

## Purchase Order Terms & Conditions for the Supply of Goods & Services

The Shire requests the Supplier to supply the Shire with the Goods and/or Services specified in the Shires Purchase Order and the Supplier agrees to provide the Goods and/or Services on the following terms and conditions.

### 1 Issue and Acceptance of Purchase Order

- 1.1 The Purchase Order is the Shire's offer to the Supplier for the Goods and/or Services specified in the Purchase Order on the terms and (conditions) contained herein (**Terms**).
- 1.2 Acceptance of the Purchase Order by the Supplier constitutes an agreement by both Parties that, subject to clause 1.3, the Purchase Order and these Terms set out the sole basis for all transactions between the Shire and the Supplier in relation to the supply of the Goods and/or Services. Such agreement is to the exclusion of any trade terms or conditions appearing on any document of the Supplier and whether any such document is provided to the Shire before or after the Shire issues the Purchase Order to the Supplier.
- 1.3 The Parties agree that:
- (a) any special conditions set out in Annexure (A);
  - (b) any variation of the Purchase Order or a provision of these Terms in accordance with clause 2;
  - (c) any formal instrument of agreement or contract between the Parties in relation to the supply of the Goods and/or Services will prevail over these Terms to the extent of any inconsistency between them; and
  - (d) any Updated Terms issued under clause 2.5
- will prevail over these Terms and/or Purchase Order to the extent of any inconsistency.
- 1.4 The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods and/or Services.

### 2 Variations

- 2.1 Any variation to the Purchase Order or a provision of these Terms (other than updated Terms in clause 2.5) must be agreed in writing and signed by both Parties. No instruction, direction or communication from any person other than a duly authorised representative will vary a Purchase Order or these Terms unless and until confirmed in accordance with this clause 2.
- 2.2 If upon receiving the Purchase Order the Supplier seeks a variation to the Purchase Order or these Terms, it must do so in writing to the Shire within 24 hours of receiving the Purchase Order.
- 2.3 For the avoidance of doubt, if the Supplier proceeds with the manufacture or supply of the Goods and/or Services without first requesting or receiving the Shire's written acceptance of any variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms of the Purchase Order and these Terms as issued without the Supplier's proposed variation. The Supplier will not be entitled to any additional payment or extension of time for performing in accordance with the Purchase Order and these Terms unless agreed under clause 2.1.
- 2.4 The Shire may, by written notice to the Supplier, vary a Purchase Order. The Supplier must within 7 days of receipt of a revised or replacement Purchase Order notify the Shire of any change in Price arising from the variation, whereby such change in Price must be based on current agreed rates with the Shire (if any) or reasonable rates and pricing as affected by the market at that time. If no such notice is received by the Shire within the 7 days, then the Supplier is deemed to have accepted the variation without any adjustment to Price.

