2 The Principal shall be deemed to have accepted the Goods when the Officer notifies the Contractor that the Goods have been accepted or when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 3.16.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.
- 3.16.4 Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

**3.17 Rejection and Removal of Goods**

- 3.17.1 The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.
- 3.17.2 Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to :
- (a) exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
  - (b) sell the rejected Goods; or
  - (c) have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.
- 3.17.3 The Principal shall not be responsible for the care or custody of any rejected Goods.
- 3.17.4 Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;
- (a) shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
  - (b) where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality
- 3.17.5 In both cases any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

**3.18 Property in the Goods**

Upon payment for the Goods property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.

**3.19 Deficient Goods**

- 3.19.1 Where after acceptance, the Goods are subsequently found not to be in accordance with the Contract or of an inferior quality, or differing from those ordered (whether by sample or quality), ("the deficient Goods"), the Principal may notify the Contractor of the deficiency, and require the Contractor to forthwith:
- (a) remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
  - (b) refund the price paid and thereupon to remove the deficient Goods from the Principal's premises;
- 3.19.2 Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.
- 3.19.3 Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.
- 3.19.4 The Principal shall not be entitled to exercise any rights under this Clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance
- 3.19.5 Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Clauses 3.17 and 3.29 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Clauses 3.17 and 3.29 were set out herein.

**3.20 Electronic Formats**

- 3.20.1 Where electronic copies are required as part of the contract specification the Contractor shall provide these electronic copies on a CD in a format readable by Microsoft Office XP (Microsoft Word or Excel preferred, as appropriate).
- 3.20.2 If Microsoft Project is used in the tender submission then the Contractor shall save as version MS Project.



**3.21 Warranties**

The Contractor shall obtain all warranties specified in the Contract including any warranties that are obtained by any subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

**3.22 Variation to Contract Terms**

None of the terms of the Contract shall be varied, waived, discharged or released either at law or in equity, except by the express written agreement of the Principal.

**3.23 Price Basis**

Unless otherwise stated in the Contract, the Contract Price shall be firm and not subject to rise and fall.

**3.24 Special Pricing and Offers**

- 3.24.1 Any special price, license fee, rate or charge in relation to the Goods or goods of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract shall be made available to the Principal.
- 3.24.2 The Contractor, through the period within which that special price, license fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

**3.25 Payment**

- 3.25.1 Unless otherwise provided in the Contract all payments shall be made within thirty (30) days of receipt of the Contractor's invoice or claim, provided that the Goods have been accepted by the Officer.
- 3.25.2 Failure by the Principal to pay the amount payable at the due time, will not be grounds to invalidate or avoid the Contract.
- 3.25.3 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

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**3.26 Deductions of Charges or Debts**

The Principal may deduct from monies due to the Contractor under the Contract or on any other account, any monies due from the Contractor to the Principal, under the Contract or on any other account, and if those monies are insufficient, the Principal may have recourse to any security under the Contract.

**3.27 Goods and Services Tax**

3.27.1 For the purposes of this Clause:

- (a) “GST” means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b) “GST Act” means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation’s Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
- (c) “Supply”, “taxable supply” and “tax invoice” have the same meanings as in the GST Act.

3.27.2 Where the supply of Goods or any part thereof is a taxable supply under the GST Act: the Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

**3.28 Customs and Excise Duties**

3.28.1 The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of tenders.

3.28.2 The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

3.28.3 The Contractor shall:

- (a) if the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the Australian Customs Tariff (Anti Dumping) Act 1975, in respect of the Goods supplied under the

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Contract direct to the Principal or to the Australian Customs Service as the case may be.

- (b) indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

### **3.29 Settlement of Disputes**

- 3.29.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 3.29.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.
- 3.29.3 Subject to the provisions of this Clause, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).
- 3.29.4 If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected:
  - (a) by an arbitrator mutually agreed upon between the parties; or
  - (b) in default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,

in accordance with the provisions of the Commercial Arbitration Act 1985.

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### 3.30 Termination of Contract

- 3.30.1 Subject to the preceding Clause, if the Contractor fails to duly and punctually observe perform and comply with any term condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term condition or stipulation or otherwise to remedy the breach; or
- (a) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
  - (b) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
  - (c) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
  - (d) If the Contractor includes in its Quotation or Tender any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;
- 3.30.2 **THEN** and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.
- 3.30.3 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the abovementioned matters and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

**3.31 Waiver**

No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

**3.32 Entire Agreement**

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods.

**3.33 Rights and Remedies**

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at law or under the Contract.

**3.34 Disability Access and Inclusion Plan**

3.34.1 If the Contract involves the supply of services to the public, then the successful Respondent will:

- (a) to the extent practicable, implement the Principal's 'Disability Access and Inclusion Plan' prepared under the *Disability Services Act 1993*, located at [https://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_267\\_homepage.html](https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_267_homepage.html); and
- (b) respond to the Principal's request to report on the extent to which the successful Respondent has implemented the Principal's Disability Access and Inclusion Plan.
- (c) The Principal's 'Disability Access and Inclusion Plan' may be downloaded at: <http://www.swan.wa.gov.au/City-Council/About-the-organisation/Access-inclusion>