"Richmond Valley Council" Purchase Order - Standard Terms and Conditions

1. General

(a) These conditions apply to any Purchase Order for goods and/or services ("Goods/Services") placed by Richmond Valley Council ("Council") with the supplier of Goods/Services ("Supplier") and must be read in conjunction with any contract specified in an individual Purchase Order ("Contract"). To the extent necessary, the Contract consists of (or is varied to) incorporate the Purchase Order and these terms and conditions, which shall be of higher order of precedence than any other Contract document (including without limitation any other term specified or order of precedence). For the avoidance of doubt, if there is any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the Contract then these terms and conditions will prevail.

(b) For the further avoidance of doubt, these Terms and Conditions do not apply to a Purchase Order which arises out of a Tender pursuant to section 55 of *the Local Government Act 1993* NSW, or where Council has already entered into terms and conditions with the Supplier.

(c) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.

2. Acceptance and Rejection

(a) Council may, at any time before acceptance, reject the Goods/Services if Council believes the Goods/Services is defective, do not comply with Council's warranties specified in clause 11 below ("Warranties") or do not meet the specifications or requirements as detailed in the Purchase Order. Council prior to rejection may unpack, inspect and test the Goods/Services for this purpose.

(b) Council may, at any time after acceptance, reject the Goods/Services if Council believes the Goods/Services are defective, do not comply with the Warranties or does not meet the specifications or requirements as detailed in the Purchase Order, provided that the defect could not have been discovered prior to acceptance.

(c) If Council rejects the Goods/Services (or any part of the Goods/Services) the Supplier must comply with a requirement of Council to:

  (i) collect the defective Goods/Services and replace it at the Supplier's expense; or

  (ii) refund Council any amount paid for the defective Goods/Services.

(d) The parties expressly agree that the rights of Council pursuant to paragraph (c) above apply notwithstanding that the matters in the Warranties are described as warranties.

3. Cancellation

(a) If the Supplier is unable to supply the Goods/Services as specified, it must promptly notify Council, and if the Goods/Services are completely unavailable, the Supplier may offer another Good/Service as a substitution. Council may accept or reject the substitute Goods/Services in its absolute discretion.

(b) The substitution of the Goods/Services must be approved by both parties in writing.

(c) Council may (at any time before delivery), cancel or change the Purchase Order. If this occurs, and:

  (i) the change causes an increase or decrease in the cost of the Goods/Services, or time required to deliver the Goods/Services, an equitable adjustment will be made appropriate to the circumstances;

  (ii) The Supplier has already incurred any reasonable expense in satisfying the Purchase Order, Council will pay those expenses.

4. Price, Payment Terms, GST

(a) The Supplier must have an Australian Business Number (ABN). Council requests the Supplier to issue a tax invoice for the Goods/Services within twenty-eight days from the date of the Purchase Order. The Supplier's tax invoice(s) are to show all the details required by *A New Tax System (Goods and Services Tax) Act 1999*.

(b) If the Supplier is not registered for GST and is not required to be registered for GST, Council requests the Supplier to issue an invoice for the Goods/Services within twenty- eight days from the date of this order.

(c) A (tax) invoice must identify the Purchase Order Number. Each (tax) invoice must also include ABN and the name of the Supplier that is recorded in the Australian Business Register for that ABN.
Otherwise, PAYG Withholding (No ABN) law requires Council to withhold an amount from the payment and send it to the Australian Taxation Office.

(d) Council will pay the Supplier within the agreed terms of payment with the Supplier.

5. Security of Payment

This clause will have application only where the Supplier provides construction work or related goods and services.

(a) The Supplier is entitled to submit claims for payment (payment claim) of any account payable under the Contract on:

(i) One occasion per month before the month where the Purchase Order is completed; and

(ii) At completion of the Purchase Order.

(b) Within 10 business days of receiving the payment claim, Council must issue a payment schedule stating:

(i) The claim to which it relates;

(ii) A determination of the amount the Council is entitled to retain, deduct, withhold or set-off pursuant to the Contract;

(iii) The Council's determination of the monies it proposes to pay; and

(iv) The reason for any difference of the amounts in the payment claim and payment schedule.

(c) If a payment schedule is issued, Council must pay the amount specified in the payment schedule within 15 business days of receipt by the Supplier.

(d) In making payment to the Supplier, Council may:

(i) Deduct money otherwise payable by the Supplier under the Contract, including:

I Any debt or other monies due; and

II Any bone fide claim to money which Council may have against the Supplier, whether for damages (liquidated or unliquidated) or otherwise);

whether under the Contract or under any other contract or on any other legal or equitable basis.

(ii) Without limiting the Contract, deduct monies otherwise due which is obliged to withhold pursuant to the *Building and Construction Security of Payment Act (1999)*.

(iii) Deduct any monies due under the Contract that Council is entitled to withhold in accordance with any legislative requirement, including section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of *the Industrial Relations Act 1996* (NSW).

6. Chain of Responsibility

(a) Chain of Responsibility means the obligations imposed in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue, vehicle standards, roadworthiness and maintenance by the HVNL in respect of Goods/Services.

(b) HVNL means the *Heavy Vehicle National Law Act 2013* (NSW), the *Heavy Vehicle (Fatigue Management) National Regulation*, the *Heavy Vehicle (General) National Regulation*, the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*, *the Heavy Vehicle (Vehicle Standards) National Regulation* as enacted in any Australian state or territory.

