



**CUMBERLAND  
CITY COUNCIL**

**Purchase Order Terms & Conditions  
Supply of Goods & Services**

## 1. Contract

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1.1 This Contract records the binding agreement between the parties relating to the supply of the Goods or the provision of the Services and comprises the following documents:

- (1) the Purchase Order;
- (2) these Terms and Conditions; and
- (3) any other document intended to form part of this Contract as identified in the Purchase Order, expressly or by reference.

1.2 The terms of this Contract are deemed to be accepted by the Supplier and apply by virtue of the Supplier's performance of its obligations under this Contract.

*\*Clauses 2-5 apply generally*

## 2. Definitions

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In this document, capitalised words have the meaning given to them in **Schedule 1**.

## 3. Term

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This Contract continues until:

- (1) the Goods have been Accepted by the Council in accordance with clause 8; or
  - (2) the Services have been provided to the Council; and
  - (3) the Council has paid to the Supplier the Price in full,
- unless it is terminated earlier in accordance with clause 26.

## 4. Warranties

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4.1 The Supplier represents and warrants to Council that:

(as applicable)

- (1) The Goods:
  - (a) comply with all samples, specifications, drawings or other descriptions provided to the Council by the Supplier prior to entering this Contract; and
  - (b) are of 'acceptable quality' and 'safety' as required by the ACL, free from all Defects (including defects in design, material and workmanship); and
  - (c) are new.
- (2) The Services:
  - (a) are fit for any of the Council's purpose(s); and

(b) comply with the Standards for Services described in clause 10.

4.2 The Supplier must make all necessary inquiries to ascertain the Council's requirements and to comply with all Laws regarding the Goods or Services.

## 5. Supplier's Obligations

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5.1 The Supplier must:

- (1) ensure delivery complies with clause 7.1;
- (2) ensure that the supply of the Goods or provision of the Services and their manner of supply, handling and delivery (as applicable) do not put the safety of any person at risk;
- (3) comply with any directions given by the Council in respect of safety;
- (4) not disrupt, damage or otherwise interfere with any work being undertaken by the Council (including its Personnel) or any third party located at the Delivery Address at the time of supply, handling and delivery (as applicable) of the Goods or Services.

5.2 The Supplier acknowledges and agrees that all representations and warranties implied by Law that are applicable to the Goods or Services supplied under this Contract form part of this Contract and are not excluded, restricted, or modified in any way.

*\*Note: clauses 6-10 apply specifically to the supply of Goods*

## 6. Packaging & Handling

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6.1 The Supplier must ensure that the Goods:

- (1) are packaged safely and securely and protected against damage to ensure their safety during transport, storage and delivery;
- (2) are fit for their intended purpose;
- (3) comply with all Laws;
- (4) are free and clear of all charges, liens, Security Interests, and encumbrances; and
- (5) do not infringe any IP rights.

6.2 The Supplier must ensure that any hazardous Goods are clearly identified with prominent and suitable warnings labels. All warning labels must comply with all applicable Laws.

## 7. Delivery

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7.1 The Supplier must deliver the Goods to the Delivery Address on the Delivery Date between 8:00am and 4:30pm (unless specified otherwise by the Council).

7.2 The Council may alter the Delivery Date at any time before the Delivery Date (but not to a date earlier

than the Delivery Date) by way of written notice to the Supplier.

7.3 Delivery is complete when the Supplier:

- (1) hands over the to the Authorised Officer the Goods, together with all drawings, operating and maintenance manuals, technical data, and Warrant documentation associated with the Goods; and
- (2) obtains the signature of the Authorised Officer on a Delivery Docket (which must be retained by the Supplier) as proof of delivery.

7.4 Subject to clause 7.2, if the Supplier does not Deliver the Goods within three Business Days of the Delivery Date, without limiting any other rights the Council may have, the Council may reject the Goods and terminate this Contract immediately by notifying the Supplier in writing.

7.5 If any matter beyond the Supplier's control causes a delay to delivery of the Goods, including:

- (1) the Council's failure to comply with its obligations under this Contract; or
- (2) a Force Majeure Event.

then the Supplier will be entitled to a reasonable extension of time to the Delivery Date.

## 8. Acceptance & Title

8.1 Subject to clause 9.1(4), Acceptance occurs when the Authorised Officer signs a Delivery Docket provided to them by the Supplier, and take possession of the Goods from the Supplier.

