

Agreement for the Purchase of

[Insert short description of goods]

Contract Number : CC22/xx

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Schedule

Item 1 Council	<p>Town of Gawler</p> <p>ABN 29 861 749 581</p> <p>Address: 43 High Steet Gawler East SA 5118</p> <p>Email: council@gawler.sa.gov.au</p> <p>Phone: (08) 8522 9211</p>
Item 2 Supplier	<p>[Insert name of Supplier]</p> <p>ABN [ABN of Supplier]</p> <p>Address: [Address]</p> <p>Email: [Email address]</p> <p>Phone: [Phone no]</p>
Item 3 Commencement Date	[Insert Commencement Date]
Item 4 Termination Date	[Insert Termination Date]
Item 5 PL Insurance Period	[Insert period], commencing on the date on which the Goods are accepted by the Council
Item 6 Warranty Period	[Insert period], commencing on the date on which the Goods are accepted by the Council
Item 7 Confidential Sections	[Insert Confidential Sections]
Item 8 Council's Representative	[Insert Council's Representative details] and any other person as may be advised by the Council in writing
Item 9 Supplier's Representative	[Insert Supplier's Representative details] and any other person as may be advised by the Supplier in writing

Date

[Insert Date]

Parties

Town of Gawler ABN 29 861 749 581 of 43 High Street Gawler East SA 5118 (**Council**)

The person specified in Item 2 of the Schedule (**Supplier**)

Background

- A. Pursuant to a [insert appropriate process, e.g. request for tender, request for quote, expression of interest etc] process, the Council sought submissions from suitably qualified parties for the supply of the Goods.
- B. The Supplier submitted a [insert appropriate submission, e.g. tender, quote etc] for the supply of the Goods, and the Council has accepted that quote.
- C. The Supplier agrees to supply the Goods on the terms in this Agreement.

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Agreement means this agreement and includes the Schedule and the Annexures.

Annexure refers to an annexure of this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in the State of South Australia.

Commencement Date means the date specified in Item 3 of the Schedule.

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been

previously published or otherwise disclosed to the general public or is required to be disclosed by law.

Confidential Sections are those specified in Item 7 of the Schedule.

Council's Representative refers to the person specified in Item 8 of the Schedule.

Delivery Docket means a document issued by the Supplier in the form of the document at Annexure D.

Existing Conditions means the conditions as described in clause 5.1 a summary of which is detailed in Annexure F.

FOI Act means the *Freedom of Information Act 1991* (SA).

Force Majeure Event means an unforeseeable and unknown event occurring after the date of this Agreement beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this Agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- (c) a pandemic is declared by a Governmental Agency and measures are implemented by the Governmental Agency to address the pandemic; and/or
- (d) a suspension or termination of services or works is necessitated by legislative requirement or is ordered by a Governmental Agency;

but does **not** include any event or circumstance which the Supplier ought to have reasonably foreseen from or as a result of the Existing Conditions.

Goods means the goods or materials specified in Annexure A of the Schedule.

Governmental Agency means any government or any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Notice means a notice, demand, consent, approval or communication under this Agreement.

Order Form means a document issued by the Council in the form of the document at Annexure C.

PL Insurance Period means the period specified in Item 5 of the Schedule commencing on the date on which the Goods are accepted by the Council.

Price means the price for the supply of the Goods, specified in Annexure B.

Schedule means the schedule to this Agreement.

Special Conditions mean the special conditions set out in Annexure E, if any.

Standing Offer means the standing offer made by the Supplier to the Council pursuant to clause 2.

Supplier's Representative refers to the person specified in Item 9 of the Schedule.

Term means the period starting on the Commencement Date and finishing on the Termination Date, subject to any extension or renewal.

Termination Date means the date specified in Item 4 of the Schedule, unless terminated earlier in accordance with this Agreement.

Variation means any change to the supply of the Goods in any Order Form, including:

- (a) any increase of, or decrease in, the quantity of the Goods; or
- (b) any changes to the character, specifications, quality, scope and/or origin of the Goods.