(c) The Supplier acknowledges that in instances where trucks greater than 4.5 tonnes are used by or engaged by the Supplier in the provision of the Goods/Services, the Chain of Responsibility and HVNL applies to the Goods/Services.

(d) The Supplier acknowledges that it is responsible for supervising, managing and controlling Chain of Responsibility and any

transport activities in respect of the Goods/Services including those carried out by loaders and unloaders of Goods or goods related to the supply of Services.

(e) The Supplier acknowledges that it will familiarise and make available to all of its staff, contractors, delegates and invitees any relevant Chain of Responsibility obligations, guidelines and procedures and or similar as updated from time to time.

(f) The Supplier acknowledges that a party in the Chain of Responsibility includes any corporations, partnerships, unincorporated bodies or individuals who are self-employed or sole operators and subject to relevant duties if they are conducting any of the following activities:

(i) Consigning;

(ii) Packing/preparing;

(iii) Scheduling;

(iv) Loading;

(v) Carrying;

(vi) Unloading;

(vii) Receiving; and

(viii) Goods transported by heavy vehicle by road or operating a heavy vehicle or at a premises at which heavy vehicles unload/load.

7. Assignment, variation and waiver

(a) The Supplier must not assign the benefit of the Purchase Order without Council's prior written approval.

(b) No variation of the Purchase Order will be binding on Council unless in writing and signed by a duly authorised representative of Council.

(c) "Richmond Valley Council's" failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.

8. Insurance

The Supplier must maintain the following policies of insurances (and provide copies on request):

(a) Public Liability: Amount per occurrence shall not be less than $20,000,000 (AUD);

(b) Product Liability (where applicable): Amount per occurrence shall not be less than $10,000,000 (AUD);

(c) Professional Indemnity (where applicable): Amount per occurrence shall not be less than $5,000,000 (AUD). The policy must include the provision for one automatic reinstatement of the sum insured;

(d) Motor vehicle insurance for any vehicles used to provide the goods/services; and

(e) Workers Compensation.

9. Quality and Delivery

The Supplier must, as specified in the Purchase Order:

(a) Provide Goods/Services safely and appropriately to protect it from damage; and

(b) deliver the Goods/Services:

(i) by the date;

(ii) to the place; and

(iii) in the quantity specified

10. Ownership and Risk

(a) Title in the Goods/Services will pass to "Richmond Valley Council" on delivery.

(b) The Supplier assumes all risk in the Goods/Services until it is accepted by "Richmond Valley Council".

11. Warranties

(a) In addition to any warranties implied by law, the Supplier warrants that:

(i) the Goods/Services are free from defects in material and workmanship and are of merchantable quantity;

(ii) it has a right to provide the Goods/Services;

(iii) the Goods/Services are free from any charge or encumbrance in favour of any third party not declared or known to "Richmond Valley Council" before or at the time the Purchase Order is made;

(iv) the Goods are of the description and quality specified in the Purchase Order;

(v) the Goods are fit for purpose;

(vi) the Goods/Services comply with all applicable Australian standards and legislation; and

(vii) the Goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right

(b) The Supplier will ensure that any warranty offered by a manufacturer of the Goods/Services is enforceable by "Richmond Valley Council".

(c) For the avoidance of doubt "Richmond Valley Council" may treat any breach of the warranties in this clause by the Supplier as a repudiation of the Purchase Order giving rise to the remedies specified in clause 1 of Schedule 1 of these Terms and Conditions.

(d) By agreeing to provide goods and/or services in accordance with this Purchase Order the Supplier warrants that it complies with the *Fair Trading Act 1987 (NSW)* and the *Competition and Consumer Act 2010 (Cth)*.

12. Indemnity

To the extent permitted by law, the Supplier agrees to indemnify and hold harmless Council against all claims, losses, damages, liabilities, and expenses howsoever arising from the Supplier's breach of contract, negligence, or misconduct and howsoever caused. The Supplier shall indemnify Council against any third-party claims arising from the supply of goods and services, including claims related to intellectual property infringement.

13. WH&S and Work Cover regulations

Without limiting or in any way affecting the duty of the Supplier to deliver the Goods/Services under these terms and conditions, the Supplier must:

(a) Where applicable, accept its appointment as 'principal contractor' under the Workplace Health and Safety Act 2011 (Cth) ("WHS Act") and Council authorises the Supplier, where applicable, to have such management and control of site as is necessary to discharge the Supplier's duties as principal contractor until the relevant delivery of Goods/Services is complete;

(b) strictly comply with all legislative requirements relating to the safety of persons on or about any site to which the Supplier is a principal contractor, and the carrying out any works, including without limitation any WHS Act;

(c) comply with any direction on safety issued by a relevant authority or by Council; and

(d) comply with any obligations under the WHS Act.

14. Severability

(a) If any provision of these Terms and Conditions is found to be void, illegal, invalid or unenforceable in any jurisdiction for any reason, then:

(i) it must be read down to the extent possible to ensure its legality, validity and enforceability in that jurisdiction; and

(ii) if that is not possible, it must be severed from this agreement,

and that reading down or severance will not affect the continued operation of the remaining provisions of these Terms and Conditions in that jurisdiction or of any provision of this agreement in any other jurisdiction

15. Contra Proferentem

(a) The law of contra proferentem is hereby excluded by the operation of these terms and conditions and the Supplier acknowledges it, he, she or they enter into it of their own free will and volition and has had the opportunity to obtain independent legal advice as to the provisions of same.