- 2.5 Notwithstanding clauses 2.1, the Shire may, by written notice to the Supplier (Variation Notice), vary these Terms (Updated Terms) and/or Purchase Order to the extent reasonably necessary to:
- (a) comply with any applicable law or Legal Requirement, including, but not limited to, the *Privacy and Responsible and Information Sharing Act 2024* (WA); and/or
  - (b) implement a change required to ensure the Shire's compliance with a mandatory policy (policy mandated by a State/Commonwealth agency and applicable to the Shire's procurement or the Services) or standard that applies to the Shire (including any whole-of-government direction) (**Compliance Change**).
- 2.6 A Variation Notice must:
- (a) identify the clause(s) to be varied and include the proposed Updated Terms as a mark-up against the existing terms;
  - (b) describe any Compliance Change and the reasons and the reasons why the Updated Terms reasonably necessary; and
  - (c) state the effective date of the variation of the Updated Terms.
- 2.7 Subject to clause 2.8, Updated Terms take effect on and from the effective date stated in the Variation Notice
- 2.8 Updated Terms must not take effect earlier than the date the Variation Notice is taken to be received under clause 22, unless the Parties agree otherwise in writing.
- 2.9 The Supplier must promptly do all things, at its cost, reasonably necessary to implement and comply with the Updated Terms from their effective date.
- 2.10 If the Supplier considers that a variation made under clause 2.5 will directly and reasonably increase the Supplier's costs of performing the Services and/or supplying the Goods, the Supplier must, within 7 days after receiving the written notice, give the Shire written notice setting out full particulars of the claimed cost impact (including supporting evidence). If the Supplier does not give that notice within that period, the Supplier is deemed to have accepted the variation without any change in Price. Any adjustment to the Price under this clause 2.8 will only apply to the extent agreed by the Shire in writing.
- 3 Cancellation of Purchase Order**
- 3.1 The Shire may at any time cancel the whole or any part of the Purchase Order by written notice to the Supplier.
- 3.2 Upon receiving a notice of cancellation the Supplier must immediately stop or cease all work and use best endeavours to mitigate any costs incurred or might be incurred in relation to the provision of the Goods and/or Services.
- 3.3 The Shire must pay for any part of the Goods delivered or Services performed prior to the cancellation. If the Supplier has shipped any Goods before cancellation but the Goods have not been delivered to the Delivery Point at the time of cancellation the Shire must either accept those Goods when delivered and accept payment or return the Goods to the Supplier at the Shire's expense.
- 3.4 If Goods have been manufactured, fabricated, and/or required to be installed in accordance with the Shire's specifications at the time of cancellation, the Shire will reimburse the Supplier in respect of any expenditure reasonably incurred by the Supplier prior to the cancellation. Such reimbursement will be made where the expenditure is directly attributable to the fulfilling of the Purchase Order and further where:
- (a) the Supplier is not able to mitigate or recoup such costs in any other way; or
  - (b) the Supplier is not otherwise entitled to be paid for those Goods or Services or receive any other form of compensation that may be agreed by the Parties for the cancellation other than as specified.

#### **4 Subcontracting & Assignment**

- 4.1 The Supplier must not subcontract or assign the whole or any part of its obligations under the Purchase Order without the prior written consent from the Shire.
- 4.2 The Shire may assign its rights or transfer its obligations under the Purchase Order without the prior consent of the Supplier.

#### **5 Site Work Obligations & Performance**

- 5.1 The Supplier and, its employees, contractors, or agents, in delivering Goods and or performing Services must (where applicable):
- (a) perform all work to not impede or interfere with any of the activities carried out on the Shires premises or provide advanced warning that any disruption to work is likely to occur as far as reasonably practical.
  - (b) perform all work in a proper and workmanlike manner and in strict accordance with any drawing, specifications, and instructions.
  - (c) comply and be aware of all Australian Standards, Laws, and Industrial Awards along with the Shires directions and orders given by the Shire or its personnel such as the production of any Safety related documentation on request.
  - (d) ensure all Suppliers personnel are properly qualified for, skilled in, the performance of their tasks and are of such character as not to prejudice safe working practices, care of property and continuity of work.
  - (e) leave the site secure and clean and fit for immediate use having regard to the condition of the site immediately prior to the delivery of Goods or the performance of Services.
  - (f) access the Site only through access points designated by the Shire.
  - (g) not interfere with the occupation of land adjacent to the site, or normal access to, from or within that land by third parties.
  - (h) not bring to site any hazardous substances or carry out any high-risk activities on site without first obtaining the Shires consent and take all proper precautions once consent has been granted.
- 5.2 The Supplier must notify the Shire of any special equipment the Supplier and its employees, contractors or agents will use on site such as cutting and drilling equipment. The Supplier must provide at their own expense (except when otherwise specified) all labour, tools, equipment, and material necessary to complete the work. Any plant, equipment, tools, appliances or other property and items that the Shire provides to the Supplier to enable completion of the Purchase Order remain on the Shire's property and must be only used for the purposes of fulfilling the Suppliers obligations under the Purchase Order. The Supplier must keep the Shire's property and equipment in good and serviceable condition.

#### **6 Time is of the Essence**

- 6.1 The Parties agree that Time is of the essence in the supply and delivery of Goods and performance of Services by the Supplier.

#### **7 Delivery of Goods, Title, and Risk**

- 7.1 The Supplier in delivering the Goods must:
- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading, or storage having regard to the transport and climatic conditions through which the Goods will pass during transport and in the accordance with applicable regulations and industry codes.

- (b) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Purchase Order numbers and ensure that the delivery documents accompany the Goods to the Delivery Point.
- (c) include a packing list in each package of Goods for delivery and assist the Shire in obtaining documents and other information required for the resolution of any transport disputes.