Warranty Period means the period specified in Item 6 of the Schedule, commencing on the date on which the Goods are accepted by Council.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.2 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.3 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.4 an unenforceable provision or part of a provision may be severed, and the remainder of this Agreement continues in force, unless this would materially change the intended effect of this Agreement;
- 1.2.5 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this Agreement;

2. ENGAGEMENT OF SUPPLIER

- 2.1 The Council engages the Supplier for the Term to supply the Goods in accordance with this Agreement.
- 2.2 The Supplier hereby irrevocably grants the Council with a Standing Offer during the Term to supply the Goods for the Price at the times requested by the Council.
- 2.3 The Council may place orders for the Goods at any time during the Term by sending an Order Form to the Supplier.
- 2.4 Each Order Form by the Council constitutes an acceptance of the Standing Offer by the Supplier to supply the Goods and will constitute an agreement for the Supplier to supply the Goods to the Council in accordance with the Order Form and the terms and conditions of this Agreement.
- 2.5 The Council is not obliged to request any or any minimum number of Goods from the Supplier under this Agreement.
- 2.6 The arrangements contemplated by this Agreement are not an exclusive arrangement and the Council may, at its discretion, engage other suppliers to supply the Goods.
- 2.7 The Goods must be provided as and when required by the Council in accordance with an Order Form.
- 2.8 The Supplier must:
 - 2.8.1 supply the Goods to the Council in the sizes, quantities and types specified by the Council in each Order Form;
 - 2.8.2 deliver the Goods to the location and at the time specified by the Council in each Order Form;
 - 2.8.3 supply the Goods to the Council for the Price specified in the Order Form; and
 - 2.8.4 comply with the reasonable requirements of the Council for the sale, supply and delivery of the Goods.
- 2.9 This Agreement is not, and the arrangements contemplated by this Agreement are not, an exclusive arrangement and the Council may, at its discretion, engage other suppliers to supply the Goods.
- 2.10 Nothing in this Agreement gives rise to an obligation on the Council's part to purchase a minimum quantity of the Goods from the Supplier.
- 2.11 The parties acknowledge that nothing in this Agreement creates or infers a relationship between the parties of partnership, agency or employer/employee.
- 2.12 The Supplier must not (without the prior written consent of the Council) advertise, promote or publish in any form, the fact that the Supplier is supplying the Goods to the Council.

- 2.13 The Supplier must immediately notify the Council in writing of:
- 2.13.1 any change in the financial or technical capacity of the Supplier which a reasonable person would consider adversely impacts upon the Supplier's ability to supply the Goods to the Council; and/or
 - 2.13.2 any change in the Supplier's ownership.

3. **DELIVERY**

- 3.1 The Supplier must deliver the Goods to the location and at the time specified by the Council in the Order Form.
- 3.2 Upon delivery of the Goods to that location, the Supplier must provide a Delivery Docket to the Council.
- 3.3 The Supplier bears all risk for the Goods until the Goods are delivered to the location specified by the Council and accepted by the Council's Representative counter signing the Delivery Docket.
- 3.4 No liability to pay for any Goods arises until the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.
- 3.5 If the Council determines, acting reasonably, that the Goods do not meet the description of the Goods in this Agreement and/or the Order Form, the Council may return such Goods to the Supplier and the Supplier must reimburse the Council for:
 - 3.5.1 all transport and other costs incurred by the Council in returning any such Goods to the Supplier for replacement;
 - 3.5.2 all transport and other costs in the Supplier delivering any replacement Goods to the Council;
 - 3.5.3 any damage or loss caused during transport of any Goods under this clause; and
 - 3.5.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the replacement of the relevant Goods under this clause.
- 3.6 Times for the fulfilment of the Supplier's obligations are essential terms of this Agreement.
- 3.7 Title passes to the Council when the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.

4. PAYMENT TERMS

4.1 Payment of Price

- 4.1.1 Subject to the terms of this Agreement, the Council must pay to the Supplier the Price for the supply of the Goods.
- 4.1.2 The Price includes all freight and other charges connected with the Supplier delivering the Goods to the location nominated by the Council and otherwise complying with the Supplier's obligations under this Agreement.

