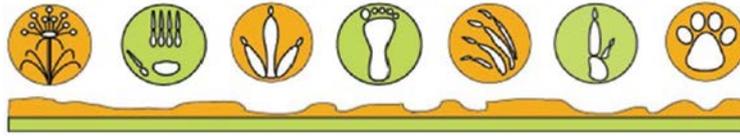


# BARKLY REGIONAL COUNCIL



## Purchase Order Terms and Conditions

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### 1. Definitions

In this agreement:

- 1.1 Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement, but excludes information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.
- 1.2 Intellectual Property means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trade marks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.3 Terms and Conditions mean these Terms and Conditions.
- 1.5 Expressions used in the Purchase Order have the same meaning in these Terms and Conditions.

### 2. General

These Terms and Conditions apply to the Order for goods ("Goods") or services ("Services") placed by Barkly Regional Council (BRC) as described in the purchase order ("Purchase Order") with the supplier of the Goods or Services ("Supplier").

### 3. Agreement

- 3.1 Notwithstanding clause 3.2 below, if the Purchase Order relates to Goods or Services that are the subject of another binding contract between you and us, the terms of that contract prevail.
- 3.2 Subject to clause 3.1 above, this Agreement embodies the entire agreement between the parties and supersedes any previous negotiations, representations, warranties or statements between the parties. No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by a BRC representative with the appropriate delegated authority to approve any such amendments as notified by BRC from time to time.
- 3.3 By accepting the Purchase Order, delivering the Goods or providing the Services under the Purchase Order, you agree that this "Agreement" applies to the exclusion of any other terms and conditions, including any supplied with the Goods or Services on your quotations, invoices, delivery notes or other documents, which have no legal effect and do not form part of this ("Agreement").
- 3.4 If the Supplier is unable or unwilling to accept the Purchase Order, it must notify BRC promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but any such variation or substitution must be approved by BRC in writing before delivery.
- 3.5 This agreement does not create a relationship of employment, agency or partnership between the parties.

### 4. Supply of Goods and Services

- 4.1 Where you are supplying Goods or where you are supplying Services, you agree to supply them in accordance with this agreement and any instructions specified in the Purchase Order. You agree to deliver the Goods or Services by the Delivery Date and to the Delivery Address or as reasonably specified by us in writing to you.
- 4.2 BRC reserves the right to cancel this Purchase Order or part thereof, if delivery is not completed within the time specified or within a reasonable time if the delivery date is not specified. You must promptly notify us when the Services are completed. After an inspection, if we reasonably consider that the Services are not complete, we will notify you of the reasons why we consider that the Services are not complete and the date by which you must complete them.
- 4.3 The Purchase Order Number must appear on all documentation, including invoices and delivery documents, and on the outside of any packages. Invoice may not be paid without a valid Purchase Order Number.
- 4.4 Supplier agrees to package goods in a manner that is sufficiently robust to ensure goods are safely delivered and protected from theft or damage while in transit, storage, delivery loading or unloading.

4.5 If at any time prior to us paying for the goods we deem the goods to be Defective, we may accept or reject them and return such goods to you and or request you to collect the defective goods at your own expense. We will not be liable for defective goods returned or collected by you. Goods differing in quality, quantity or price will not be accepted without prior approval. Where services are provided they must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the purchase order.

## **5. Terms of Payment**

5.1 Unless otherwise stated in the Purchase Order or agreed to by us in writing, we will make payments thirty (30) days from the end of the month in which a correctly rendered invoice is received.

5.2 Unless otherwise agreed in writing, you agree to invoice us:

- a) in respect of Goods, on or after the delivery of the Goods; or
- b) in respect of Services, monthly in arrears unless otherwise stated in the Purchase Order

5.3 We assume no payment obligations for goods and/or services provided in a quantity or to a specification that is not authorised under the Purchase Order, except where we have agreed to the provision of such goods and/or services in writing.

5.4 We have the right to off-set any amounts which may become payable by us to you against any amounts you may owe to us.

## **6. Warranties**

You represent and warrant that all Goods and/or Services:

6.1 Supplied will comply with or be performed in accordance with all applicable legislative, regulatory and standard codes of practice.

6.2 You supply will conform to the description set out in the Purchase Order and is of the same type and quality as any samples provided by you and be fit for the commonly known purpose for which it is sold

6.3 Are free and clear of all liens and encumbrances and you have the title to the goods.

6.4 Where you provide services, you warrant that you have the tools, capabilities, skill, facilities and resources to provide services as required under the Purchase Order.

6.5 You have all rights, licences, qualifications, accreditations and authorisations necessary for you to provide the Services as required under the Purchase Order.

## **7. Termination**

7.1 BRC reserves the right to terminate the Purchase Order under any of the following circumstances:

- a) In the event that the supplier breaches any conditions of this Purchase Order, including warranties
- b) In the event that the supplier has become insolvent or bankrupt
- c) At any time prior to the delivery of the Goods or commencement of Services.

7.2 In the event that BRC terminates the Purchase Order, the Supplier shall do everything possible to mitigate costs incurred as a result of and BRC's liability will be limited to costs directly attributable to the Purchase Order up to the date of termination

## **8. Audit**

The Supplier must keep BRC fully and regularly informed as to all matters relating to the Goods and Services and must provide to the Council any information reasonably requested by the Council for the purposes of monitoring the performance of the Supplier's obligations under this agreement.

## **9. Disputes**

All disputes or differences between BRC and the Supplier must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the President of the Local Government Association of the Northern Territory, Australia.

## **10. Insurance**

The supplier shall take out and maintain physical property insurance covering:

- a) damage to or destruction of property, plant or equipment and motor vehicle;
- b) public and product liability insurance for a minimum of \$20 million covering any liability for the death or bodily damage to a third party caused by or arising from the use of all owned and non-owned property, plant or equipment and motor vehicles for delivery of goods and or services under this agreement.

## **11. Liability**

The supplier shall to the full extent permitted under law indemnify BRC, and its respective officers, employees and representatives from and against any loss, liability, damage, cost or expense suffered or incurred by us in

relation to the supply of Goods and/or Services as a result of any breach of this agreement, any negligence or any wilful or fraudulent omission by the Supplier or the Suppliers officers, employees, agents or subcontractors in connection with or incidental to this Purchase Order.

## **12. Work Health, Safety**

The supplier must ensure, so far as is reasonably practicable, that the Services and/or Goods (Plant, Substances, Structures) is without risks to the health and safety of persons, workers or others, and that adequate information is supplied, including but not limited to Risk Assessments, Safety Data Sheets and any Calculations relied upon in accordance with all State, Territory and National WHS Laws and Codes of Practice.

## **13. Miscellaneous**

### **13.1 Assignment**

The Supplier must not assign this agreement or any right under it without the prior written consent of BRC.

### **13.2 Waiver**

A waiver of a provision of or right under this agreement:

13.2.1 must be in writing signed by the party giving the waiver;

13.2.2 is effective only to the extent set out in the written waiver.

### **13.3 Exercise of Power**

13.3.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right

13.3.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

### **13.4 Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement

### **13.5 Governing Law**

13.5.1 This agreement is governed by the law in the Northern Territory in the first instance;

13.5.2 Should the Northern Territory Law not provide, a law of a competent jurisdiction of the Commonwealth shall apply.

### **13.6 Ombudsman**

The Supplier acknowledges that the *Ombudsman Act 2009 (NT)* empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that Act and all other applicable laws.

## **14. GST**

14.1 The total amounts payable under this agreement are inclusive of GST, if applicable.

14.2 Notwithstanding any other provision of this agreement, BRC need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Council a tax invoice in respect of that taxable supply.