8.2 The risk of loss of, or damage to, the Goods passes to the Council on Acceptance of the Goods by the Council.

8.3 Title to the Goods does not pass to the Council until the Supplier receives payment in full of Price for the Goods.

## 9. Defects

9.1 If any Goods supplied under this Contract are Defective, or are otherwise damaged due to the Supplier's failure to properly package the Goods, or the Supplier's mishandling of the Goods (as determined by the Council acting reasonably), the Council may, at its sole discretion:

- (1) reject all or part of the Defective Goods, in which case the risk in the Defective Goods will remain with the Supplier and the Council will not be liable to pay for the Defective Goods; or
- (2) require the Supplier, at its cost, to repair, modify or replace any of the Defective Goods, or supply equivalent Goods; or
- (3) require the Supplier to reimburse the Council for the cost of repairing or replacing the

Defective Goods, or of acquiring equivalent Goods; or

- (4) where the Council has already paid the Price for the Defective Goods, require the Supplier to refund to the Council the Price already paid.

9.2 Where the Council rejects all or part of the Defective Goods under clause 9.1(1):

- (1) without limiting any other right or remedy that the Council may have at Law or under this Contract, the Council must give the Supplier written notice of rejection (including detailed reasons for its rejection):
  - (a) in the case of a defect that is apparent on normal visual inspection, within five Business Days of Delivery; or
  - (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent, and
- (2) clauses 8.1 and 8.2 do not apply, whether or not the Authorised Officer has signed the Delivery Docket and/or the Goods have been physically delivered to the Delivery Address.

9.3 Clause 9.1 equally applies to any repaired or replacement Goods supplied by the Supplier.

9.4 In any of the circumstances listed in paragraph 9.1, the Council will be entitled to recover from the Supplier, as a debt due and payable on demand, any financial loss (including costs and expenses) incurred by the Council either directly or indirectly arising as a result of the Defective Goods.

9.5 Any Warranty provided in accordance with this Contract:

- (1) commences on the Delivery Date or Acceptance, whichever occurs last; and
- (2) is valid for the longer of the Supplier's or the manufacturer's standard warranty period.

## 10. Vehicle Laws

10.1 The Supplier must, and must ensure its Personnel, comply with all Vehicle Laws applicable to:

- (1) the handling and transportation of the Goods;
- (2) driver fatigue management; and
- (3) vehicle safety compliance.

10.2 So far as is reasonably practicable, the Supplier must ensure the safety of its transport activities and eliminate any associated public risks.

10.3 If the Supplier is not able to perform an obligation under this Contract without breaching an applicable Vehicle Law, then the Supplier must notify the Council immediately and must not breach, or permit a breach of, the Vehicle Law.

10.4 The Supplier warrants that in supplying the Goods, the Supplier has not and will not infringe any Vehicle Laws.

*\*Note: clauses 11-19 apply specifically to the supply of Services*

## **11. Standards for Services**

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11.1 The Supplier must perform the Services:

- (1) Diligently and in a manner and with the degree of professional skill, care and diligence expected of a competent professional services provider experienced in carrying out services of a similar nature to the Services;
- (2) timely and without delay; and
- (3) in accordance with all relevant Laws.

11.2 The Supplier warrants to the Council that it has the skill, experience, qualifications and Personnel to perform the Services in accordance with this Contract and acknowledges that the Council is relying on the Supplier's expertise, skill, and judgement in the Supplier's performance of the Services.

11.3 If it becomes apparent to the Supplier that anything including an act or omission of the Council may delay carrying out the Services, the Supplier must promptly and in any event within five Business Days of the event or action giving rise to the delay, notify the Council in writing with details of the possible delay, the cause and the impact on the Services.

## **12. Deliverables**

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12.1 If the Supplier is required to prepare and submit Deliverables as part of the Services, it must ensure that the Deliverables when provided to the Council:

- (1) are complete and suitable for the Council's purpose or purposes stated in this Contract;
- (2) comply with all relevant Laws and best industry practices; and
- (3) comply with the requirements of this Contract.