4.2 Payment terms

- 4.2.1 The Supplier must issue invoices on or after the first day of each calendar month for Goods supplied in the previous month.
- 4.2.2 The Council must pay the Price within 30 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Supplier. [
- 4.2.3 A tax invoice is correctly rendered when it:
 - 4.2.3.1 describes the Goods supplied and the period to which the Goods relate;
 - 4.2.3.2 displays the terms of payment of the Price set out in the invoice;
 - 4.2.3.3 is addressed to the Council's address specified in Item 1 of the Schedule; and
 - 4.2.3.4 sets out in reasonable detail the manner and basis of the calculation of the Price, including the component of GST.

4.3 Effect of payment

A payment of all or part of the Price is not an acceptance of the Goods or a waiver of a right or action of the Council.

4.4 Right of set off

The Council may deduct from amounts otherwise payable to the Supplier any amount due from the Supplier to the Council.

5. WARRANTY

- 5.1 The Supplier acknowledges and agrees that it enters into this Agreement with knowledge of the existence and impact of the COVID-19 pandemic in the State of South Australia, Australia and the world as at the date of this Agreement (**Existing Conditions**) and has had regard to those Existing Conditions in entering into this Agreement.

- 5.2 The Supplier warrants to the Council that it has not relied on any advice or statements by the Council regarding the Existing Conditions and has taken appropriate advice in respect of the Existing Conditions or chosen not to seek or receive such advice.
- 5.3 The Supplier warrants that all Goods supplied to the Council:
- 5.3.1 will conform to the description and specifications of the Goods in this Agreement and any Order Form;
 - 5.3.2 will be of good merchantable quality and fit for the purpose for which they are sold;
 - 5.3.3 will be new (unless otherwise specified);
 - 5.3.4 will be free from all liens and encumbrances and the Supplier has good marketable title to the Goods; and
 - 5.3.5 will be delivered at the location and by the time and date specified in any Order Form;
 - 5.3.6 be free from defects in design, material and workmanship; and
 - 5.3.7 operate in accordance with their intended use and in accordance with any operating instructions or specifications for the Goods.
- 5.4 The Supplier must, throughout the PL Insurance Period and at its cost, effect product liability insurance in respect of the Goods from a reputable insurance carrier, for at least AUD \$10,000,000.00 combined single limit, for bodily injury and property damage. The policy must note the Council's interest under this Agreement.
- 5.5 If any of the Goods are defective or fail to operate in accordance with their intended use and/or in accordance with any operating instructions or specifications for the Goods within the Warranty Period, the Council may return the defective Goods to the Supplier and the Supplier must repair or replace the returned defective Goods at no cost to the Council.
- 5.6 The Supplier is responsible for:
- 5.6.1 all transport and other costs incurred by the Council in returning any defective Goods to the Supplier for repair or replacement;
 - 5.6.2 all transport and other costs in the Supplier delivering any repaired or replacement Goods to the Council;
 - 5.6.3 any damage or loss caused during transport of any Goods under this clause; and
 - 5.6.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the defective Goods.
- 5.7 Any Goods repaired or replaced under this clause are subject to the warranty under this clause for the full Warranty Period.

[Drafting Note – please insert any other insurances required by the Council – this may depend on the Goods, or the relevant Council project for which the Goods are required]

- 5.8 The Supplier acknowledges that the Council has relied on the Supplier's warranties in entering into this Agreement.

6. SUPPLIER IS A TRUSTEE

If the Supplier is acting as trustee of a trust, then in relation to this Agreement:

- 6.1 the Supplier is liable both personally and in its capacity as a trustee of that trust;
- 6.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust (but, for the avoidance of doubt, may apply its right of indemnity out of the assets of the trust to any of its liabilities including those arising in relation to this Agreement);
- 6.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- 6.4 it represents and warrants that:
- (a) such trust has been duly established and currently exists;
 - (b) it is the duly appointed, current and only trustee of that trust;
 - (c) as trustee it has the power to enter into and perform its obligations under this Agreement;
 - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (e) it either has no conflict of interest affecting it as trustee (and/or its directors, if any) or such conflict is otherwise overcome by the terms of the relevant trust Agreement; and
 - (f) no breach of the relevant trust Agreement exists or would arise.