- 7.2 Where reasonably practical, the Supplier must inspect the Goods on delivery to ensure that no loss or damage has resulted from weather or transportation. The Shire shall specify the method of delivery required at the time of placing the Purchase Order.
- 7.3 If the Supplier becomes aware of any circumstance which cause the delay in the delivery of Goods, the Supplier must immediately notify the Shire of the expected delay and propose a revised delivery date and time. The Shire may, acting reasonably, agree or reject the revised delivery time, and without prejudice to any other rights or claims it may have against the Supplier.
- 7.4 The Shire reserves the right to cancel the Purchase Order if the Goods are not delivered to the Delivery Point on the delivery date specified in the Purchase Order.
- 7.5 Where the Shire cancels the Purchase Order under clause 7.4 within 2 business days after the specified delivery date has lapsed, the Supplier does not have and may not prosecute any claim whatsoever at law or in equity against the Shire, provided that the failure of the Supplier to deliver the Goods on the delivery date was not due to the conduct of the Shire or a Force Majeure Event. If this clause applies, the Supplier is further liable, in addition to any other liability it may have under the Agreement, to pay the costs of removing the Goods from the Shire's premises and indemnify the Shire against any loss or damage incurred by the Shire as a result of the Supplier's failure to deliver.
- 7.6 Risk in Goods do not pass to the Shire until the Goods are delivered to the Delivery Point and in accordance with any other instructions of the Shire specified in the Purchase Order.
- 7.7 If the Supplier has registered its interest on the Personal Property Securities Register, then the title of the Goods does not pass to the Shire until the Price is paid in full.
- 7.8 The Supplier warrants that it has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to the Shire, which will be entitled to clear, complete, and quiet possession of the Goods.

## **8 Defects**

- 8.1 If the Goods do not meet the requirements of the Purchase Order, the Shire may, at its discretion, reject the Goods, or require the Supplier to replace the Goods at no additional cost to the Shire. If the Services do not meet the requirements of the Purchase Order, the Shire may, at its discretion require the Supplier to re-perform the Services at no additional cost to the Shire or procure another Supplier to carry out those Services, the cost of which the Supplier it agrees will reimburse the Shire, which reimbursement can be recovered by the Shire from the Supplier as a debt.

## **9 Defects Liability Period**

- 9.1 Subject to any longer warranty period provided by the Supplier in its normal course of the supply of the Goods or Services (in which case that longer warranty period of the Supplier will apply and replace the Defects Liability Period specified in this subclause), the Defects Liability Period will be a period of twelve months (12 months) from the date of supply of the Goods or Services.
- 9.2 The Supplier, at its own cost, if required to do so by the Shire, must rectify any omission or defect in the Goods and Services existing at the date of completion or delivery or which becomes apparent prior to the expiration of the Defects Liability Period.

9.3 If rectification works is not commenced or completed in accordance with the Shires instructions, the Shire may have the rectification work carried out by a third party at the Suppliers expense (but with no prejudice to any other rights the Shire may have) and the cost of rectification incurred by the Shire will be a debt due from the Supplier to the Shire.

## **10 Breach**

10.1 If the Supplier breaches the Agreement, or if it notifies the Shire that it is not or will not be able to perform all or any of its obligations under the Agreement, then without limiting any other right or remedy available to the Shire, the Shire may:

- a) terminate the Agreement by notice in writing to the Supplier: and/or
- b) acquire the Goods and/or Services (or the nearest reasonably available substitute) from a third party(s).

## **11 Supplier's Warranties**

11.1 The Supplier agrees and warrants that the Goods and/or Services:

- a) are of merchantable quality and fit for the intended purpose
- b) are manufactured and delivered strictly in accordance with any drawing's technical and other instructions of the Shire given for the purpose of the Agreement.
- c) are free from defects in design, materials, and workmanship.
- d) do not infringe the intellectual property rights of any third party and
- e) comply with the requirements of any relevant statutes, regulations, or legally applicable standards.

11.2 Without limiting any other provision of these Terms (including this clause 11):

- a) if the Goods are not manufactured by the Supplier, the Supplier assigns to the Shire the benefit of any manufacturer's warranty or entitlement applicable to the Goods, that the manufacturer has granted to the Supplier under any contract or by implication or operation of any law.