12.2 The Supplier acknowledges and agrees that:

- (1) it has accepted sole responsibility for and assumes the risk of all increased costs, Losses and delays arising out of a failure to:
  - (a) provide all the Deliverables which are required under, and comply with, this Contract; or
  - (b) complete all of the Supplier's obligations under this Contract to the reasonable satisfaction of the Council,within the Term;

(2) is not entitled to make any Claim if it must carry out the Services after the expiry of the Term because:

- (a) it has not provided all the Deliverables which are required under, and comply with, this Contract; or
- (b) it has not completed all of the Supplier's obligations under this Contract to the reasonable satisfaction of the Council; or
- (c) for any other reason attributable to the Supplier and its Personnel.

## **13. Access**

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13.1 Subject to the Supplier complying with clause 23, the Council will grant the Supplier non-exclusive access to the relevant Site as reasonably required to perform the Services.

13.2 The Supplier must procure its own access to any other land or site required to perform the Services.

13.3 The Supplier must, and must ensure that those performing the Services, when accessing the Site, comply with the following:

- (1) all WHS requirements; and
- (2) any access requirements notified to the Supplier by the Council at any time on or after the date of execution of this Contract.

## **14. Quality Assurance**

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If required by the Council, the Supplier must:

- (1) establish and implement an appropriate quality management system (**QMS**) and perform regular audits as required by the QMS;
- (2) retain records and information created or obtained in accordance with the QMS for at least seven years after the Supplier ceases to perform the Services; and
- (3) if requested by the Council, allow an Authorised Officer (or nominee) to access and take a copy of such records and information as reasonably required by the Council in connection with the Services.

## **15. Variation to Services**

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15.1 During the Term, the Council may, acting reasonably, direct the Supplier to vary the Services by serving on the Supplier a Variation Notice stating:

- (1) that it is a Variation Notice under clause 15.1;
- (2) the terms of the variation; and

- (3) the time within which such variation is required.

15.2 The Supplier must promptly (and in any event, within five Business Days) after receiving a Variation Notice provide the Council with a written quotation to carry out the proposed variation.

15.3 If a Variation Notice deletes any part of the Services, the Supplier must adjust the Price by an amount equivalent to the value of the part of the Services so deleted.

15.4 Noting in this Contract precludes the Council from performing any part of the Services that have been deleted from this Contract by a Variation Notice.

## **16. Suspension of Services**

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16.1 The Council may, at any time and for any reason, direct a suspension of all or part of the Services.

16.2 If the Council gives a direction to suspend pursuant to subclause 16.1

- (1) the Council, at any time after such direction, direct the Supplier to recommence all or part of the Services, and the Supplier must promptly comply with that direction; and
- (2) the Supplier will not be entitled to any additional costs (including any claim for compensation for lost income) incurred by reason of any suspension under subclause 16.1.

## **17. WHS and Environment Requirements**

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17.1 The Supplier must:

- (1) ensure that the Supplier and its Personnel, in performing the Services, comply with:
  - (a) the WHS Legislation; and
  - (b) the Supplier's WHS and environment plans and policies;
  - (c) liaise with the Council to ascertain whether there are any identified WHS hazards and risks or identified potential WHS hazards and risks which may apply to the Services generally;
  - (d) consult, co-operate and co-ordinate with all duty holders to identify all potential WHS issues that may arise, or have arisen, out of, or in connection with, the Services;
  - (e) identify all precautionary measures necessary for the WHS of, and the welfare of, all workers and other persons and other third parties who may be affected by the Services;
  - (f) exercise and implement all precautionary measures necessary for the WHS of and the welfare of all workers and other

persons, members of the public and other third parties who may be affected by the execution of the Services;

- (g) eliminate where possible WHS risks or if elimination is not possible, minimise WHS risks; and

- (h) develop and keep up to date whilst the Services are being performed documented WHS and environment plans and policies relevant to the Services.

- (2) The Supplier must comply, and keep complete records of its compliance, with the requirements of all WHS Laws that are applicable or relevant to the provision and completion of the Services.

## **18. Subcontracting**

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18.1 The Supplier must not subcontract any part or the whole of the Services without the Council's prior written consent.

18.2 Neither the subcontracting of, nor the Council's consent to subcontract any of, the Services excludes or reduces the Supplier's obligations or liabilities under this Contract.

18.3 The Supplier is responsible and liable to the Council for any act, omission, default, or negligence of its subcontractors as if it were the act, omission, default, or negligence of the Supplier.