7. VARIATIONS AND EXTENSIONS OF TIME

7.1 No unauthorised Variation

- 7.1.1 The Supplier must not, and is not authorised to, make any Variation to the supply of the Goods as set out under this Agreement except:
- 7.1.1.1 a Variation instructed by the Council; and/or
 - 7.1.1.2 a Variation requested by the Supplier, which has been approved by the Council.
- 7.1.2 Variations by the Supplier arising from, or related or attributable to the Existing Conditions which were, or ought to have been, reasonably foreseen as at the date of receipt of an Order Form from the Council are not permitted.

7.2 Execute Variations

The Supplier must provide any Variation in the supply of the Goods instructed by the Council.

7.3 Variations in Writing

All Variations must be documented in writing and must be signed by both the Council's and the Supplier's Representatives.

7.4 Adjustment of Price

For the purpose of any adjustment to the Price for a Variation:

7.4.1 if practicable, the value of a Variation must be agreed by the Supplier and the Council before the Supplier commences to execute the Variation; or

7.4.2 if the value of the Variation is not agreed by the Supplier and the Council, the value must be determined by the Council by application of rates accepted by the Council.

A Variation must be valued as soon as practicable, and the Supplier must promptly and diligently supply to the Council all information relevant to the valuation.

7.5 Extension of Time

7.5.1 Extension

7.5.1.1 Subject always to clause 7.5.1.3, if the Supply of the Goods is delayed by a cause beyond the control of the Supplier, the Supplier may, subject to clauses 7.5.2 and 7.5.3, request a fair and reasonable extension of the time for the Supply of the Goods.

7.5.1.2 Any request by the Supplier for an extension must be in writing and made within seven days after the commencement of the delay and must state with particularity the cause of the delay, and an estimate (if practicable) of the extent or likely extent of the delay in delivering the Goods.

7.5.1.3 For the avoidance of doubt, the Supplier is not entitled to an extension of time for any delays or disruptions arising from the Existing Conditions which were, or ought to have been, reasonably foreseen.

7.5.2 Conditions precedent

The Supplier is entitled to a time extension only if the delay is by a cause beyond the control of the Supplier, and the Supplier took reasonable steps to minimise the delay in the supply of the Goods.

7.5.3 Council's determination

The Council must determine what (if any) fair and reasonable extension of time for the supply of the Goods should be allowed to the Supplier in respect of each request and

must give written notice of every such determination to the Supplier, and the Delivery Date must be extended accordingly.

7.5.4 Documentation

All extensions of time must be documented in writing and must be signed by both the Council's and the Supplier's Representatives.

7.5.5 No costs or damages

The Supplier accepts the risk of all costs, losses and expenses incurred because of a delay in the supply of the Goods (including a delay caused by a Variation directed by the Council). The Supplier's sole remedy for such a delay is an extension of time approved by the Council under this clause. No costs or damages are payable by the Council in respect of such a delay.

8. STATUTORY REQUIREMENTS

8.1 The Supplier must ensure that its supply and delivery of the Goods complies with all Laws applicable to the sale, supply and delivery of goods and materials.

8.2 Where required, the Supplier must, at its cost in all things, obtain all approvals and pay all fees incurred on the sale, supply and delivery of the Goods to the Council.

9. INDEMNITY AND EXCLUSION OF LIABILITY

9.1 The Supplier must indemnify the Council and its employees, officers and contractors against all claims, demands, expenses, loss or damage whatsoever in respect of the supply of the Goods under this Agreement, including any claims, demands, expenses, loss or damage that arise as a result of loss or damage to any property, or the death of or personal injury to any person.

9.2 This indemnity is reduced by the extent to which the Council contributed to the event giving rise to the claim for indemnity.

9.3 The Supplier must supply the Goods at its own risk in all things and releases the Council and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering and liabilities incurred by the Supplier or its employees, agents, subcontractors, third parties, and customers which arise in relation to the supply of the Goods.