## **12 Price & Payment**

12.1 The price payable for the Goods and Services shall be that specified on the Purchase Order for the date of delivery of the Goods or the date of commencement of the performance of any Services, unless such price is subject to alteration in accordance with a formula agreed in writing by both Parties.

12.2 The Price set out in the Purchase Order is all-inclusive and is the total amount payable by the Shire under this Agreement including but not limited to all taxes, duties, charges, levies, fees and delivery costs payable on or in respect of the Goods and the Services, unless otherwise stated on the Purchase Order or varied in accordance with these (Terms).

12.3 The Shire may (acting reasonably) withhold payment of Price, or any payment instalment of the Price, if the Goods or Services supplied by the Supplier are not of a standard or quality acceptable by the Shire, or if the Supplier is in breach of this Agreement.

12.4 If the Supplier does not provide its Australian Business Number (ABN) or has provided in lieu of an ABN a statement by the Supplier, on any Invoice issued pursuant to the Agreement, then the Shire may withhold 49% of the payment and remit it to the Australian tax Office (ATO) as required by legislation.

12.5 Unless otherwise agreed, the Shire will pay the Supplier by Electronic Funds Transfer.

### 13 Invoicing

- 13.1 The Supplier must, as a precondition for payment, submit within 30 days of delivery of the Goods or performance of the Services to the Shire a tax invoice which contains:
- (a) the Purchase Order number,
  - (b) a description (including the quantity) of the Goods delivered (by item if applicable) or Services supplied,
  - (c) the Supplier's ABN and address for payment, and
  - (d) any copies of tax invoices issued to the third parties (if applicable), which contain sufficient information for the Shire to determine if the Goods and Services have been provided by such third parties.
- 13.2 Tax invoices must be lodged by the Shires preferred method electronically:
- By Email to: [creditors@sishire.wa.gov.au](mailto:creditors@sishire.wa.gov.au)
- Alternatively, By Mail to: Account Payable  
Shire of Serpentine Jarrahdale  
6 Paterson Street  
Mundijong WA 6123
- 13.3 If the Shire disputes any item or items in the Tax Invoice, the Shire will notify the Supplier specifying reasons for the dispute, withhold payment of the disputed item or items until settlement of the dispute and pay the undisputed portion of the Tax Invoice in accordance with (clause 13).
- 13.4 Under no circumstance shall the Supplier attach an Invoice(s) to the Goods being Delivered nor physically deliver or email any invoice(s) to any business/service unit other than the Shire's Creditors unit first. Failure to comply with these requirements may result in the possible loss or misplacement of an invoice(s) where the Supplier breaches this obligation and it results in the delay in the payment of the invoice(s) by the Shire, the Supplier agrees that no interest will accrue, and no late payment penalty will apply to the invoice(s).

### 14 Goods & Services Tax

- 14.1 If GST is imposed on any Supply made under this Purchaser Order by a party (Supplier) to another party (Recipient), then the Recipient must pay to the Supplier an amount equal to that GST in addition to any other amount payable or other consideration provided for the Supply.
- 14.2 The Recipient's obligation to pay an amount equal to the GST under (clause 14.1) only applies if the Supplier has given the Recipient a Tax Invoice for the Supply that details the relevant amount in respect of which GST is payable and the amount of that GST.
- 14.3 If the amount paid by the Recipient under 14.1 differs from the amount of GST payable at law by the Supplier on the Supply, the amount paid by the Supplier to the Recipient will be adjusted accordingly.

### 15 Insurance

- 15.1 The Supplier warrants that it has obtained and maintained throughout the duration of the Agreement all applicable insurance cover(s) required by Australian law (Municipal, State and Commonwealth) and by the Agreement including but not limited to the following:
- a) Goods in Transit – Transit and Material Damage insurance for the Goods' purchase value (including freight and other charges), up until title and risk to the Goods pass to the Shire and;

