

TERMS AND CONDITIONS OF CONTRACT

1. **CONTRACT**

These conditions together with any specification provided by Council in connection with the supply of the goods or materials ["the Specification"] and the attached order shall constitute the contract documents and the entire terms of the agreement.
2. **THE GENERAL SCOPE OF CONTRACT**

This contract requires the Contractor to:

 - 2.1 Supply goods or materials ("the Materials") as nominated as to sizes, qualities and types;
 - 2.2 Ensure that the Materials delivered comply with the quality size and nature specified in the Contract Documents;
 - 2.3 Supply the same for the amount or at the rates of charge referred to in the attached order;
 - 2.4 Comply in all respects with the Contract Documents concerning the sale, supply and delivery of the Materials.
3. **QUALITY**

The quality of the Materials delivered shall not differ from that specified in the Contract Documents unless the change in quality is ordered by the Council in a written form specifically referring to the amendment of the quality.
4. **STATUTORY REQUIREMENTS**

The Contractor shall ensure that its supply and delivery of the Materials satisfies all of the requirements of all relevant Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made or issued thereunder applicable to the sale supply or delivery of the Materials and, where necessary, secure all necessary approvals and pay all fees incurred in connection with the sale supply or delivery thereof to the Council.
5. **DELIVERY**
 - 5.1 Delivery shall be made to such locations and at such time as shall be nominated by this Council in the attached order.
 - 5.2 Upon delivery the Materials shall be accompanied by a delivery document with the Council's order number nominated thereon. A separate invoice shall be delivered to the Council within three (3) days of delivery which shall state clearly the contents of the delivery.
 - 5.3 The Price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of the Materials to the Council.
 - 5.4 All elements of the Materials delivered by the Contractor shall be at the risk of the Contractor and no liability to pay for them shall arise until that element of the Materials are approved by the Council and delivery is accepted in writing or by counter-signature.
 - 5.5 Upon return of any such element of the Materials which is not acceptable to the Council the Contractor shall reimburse the Council for:
 - [a] any amounts paid by the Council on account of the Price of the returned elements of the Materials; and
 - [b] any costs incurred by the Council in connection with the delivery or return of the relevant element of the returned Materials.
6. **TERMS OF PAYMENT**

The Council shall pay the Price to the Contractor in the calendar month following the month of receipt of invoice subject to:

 - 6.1 the Price being in accordance with this Contract.
 - 6.2 the Materials being received and accepted by the Council as satisfying the Contract Documents;
 - 6.3 Sales tax not being included in the Price.
7. **ACCEPTANCE OF GOODS**

The Council shall only be obliged to accept delivery of such Materials as comply with the Contract Documents and if the delivery of the Materials shall not comply with all of the same in any respect then the Contractor shall, if so required by the Council remove all such rejected elements of the Materials and replace the same with a delivery of the Materials acceptable to the Council.
8. **SAMPLES**

The council may require, as a condition of delivery of any element of the Materials, the Contractor to supply a sample of the relevant Materials for approval by the Council. In the event that such a sample is produced and approved then any delivery of that element of the Materials which is referable to the sample shall be of a size and nature and quality consistent with that of the approved sample.
9. **PROPERTY IN THE MATERIALS**

Where any part of entire payment for any element of the Materials is made by the Council the entire title of the property shall pass without exclusion or limitation but subject to the Council's right to subsequent rejection in the event that the relevant element of the Materials is discovered to not comply with the terms of this Contract, the Specification or the relevant order.
10. **WARRANTY**

The Contractor warrants that all of the Materials delivered to the Council-

 - 10.1 will conform to the relevant description of the same contained in the Contract Documents;
 - 10.2 shall be of good merchantable quality and for the known purpose for which it is sold;
 - 10.3 are new (unless otherwise specified);
 - 10.4 are free from all liens and encumbrances and the Contractor has a good marketable title thereto;
 - 10.5 shall be delivered by the due delivery date specified on the attached order.

These warranties are in addition to any warranty or guarantee provided by the Contractor in respect of the relevant element of the Materials or implied by law.
11. **GENERAL MATTERS AND DEFINITIONS**
 - 11.1 Unless otherwise provided all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of Commonwealth legal units.
 - 11.2 The laws in force in the state of South Australia shall apply to this Contract and the parties shall submit to the jurisdiction.
12. **ASSIGNMENT**

The Contractor shall not, without the prior written approval of the Council, assign the Contract or assign, mortgage, charge, encumber any of the moneys payable under this Contract.
13. **PART ACCEPTANCE OF ORDER**

Where the Purchaser has accepted an element of the Materials that constitute part of a 'Materials Request' the Purchaser shall pay the Contractor that part of the purchase price attributable to that element of the Materials accepted.
14. **NO WAIVER**

No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or exercise of any right or remedy.
15. **SPECIAL CONDITIONS**

Any special conditions that the Council shall incorporate on the attached order shall be incorporated herein in the event that the Contractor shall make delivery of the goods referred to therein and in the event of any inconsistency with these terms and conditions such special conditions shall prevail.
16. **TIME OF THE ESSENCE**

Time shall be of the essence as regard to any date or period under the terms and conditions.