## **19. Personnel**

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19.1 The Supplier must ensure:

- (1) it has a sufficient number of Personnel to comply with its obligations under this Contract; and
- (2) its Personnel are all suitably qualified, experienced and have the necessary skills and Approvals to provide the Services under this Contract.

19.2 The Supplier is responsible and liable to the Council for any act, omission, default, or negligence of its Personnel as if it were the act, omission, default, or negligence of the Supplier.

19.3 If, in the Council's reasonable opinion, the Supplier's Personnel are inadequate to perform its obligations under this Contract, the Council may direct the Supplier to appoint additional Personnel to carry out the Services or otherwise rectify that inadequacy. The Supplier must comply with any such direction at its own expense.

19.4 The Supplier must ensure that it, and its Personnel:

- (1) comply with all Laws applicable to it in relation to its Personnel, including in

connection with WHS, payroll tax, superannuation, workers compensation and industrial relations; and

- (2) if reasonably required by the Council, register (or provide proof of registration) with BNG Contractor Services.

19.5 The Supplier is an independent contractor of the Council. Nothing in this Contract implies that any person involved in the performance of the Services by or on behalf of the Supplier is an employee of the Council.

*\*Clauses 20-35 apply generally*

## **20. Payment**

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20.1 Subject to clause 20.5, the Council will pay the Price within 14 Business Days of the following:

- (1) the Supplier's compliance with this Contract (including delivery of the Goods on the Delivery Date), and
- (2) receipt of correctly rendered and dated tax invoice.

20.2 All tax invoices submitted by the Supplier must:

- (1) be tax invoices complying with the GST Act;
- (2) clearly and accurately itemise the amounts payable for each item supplied in Australian dollars;
- (3) identify the Goods or Services supplied under this Contract;
- (4) include Council's official Purchase Order number; and
- (5) be sent to the Council by email or fax:

[accountspayable@cumberland.nsw.gov.au](mailto:accountspayable@cumberland.nsw.gov.au)

F | (02) 9643 1120.

20.3 The Supplier is not entitled to interest on any unpaid monies.

20.4 The Council may deduct from monies due, or that become due, to the Supplier, any amount necessary to satisfy a debt or other Claim the Council may have against the Supplier under this Contract.

20.5 The Council has no liability for payment of the Price if the Supplier cannot produce, at the Council's request, the Delivery Docket signed by the relevant Authorised Officer at the time of delivery. Any other details, terms or conditions on the Delivery Docket, other physical acceptance of the Goods, or any other signature or endorsement on the Delivery Docket by anyone other than the relevant Authorised Officer, has no legal or contractual effect.

20.6 The Price:

- (1) is fixed, subject to any other special conditions as agreed between the parties, in writing; and

- (2) shall include any customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery, insurance, GST, and any other costs and charges (as applicable to the Goods or Services).

## **21. GST**

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21.1 Words or expressions used in this clause 21 which are defined in the GST Act have the same meaning in this clause.

21.2 The Price payable for the Goods supplied under this Contract is 'GST exclusive' unless expressly stated otherwise.

21.3 The Council must pay to the Supplier an additional amount equal to the GST payable on the supply at the same time as the GST exclusive Price is paid, subject to the Supplier issuing the recipient with a tax invoice in accordance with clause 20.2.

21.4 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

21.5 If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that Loss.

## **22. Indemnity**

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22.1 Subject to clause 22.9, the Supplier indemnifies the Council (and its Personnel) (in this clause, '**Those Indemnified**') from and against all Claims or Losses arising out of or by reason of any negligent or wilful act or omission by the Supplier (and its Personnel) in connection with its obligations under this Contract and the Goods or Services supplied under it for the following:

- (1) loss of or damage to any Council property, or damage of any kind suffered by Those Indemnified, or
- (2) breach of any warranty or representation given by the Supplier in relation to the Goods or Services;
- (3) breach of any term or condition of this Contract;
- (4) injury or death of any person, including third party, in connection with this Contract or the Goods or Services supplied under it;
- (5) liability under the ACL in connection with this Contract or the Goods supplied under it; and

(6) a Defect in the Goods.

22.2 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Contract.

22.3 It is not necessary for those indemnified to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

22.4 The Supplier's indemnity to the Council under this clause shall be reduced proportionately to the extent that any wilful, unlawful, or negligent act or omission of the Council (including its Personnel) contributed to the loss or liability.