- b) Public and Products Liability Insurance with a minimum of not less than twenty (A\$20) million dollars (A\$20,000,000) for any one occurrence for liability to any third party arising out of the performance of the Purchase Order (including provision of Goods and Services) and which covers and includes Site Works:
  - i) the Company as a named insured,
  - ii) the Supplier; and
  - iii) the Supplier's Sub-Contractor
- c) Workers Compensation and Employees Liability Insurance in accordance with the law of the State in which the work is performed. Such insurance must be unlimited in respect to common law liability.
- d) Motor Vehicle Comprehensive Cover including Third Party liability with a minimum amount of not less than twenty (A\$20) million dollars (A\$20,000,000)
- e) Professional Indemnity Where the Contract involves the provision of professional services and/or advice, the Supplier is to take out a Professional Indemnity Insurance policy with an Insurer approved by APRA as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia. The policy of Professional Indemnity Insurance taken out by the Supplier will not be less than \$5 million (AU\$5,000,000).

15.2 Where this Agreement includes the provision of Services such insurances must include:

- a) a cross-liability clause noting the Shire for its rights and interests.
- b) a Principals Indemnity clause noting the Shire as Principal; and
- c) a waiver of subrogation in favour of the Shire.

15.3 Where such Services referred to in clause 15.2 include the giving of professional advice or instruction, design, formula or specification, the Supplier shall affect Professional Indemnity Insurance with a minimum cover of not less than five million dollars (A\$5,000,000) for any one claim.

15.4 On request from the Shire in writing, the Supplier shall provide copies of the policies of insurance (Certificate of Currency) the Supplier is required to effect and evidence to the Shire's satisfaction of their currency.

15.5 The Supplier agrees that if it fails to effect or maintain any such insurance as specified above, then it will reimburse the Shire for the expense it incurs in effecting or maintaining such insurance. The Supplier agrees that the Shire may invoice it for such reimbursement and may recover it from the Supplier as a debt or set off against any amount payable to the Supplier, any premium so paid by the Shire.

## 16 Indemnities

16.1 The Supplier will indemnify and keep indemnified the Shire from and against any liability, damages, remedies, losses, penalties, fines, costs, expenses (including legal fees costs), demands, claims and proceedings or any natures incurred by the Shire and arising directly or indirectly out of or in connection with:

- a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of the Goods and Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
- b) the failure of the Goods and Services to conform to or fulfill and a term or condition of this Agreement; or
- c) any breach of this Agreement by the Supplier, including all costs and expenses incurred by the Shire in rectifying the breach.

## 17 Confidentiality

- 17.1 The Supplier must not and must ensure that its personnel do not disclose Confidential Information other than as strictly necessary for the provisions of the Goods and Services or as required by law (including disclosure to a stock exchange) or where required for the making of defending of any claim made in connection with this Agreement.
- 17.2 Where the Supplier is legally obliged to disclose Confidential Information, it must before such disclosure, inform the Shire in writing that the disclosure is required to be given.

## 18 Intellectual Property rights

Where this Purchase Order includes the provision of the Services involving the preparation or provision of any design, design specification or drawings, the Supplier agrees to give permanent, non-exclusive irrevocable licence to the Shire absolutely to use:

- a) the copyright subsisting in any work created by the Supplier or any of its employees, agents, or contractors in the course of the Services and which is the subject of copyright; and
- b) all other intellectual property rights in respect of any practice, concept, product, or process design owned by the Supplier creates, develops, discovers, or first reduces to practice in the course of the Services provided those rights are capable of being registered at law.

## 19 Record Keeping Requirements

- 19.1 All reports, Manuals, drawings, computer programs or other records of any kind, including originals and copies, supplied by the Shire to the Supplier in connection with the supply of Goods or performance of the Services, shall be returned to the Shire upon the conclusion or earlier termination of the Agreement.
- 19.2 The Supplier shall ensure that all records relevant to or created in the course of the supply pursuant to this Agreement are held in a safe and secure manner in line with good industry practices. This includes maintaining electronic records which are protected by backups and cybersecurity systems and procedures and being held in a fire-proof environment.
- 19.3 The Shire will be provided with access to all relevant operational records held by the Supplier associated with the delivery of Goods or Services under this Agreement within 24 hours of a written request. Such requests will be limited to the purposes of contract management and compliance with statutes, including but not limited to the *Freedom of Information Act 1992* and the *State Records Act 2000*.