10. NON PERFORMANCE BY SUPPLIER

If the Supplier breaches a provision of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

10.1 suspend any or all payment of the Price until the breach is remedied;

- 10.2 remedy the breach itself whether by the use of the Council's employees or other suppliers and deduct the cost of remediation from sums due to the Supplier;
- 10.3 terminate this Agreement in accordance with clause 12.1; and/or
- 10.4 pursue any other legal remedies available to the Council.

11. **FORCE MAJEURE**

- 11.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this Agreement:
 - 11.1.1 neither party is liable for such delay or failure; and
 - 11.1.2 all obligations of a party under this Agreement are suspended until the Force Majeure Event ceases to apply.
- 11.2 A party which is, by reason of a Force Majeure Event, unable to perform its obligations under this Agreement must:
 - 11.2.1 notify the other party as soon as possible giving:
 - 11.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 11.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 11.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 11.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 11.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 11.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 11.2.5 notify the other party when resumption of performance occurs.
- 11.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this Agreement by written notice to the Supplier (**Termination Date**).
- 11.4 In the event of the Council terminating this Agreement pursuant to clause 11.3:
 - 11.4.1 the Council will be liable to pay the Supplier any unpaid invoices already issued to the Council; and

- 11.4.1 within twenty (20) Business Days of the Termination Date the Supplier must give the Council a final invoice for Goods supplied up to and including the Termination Date and not the subject of a prior invoice.
- 11.5 Without limiting the effect of clause 11.4, the Council will not be liable to compensate the Supplier for loss of potential profits or other consequential loss incurred by the Supplier arising from termination by the Council pursuant to clause 11.3.

12. **TERMINATION**

12.1 **Termination by Council**

The Council may immediately terminate this Agreement by giving notice to the Supplier if the Supplier:

- 12.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this Agreement;
- 12.1.2 breaches a material term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so;
- 12.1.3 becomes an externally-administered body corporate or an insolvent under administration;
- 12.1.4 becomes insolvent or bankrupt.

and in such circumstances, the Council will be liable to the Supplier only in respect of the Price properly owing up to the date of termination in respect of the supply of the Goods (or part thereof) performed to that time. Without limiting the effect of this clause, the Council will not be liable to compensate the Supplier for loss of potential profits or other consequential loss incurred by the Supplier arising from termination by the Council pursuant to this clause.

12.2 **Termination by Supplier**

The Supplier may immediately terminate this Agreement if the Council breaches a material term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

12.3 **Accrued rights and remedies**

Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.

13. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

- 13.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this Agreement, and agrees that it will:

- 13.1.1 keep confidential;
- 13.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- 13.1.3 maintain proper and secure custody of; and
- 13.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this Agreement.

- 13.2 The Supplier consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.
- 13.3 Unauthorised disclosure of the Confidential Sections and their subject matter contained therein constitutes a breach of a party's obligations under this Agreement.

14. **DISPUTE RESOLUTION**

- 14.1 A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.
- 14.2 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 14.3 If the parties are unable to resolve the dispute within ten (10) Business Days, they must promptly refer the dispute:
 - (a) in the case of the Council to the Council's Representative; and
 - (b) in the case of the Supplier to the Supplier's Representative.
- 14.4 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 14.5 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this Agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 14.6 All disputes or differences between the Council and the Supplier must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the Chair for the time being of Resolution Institute. Any such arbitration must be carried out in accordance with, and subject to, the Resolution Institute Arbitration Rules.
- 14.7 If possible, each party must perform its obligations under this Agreement during negotiations, mediation and arbitration proceedings

15. SUBCONTRACTING AND ASSIGNING

- 15.1 The Supplier must not assign or subcontract this Agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld by the Council in its absolute discretion.
- 15.2 With any application for such consent, the Supplier must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Services to be assigned or subcontracted.
- 15.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Supplier from any liability under this Agreement or at Law in respect of the performance or purported performance of this Agreement and the Supplier is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Supplier.
- 15.4 For the purpose of this clause, if the Supplier is a company, an assignment of this Agreement includes any change in the beneficial ownership of the share capital of the Supplier, or the resignation, death or appointment of any director of the company, which alters the effective control of the Supplier.