22.5 Without limiting clause 22.1 and subject to clause 22.4, and to the extent caused by the Supplier (and its Personnel), the Supplier is liable for any direct, indirect or consequential losses or expenses suffered by the Council arising out of or in connection with this Contract or the use of the Goods or Services including, but not limited to loss of agreements, contracts, business opportunity, anticipated saving, loss or damage to reputation or goodwill, or loss or corruption of software, data or information.

22.6 The Council's maximum aggregate liability to the Supplier under this Contract is limited to:

- (1) (Goods) the Price of the Goods already Accepted by the Council; or
- (2) (Services) the Price paid for all or part of the Services already provided and completed,

prior to the date of expiry or earlier termination of this Contract.

22.7 The Council will not otherwise be liable to the Supplier for any Loss (whether direct, indirect, consequential, economic, or otherwise) suffered by the Supplier and arising out of or in connection with termination of this Contract under clause 26.

22.8 Nothing in this Contract intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

22.9 Nothing in this Contract limits or excludes a party's liability:

- (1) for death or personal injury caused by its negligence or wilful misconduct (including that of its Personnel);
- (2) for fraud or fraudulent misrepresentation by it or its Personnel;

(3) where liability cannot be limited or excluded by applicable Law;

(4) for repudiation or abandonment of this Contract;

(5) for breach of confidentiality under clause 24; or

(6) for breach of a party's IP Rights, or the IP Rights of a third party in connection with this Contract or the Goods or Services supplied under it.

## **23. Insurance**

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23.1 Commencing on the date of this Contract, the Supplier must, at its cost, effect and maintain the following insurances for the Term:

(as applicable)

- (1) insurance cover for the Goods for their full replacement value against loss or damage, including loss or damage in transit to the Delivery Address and unloading at the Delivery Address;
- (2) workers compensation insurance, in accordance with the requirements of, and for an amount of not less than the maximum amount specified in, the relevant statutory regime in NSW; and
- (3) public or product liability insurance for the amount of \$20,000,000.00 for any one occurrence; and
- (4) any other insurances as may be agreed between the parties in writing.

23.2 Whenever requested by the Council, the Supplier shall provide satisfactory evidence that all insurances required to be effected by the Supplier under this Contract have been effected and maintained.

23.3 If, after being requested by the Council, the Supplier fails to produce evidence of insurance as required by clause 23.2, the Council may effect and maintain the relevant insurances and pay the premiums, in which case the amount paid shall be a debt due from the Supplier to the Council.

## **24. Proportionate Liability**

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24.1 To the maximum extent permitted by law, the parties agree that Part 4 of the Civil Liability Act excluded in relation to all and any rights, obligations, and liabilities under this Contract whether such rights, obligations, or liabilities are sought to be enforced as a breach of contract or a Claim in tort or otherwise at law or in equity.

24.2 If, despite the previous clause, a court of competent jurisdiction determines that the Civil Liability Act does apply, then the Supplier:

- (1) acknowledges and agrees that the Supplier is entirely and solely responsible for a breach of any duty of care on the part of its Personnel; and
- (2) undertakes to the Council, as a separate and independent absolute obligation, to compensate the Council for any Loss incurred by the Council as a result of such breach of duty of care on the part of its Personnel.

## 25. Intellectual Property

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### 25.1 The Supplier:

- (1) warrants that the Goods or Services do not infringe or contribute to any infringement of any IP rights of any third party;
- (2) warrants that in performing its obligations under this Contract and in all submissions and proposals made by it to Council prior to this Contract, the Supplier (including its Personnel) has not and will not infringe the IP rights of any third party; and
- (3) warrants that use by Council of the Goods or Services will not infringe the IP rights of any third party.

25.2 The IP in all materials provided by the Council to the Supplier including, but not limited to, drawings, specifications, designs, manuals and/or tenders remains with the Council, and the Supplier must promptly return all such material to the Council, if requested by the Council.

25.3 The Supplier indemnifies the Council against any and all Losses arising out of any Claim in respect of infringement of any IP or industrial property whether in Australia or overseas, relating to the Goods or Services.