## 20 General

- 201 The Supplier shall not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining the Shire's prior written consent. Such consent may be granted unconditionally or upon such conditions as the Shire thinks fit, will fulfil the purpose of the Agreement and will not in any way prejudice the Shire.
- 20.2 The appointment of subcontractor by the Supplier shall not relieve the Supplier from any liability or obligation under this Agreement. The Supplier shall be liable for the acts and omissions of its subcontractors as if they were an employee, officer, or agent of the Supplier. The Supplier shall ensure that its subcontractor comply the Purchase Order and these Terms.
- 20.3 The Shire requires that the Supplier demonstrates that it has taken account of the environmental, social, and economic impacts of the Goods and Services supplied to the Shire. All Goods and Services supplied, and all work performed must therefore be in accordance with all applicable Legal Requirements including but not limited to the *Environmental Protection Act 1996*, Australian Standards, and applicable industry codes of practice, the Shire's policies on work, health and safety and the environment.

- 20.4 The Supplier must comply with all laws (Federal, State or Local) in any way affecting or applicable to the Supply of the Goods and Services and obtain all permits and licences and give all notices required to be given and must pay all fees, deposits, and taxes in connection with those.
- 20.5 The Shire will be under no liability to the Supplier for any consequential losses (including loss of profit) it suffers should the Shire breach of this Agreement.
- 20.6 Neither party will be liable for the other for any loss arising from any act of war, terrorism, strike, lock-out, industrial action, fire, flood, storm, or government actions related to a pandemic or other event beyond the reasonable control of either Party (Force Majeure Event).
- 20.7 If the Shire and the Supplier are in dispute over any matter arising out of connected with this Agreement either party may give the other party written notice of the details of the dispute. Within 14 days of a party receiving the notice, the other party must meet the first party and attempt to resolve the dispute. If, within 14 days of that meeting, the dispute remains unresolved, then either party may proceed to litigation.

## 21 Entire Agreement

- 21.1 This Purchase Order constitutes the entire agreement between the parties and supersedes any prior understandings (whether oral or written) regarding the subject matter of the Purchase Order.
- 21.2 For the avoidance of doubt, to the extent that the Supplier's standard form terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will have no legal effect and will not form part of the Agreement, even if any of the Supplier's personnel sign or annex them to this Purchase Order.

## 22 Notices

- 22.1 A notice, demand, consent, approval or other communication under or in connection with this Agreement (a **Notice**) must be in writing and is only effective if delivered by one of the following methods to the recipient's address or email address for notices set out in the Purchase Order (or as last notified by the recipient in accordance with this clause):
- (a) hand delivery;
  - (b) prepaid post (within Australia); or
  - (c) email.
- 22.2 A Notice is taken to be received:
- (a) if delivered by hand, when left at the recipient's address for notices;
  - (b) if sent by prepaid post within Australia, at 9.00 am (Western Australia time) on the third Business Day after posting; and
  - (c) if sent by email, when sent (as recorded by the sender's email system) before 5.00 pm (Western Australia time) on a Business Day, otherwise at 9.00 am (Western Australia time) on the next Business Day.
- 22.3 The parties' addresses and numbers are those set out on the Purchase Order, or as otherwise notified.
- 22.4 A party may change its address for notices or email address for notices by giving the other party a Notice of the change. **23**
- ## Severability
- 23.1 The invalidity or enforceability of one or more of the provisions of the Agreement created through the use of this Purchase Order will not invalidate, or render unenforceable, the remaining provisions of the Agreement.

## **24 Relationship between the Parties**

24.1 Nothing in the Agreement created through the use of this Purchase Order constitutes a joint venture, agency, partnership, or other fiduciary relationship between the parties. At all times when performing its obligations under this Purchase Order, the Supplier is an independent third party and not an employee or agent of the Shire.

## **25 Law and Jurisdiction**

26.1 The laws of the State of Western Australia govern this Agreement created through this Purchase Order. Each party submits to the jurisdiction of the courts of the State of Western Australia and waives any right to claim that those courts are an inconvenient forum.

## **26 Waiver**

26.1 No failure to exercise and no delay in exercising any right, power or remedy under the Agreement created through the use of this Purchase Order will operate as an election not to exercise that right, power, or remedy. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that right, power, or remedy.