16. MISCELLANEOUS

16.1 Special Conditions

If there is an inconsistency between a Special Condition set out in Annexure E and the rest of this Agreement, the Special Condition prevails to the extent of the inconsistency.

16.2 Alteration

This Agreement may be altered only in writing signed by each party.

16.3 Approvals and consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this Agreement.

16.4 Entire Agreement

This Agreement:

- 16.4.1 constitutes the entire Agreement between the parties about its subject matter;
- 16.4.2 supersedes any prior understanding, Agreement, condition, warranty, indemnity or representation about its subject matter.

[Drafting Note - please note the provisions above. Please ensure that all agreed terms are included in this Agreement]

16.5 Waiver

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

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

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

16.6 Exercise of power

16.6.1 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.

16.6.2 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.

16.7 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.

16.8 Further action

Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

16.9 Governing law

16.9.1 This Agreement is governed by the law in South Australia.

16.9.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

16.10 Counterparts

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by email.

16.11 Conflict of Interest

The Supplier must disclose in writing to the Council all actual and potential conflicts of interest that exist, arise or may arise in the course of performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

16.12 Ombudsman

The Supplier acknowledges that the *Ombudsman Act 1972* (SA) empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that Act and all applicable Laws.

16.13 Work Health and Safety

In complying with its obligations pursuant to this Agreement, the Supplier agrees to:

- 16.13.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;
- 16.13.2 comply with all requirements of the *Work Health and Safety Act 2012* (SA) and any regulations made under it;
- 16.13.3 comply with any reasonable requests of the Council in relation to the Supplier's performance of its obligations pursuant to this Agreement;
- 16.13.4 promptly notify the Council of any accident, injury, property or environmental damage or any potential breach of any law (reportable incident) that occurs during or as a result of this Agreement. Within 24 hours of a reportable incident, the Supplier must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

16.14 ReturnToWorkSA

- 16.14.1 Subject to clause 16.14.2, the Supplier must ensure that it is at all times registered as an employer under the *Return to Work Act 2014* (SA) (**Act**) and that it pays all monthly levies due under it in respect of its employees engaged in relation to the supply of the Goods under this Agreement. The Supplier must produce to the Council on execution of this Agreement a current Certificate of Registration as an employer under the Act. The Supplier must ensure that all subcontractors engaged by it (if any) have at all times current Certificates of Registration as employers under the Act, and must produce them to the Council upon request in writing by the Council.
- 16.14.2 Notwithstanding clause 16.14.1, if the Supplier (or any sub-contractor) is unable to register as an employer under the Act, then the Supplier must instead adequately insure against accident, personal injury and disability. The Supplier must maintain such insurance at all times during the currency of this Agreement (including the Warranty Period) and must produce evidence of:
 - 16.14.2.1 the existence and adequacy of such insurance; and
 - 16.14.2.2 the Supplier's (and/or any sub-contractor's) inability to register as an employer under the Act.

16.15 ICAC

The Supplier acknowledges and agrees that by entering into this Agreement with the Council the Supplier will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (**ICAC Act**) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

17. GOODS AND SERVICES TAX

17.1 Consideration does not include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this Agreement does not include GST.

17.2 Gross up of consideration

Where a supply by one party (**supplier**) to another party (**recipient**) under this Agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

17.2.1 the expressed consideration for that supply must be increased by, and the recipient must pay to the supplier, an amount equal to the GST payable by the supplier in respect of that supply; and

17.2.2 the recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

17.3 Reimbursements

If a payment to a party under this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

17.4 Tax invoices

Notwithstanding any other provision of this Agreement, the recipient need not make any payment for a taxable supply made by the supplier under this Agreement until the supplier has given the recipient a tax invoice in respect of that taxable supply.

17.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this Agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the supplier first becomes aware that the adjustment event has occurred.

18. NOTICES

18.1 A Notice must be:

18.1.1 in writing, in English and signed by a person authorised by the sender; and

- 18.1.2 hand delivered, sent by pre-paid post or electronic communication to the recipient's address specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 18.2 A Notice is deemed to be received:
 - 18.2.1 if hand delivered, on delivery;
 - 18.2.2 if sent by prepaid post, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);
 - 18.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.
- 18.3 However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

19. **COSTS**

Each party must pay its own costs of preparing this Agreement and any document required by it.