## **27 Privacy and Responsible Information Sharing**

27.1 To the extent that the Supplier collects, holds, uses, accesses, stores, discloses, transfers, processes or otherwise handles Personal Information or Government Information in connection with this Purchase Order, the Supplier must comply with:

- (a) The PRIS Act;
- (b) the Information Privacy Principles in Schedule 1 to the PRIS Act;
- (c) any applicable approved privacy code of practice;
- (d) any applicable information sharing agreement, protocol or direction notified by the Shire; and
- (e) the Shire's reasonable written directions, as amended from time to time.

27.2 The Supplier must handle Personal Information and Government Information only as necessary to perform the Purchase Order and in accordance with the Shire's written directions, except to the extent the Supplier is required by law to do otherwise.

27.3 The Supplier must only use or disclose Personal Information or Government Information for the purposes of performing the Purchase Order and as otherwise authorised in writing by the Shire or required by law.

27.4 The Supplier must not transfer, store, process or permit access to Personal Information or Government Information outside Australia without the Shire's prior written approval.

27.5 The Supplier must take all reasonable steps to protect Personal Information and Government Information against misuse, interference, loss, unauthorised access, unauthorised modification and unauthorised disclosure.

27.6 Without limiting clause 27.5, the Supplier must maintain appropriate technical and organisational security measures having regard to the nature of the information and risks involved, including access controls and secure storage.

27.7 The Supplier must, on the Shire's reasonable written request, provide reasonable information and evidence of the Supplier's compliance with this clause 27.

27.8 If the Supplier becomes aware of an actual or suspected Information Breach, the Supplier must immediately and, in any event, within 48 hours, notify the Shire in writing.

- 27.9 The Supplier must take immediate steps to contain, mitigate and remediate the breach, and provide all assistance reasonably required by the Shire in relation to the Information Breach, including to support any investigation and any notifications the Shire reasonably determines are required or appropriate.
- 27.5 The Supplier must not subcontract any activity involving Personal Information or Government Information unless the subcontractor is bound by obligations no less onerous than this clause 27.
- 27.6 On completion, expiry or termination of the Purchase Order, the Supplier must return, destroy or permanently de-identify Personal Information and Government Information as directed by the Shire, unless retention is required or authorised by law.
- 27.7 This clause 27 survives completion, expiry or termination of the Purchase Order.

## Definitions

Unless the context otherwise requires:

**Confidential Information** means the terms of this Purchase Order and any information concerning the business, operations, finances, plans, or customers of the Shire, which is disclosed to or acquired by the Supplier, but does not include information which:

- (a) is or becomes public knowledge other than through a breach of this Purchase Order; or
- (b) has been independently developed or acquired by the Supplier.

**Delivery Point** means the delivery point specified in the purchase order form.

**Goods** means any goods to be supplied by the Supplier pursuant to this Purchase Order.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*.

**Government Information** means any information held by a public entity (including information held on its behalf), and includes personal information and non-personal operational, administrative, program or service-delivery information, but does not include Exempt Information.

**Information Breach** means unauthorised access to, unauthorised disclosure of, or loss of Personal Information.

**Information Privacy Principles** means an information privacy principles set out in Schedule 1 of the *Privacy and Responsible Information Sharing Act 2024*.

**Legal Requirements** means any Australian statute, ordinance, regulation or by-law, orders, awards, commission and proclamations of the Commonwealth and or the State of Western Australia and includes certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services, standards, codes and guidelines applicable to the Services, including any Fees or charges payable in connection.

**Personal Information** means information or an opinion, whether true or not and whether recorded or not, that pertains to an individual, whether living or dead, who identity is apparent or can reasonably be determined from that information or opinion.

**Price** means the price specified in the purchase order form as the 'Unit Price' or 'Total (excluding GST),' as the context requires.

**PRIS Act** means the Privacy and Responsible Information Sharing Act 2024 (WA).

**Purchase Order** means the document comprising:

- (a) these terms and conditions or Updated Terms;
- (b) the purchase order form to which these terms and conditions are attached; and
- (c) any attachments, schedules or annexure referred to in the purchase order form or terms and conditions

**Services** means any services to be performed by the Supplier pursuant to this Purchase Order.

**Shire** means Shire of Serpentine Jarrahdale ABN 98 924 720 841 located 6 Paterson Street, Mundijong, WA 6123

**Site** means any land or building that the Shire makes available to the Supplier for the purpose of performing its obligations under the Agreement created through the use of this Purchase Order.

**Supplier** means the Supplier, consultant, agent, contractor, or subcontractor specified in the purchase order form.

**Supply** has the meaning given in the GST Act.

**Tax Invoice** has the same meaning as in the GST Act.

**Updated Terms** means the Terms as varied, replaced or supplemented by the Shire under clause 2.5, as set out in the Shire's written notice issued under that clause, and effective from the date specified in that notice (or, if no date is specified, from the date the notice is taken to be received under the Notices clause).

#### **Interpretation**

Unless the context otherwise requires:

- (a) a reference to 'including,' 'includes' or 'include' must be read as if it is followed by '(without limitation);'
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) all monetary amounts are in Australian dollars; and
- (e) no rule of construction applies to the disadvantage of the party on the basis that the party put forward this Purchase Order or any part of it.

## Annexure A – Special Conditions

### Road Transport Fuel Cost Recovery

If and to the extent that this Purchase Order, or any Goods and/or Services supplied under it, forms part of a road transport contractual chain to which Fair Work Commission Order MS900102, being the Road Transport Contractual Chain Order – Fuel Cost Recovery – 2026 (**Order**), applies, the Supplier may claim an amount required under the Order to ensure recovery of the increased cost of fuel as a separate Fuel Reimbursement Amount, subject to this clause.

For this clause:

- (f) **Base Diesel Price** means the Australian Institute of Petroleum weekly average national terminal gate diesel price on or before 6 March 2026;
- (g) **Current Diesel Price** means the equivalent price for the week immediately preceding the relevant Review Period;
- (h) **Review Period** means each fortnight or, if pricing is administered twice monthly, twice per calendar month;
- (i) **Relevant Fuel Usage** means the actual litres of fuel used in performing the relevant transport work comprised in the Goods and/or Services during the Review Period or, if actual litres are not reasonably available, the litres calculated using a reasonable methodology consistently applied to that work and supported by contemporaneous records; and
- (j) Fuel Reimbursement Amount means:

$$\text{Fuel Reimbursement Amount} = \text{Relevant Fuel Usage} \times (\text{Current Diesel Price} - \text{Base Diesel Price})$$

If the Current Diesel Price is equal to or less than the Base Diesel Price, the Fuel Reimbursement Amount is nil.

The Supplier must show the Fuel Reimbursement Amount as a separate line item on its invoice and provide reasonable supporting information for the calculation, including the relevant Review Period, the diesel prices used, the Relevant Fuel Usage, and the methodology applied and any other documentation reasonably requested by the Shire to substantiate the claim.

The Shire may, acting reasonably, request further supporting information necessary to verify the claim. The Supplier must promptly provide such information.

The Supplier may only invoice the Shire for:

- (a) the Fuel Reimbursement Amount approved in writing by the Shire; or
- (b) any undisputed portion of the claim expressly authorised by the Shire for invoicing.

The Shire must not unreasonably withhold or delay approval of any part of a claim that is reasonably substantiated and payable under the Order.

If the Supplier subcontracts any part of the relevant transport work, the Supplier remains responsible for compliance with this clause and, to the extent required by the Order, must take the reasonable steps required by the Order to give effect to any applicable downstream fuel cost recovery obligations.

Where any subcontractor has performed part of the relevant transport work during the Review Period, the Supplier must provide with its claim a signed subcontractor statement, in a form reasonably required by the Shire, signed by an authorised officer of the Supplier.

The Supplier must not recover, or seek to recover, the same increased cost of fuel more than once under this or any other agreement.

This clause ceases to apply at the time the obligations in clause 4 of the Order cease to apply, including where the weekly average national terminal gate price for diesel, as measured in the weekly diesel price report of the Australian Institute of Petroleum, falls below \$2.00 per litre.

Any dispute arising in connection with this clause, including any dispute as to applicability, calculation, substantiation or entitlement, is to be resolved in accordance with the dispute resolution provisions of these Terms or any formal instrument of agreement or contract between the parties, as applicable. Nothing in this clause limits any right of a party to refer a dispute to the Fair Work Commission to the extent permitted by the Fair Work Act 2009 (Cth), the Order or any other applicable law.

To the extent of any inconsistency between this Purchase Order, these Terms and Conditions and the Order, the Order prevails.