Annexure A Goods

[Insert detailed description of the Goods, including all relevant specifications]

Annexure B Price

[Insert the Price payable by the Council for the Goods, including:

- basis for determining the Price;
- the review mechanism for the Price, if applicable;
- what, if any, milestones the supplier needs to have satisfied before the Council is obligated to pay the Price]

Annexure C Order Form

[Drafting Note - the Order Form MUST include at least the following information:]

1. *Name and ABN of Supplier (legal entity, not business name)*
2. *Type/specifications and quantity of Goods to be supplied*
3. *Council's unique Order Form number*
4. *Location where the Goods are to be delivered by the Supplier*
5. *Time and date when the Goods are to be delivered*
6. *Price for the Goods (exclusive of GST)*

Annexure D Delivery Docket

[Drafting Note - the Delivery Docket MUST contain the following information:]

1. *Order Form number to which the delivery relates*
2. *Description of the Goods delivered (including type/specifications and quantity)*
3. *Date and location of delivery*
4. *Place for signing by the Supplier's Representative*
5. *Place for counter-signing by the Council's Representative*

Annexure E Special Conditions

[Drafting Note – Special Conditions should be used to add or to amend the position put forward in the Agreement. They should be used to highlight any unusual or special circumstances particular to the circumstances of the case which have made it necessary to amend the standard terms and conditions. Please use the Special Conditions with care as you may inadvertently modify the Agreement in a way which exposes the Council to risk or results in the Agreement between the Council and the supplier not being clear. Councils should have appropriate controls in place which facilitate Special Conditions being checked by a Council Officer with appropriate authority to bind the Council and sufficient training and expertise to ensure that the Council is not exposed to unnecessary risk. If you have any concerns about any aspects of the Special Conditions you should seek legal advice]

Annexure F Existing Conditions

Directions as applicable made pursuant to the *South Australian Public Health Act 2011* and the *Emergency Management Act 2004*, refer to <https://www.covid-19.sa.gov.au/emergency-declarations>.

EXECUTED as an Agreement

By the Council

SIGNED by [Insert name] under delegated authority in the presence of:	
..... Signature Date: ____/____/____ Signature of witness Name of witness (print) Date: ____/____/____

***Drafting Note:** Use the below execution clause if the Supplier is a company executing under common seal.*

The common seal of [Insert Supplier name] was affixed in accordance with its Constitution and by the authority of its directors:	
..... Director Date: ____/____/____ Director/Secretary Date: ____/____/____

Drafting Note: Use the below execution clause if the Supplier is a company but is NOT executing under common seal.

Executed by [Insert Supplier name] in accordance with section 127(1) of the <i>Corporations Act</i> by the authority of its directors:	
..... Signature of Director Signature of Director/Secretary
..... Name of Director (print) Name of Director/Secretary (print)
Date: ____/____/____	Date: ____/____/____

Drafting Note: Use the below execution clause if the Supplier is an individual.

Signed by [insert name] in the presence of:	
..... Signature Signature of witness
..... Name of Individual (print) Name of witness (print)
Date: ____/____/____	Date: ____/____/____

Drafting Note: Use the below execution clause if the Supplier is a **Discretionary Trust**.

Executed by [Insert Names of Trustees] as Trustees for the [Insert Names of Trust]	
..... Signature of Trustee Signature of Trustee
..... Name of Trustee (print) Name of Trustee (print)
Date: ____/____/____	Date: ____/____/____

Drafting Note: Use the below execution clause if the Supplier is a Partnership - please add extra execution clauses for additional partners as necessary.

Partner 1:

Signed by [insert name] in the presence of:	
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	Date: ____/____/____
_____ Address of witness (print)	
Date: ____/____/____	

Partner 2:

Signed by [insert name] in the presence of:	
_____ Signature of witness	_____ Signature of partner
_____ Name of witness (print)	Date: ____/____/____
_____ Address of witness (print)	
Date: ____/____/____	