## 26. Termination

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26.1 Council may terminate this Contract by written notice (**Termination Notice**) to the Supplier:

- (1) if the Supplier breaches a term of this Contract and fails to remedy the breach within 14 Business Days of date receipt of a Termination Notice;
- (2) if Council is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under this Contract;
- (3) if the Supplier:
  - (a) being an individual - becomes bankrupt or makes an assignment of his/her estate for the benefit of his/her creditors or makes a composition or other arrangement with his/her creditors; or

(b) being a company - goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier;

(4) in response to a finding of serious wrongdoing or other misconduct involving the Supplier or its Personnel in supplying the Goods or Services under this Contract; or

(5) at any time before the Delivery Date, provided that the time is not less than 14 Business Days.

26.2 Termination under clause 26.1 is effective from the date stated in the Termination Notice.

26.3 The Supplier will be liable to Council for any Loss (whether direct, consequential, economic, or otherwise) suffered by Council and arising out of or in connection with termination in accordance with clause 26.1.

26.4 Termination of the Contract pursuant to this clause 26 shall be without prejudice to the rights of either party accruing before termination.

## 27. Dispute Resolution

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27.1 If a dispute arises between the parties about this Contract (**Dispute**) then the party who raises the Dispute must tell the other party about the Dispute in writing (**Dispute Notice**).

27.2 The parties must meet and take all reasonable steps to resolve such Dispute by negotiation within 14 Business Days of receiving a Dispute Notice.

27.3 If the Dispute is not resolved under clause 27.2, then:

- (1) the Dispute must be referred to mediation by a mediator selected:
  - (a) by the parties; or
  - (b) if the parties cannot agree on a mediator, by the President of the Australian Disputes Centre, and
- (2) before the commencement of any legal proceedings about the Dispute.

27.4 Any costs incurred in the mediation of the Dispute shall be borne equally by the parties.

27.5 Even if there is a Dispute in connection with this Contract, the parties must continue to perform their obligations under this Contract.

27.6 Nothing in this clause 27 prevents either party from seeking urgent interim or interlocutory relief from a court of competent jurisdiction.



## 28. Force Majeure

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In this clause, 'Affected Party' means the party that is prevented from or hindered or delayed in performing any of its obligations under this Contract by a Force Majeure Event.

28.1 The Affected Party must as soon as is reasonably practicable after the start of the Force Majeure Event (but no later than five Business Days), notify the other party in writing of:

- (1) the nature and particulars of the Force Majeure Event;
- (2) the date on which the Force Majeure Event started;
- (3) the likely or potential duration of the Force Majeure Event; and
- (4) the effect of the Force Majeure Event on the Affected Party's ability to perform any of its obligations under this Contract; and
- (5) use all reasonable endeavours to remedy, mitigate or minimise the effect of the Force Majeure Event on the performance of its obligations.

28.2 Provided it has complied with clause 28.1:

- (1) the Affected Party will not be in breach of this Contract or otherwise liable for any such failure, hindrance or delay in the performance of those obligations to the extent that the failure, hindrance or delay is directly caused by the Force Majeure Event; and
- (2) the relevant obligations will be suspended, and the time for performance of such obligations will be extended, until the time that those obligations are no longer affected by the Force Majeure Event.

28.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

28.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

28.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 14 Business Days, the party not affected by the Force Majeure Event may terminate this Contract by giving seven Business Days' written notice to the Affected Party.

## 29. GIPA Act

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The Supplier agrees to provide Council with immediate access to any information reasonably required by the

Council to allow the Council to comply with its obligations under the GIPA Act.

## 30. Modern Slavery

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30.1 The Supplier must take reasonable steps (appropriate to their size and circumstance) to identify, assess, and address Modern Slavery risks within their operations and supply chains. Reasonable steps include the following:

- (1) developing an awareness and understanding of Modern Slavery and the Supplier's obligations under Modern Slavery Laws, including any mandatory reporting requirements (as applicable); and
- (2) actively engaging in efforts to identify and address Modern Slavery risks within the Supplier's operations and supply chains, including, compliance with Australian labour laws, conducting Modern Slavery risk assessments, and having an internal policy to address Modern Slavery within the Supplier's operations;

30.2 The Supplier must notify Council in writing as soon as practicable of any instances of Modern Slavery and the actions taken, or being taken, to remedy the Modern Slavery, if the Supplier becomes aware of any:

- (1) actual or reasonably suspected occurrences of Modern Slavery, or
- (2) notices, investigations, proceedings or Claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws by the Supplier or the Supplier's directors, Personnel, Related Entities, or any of its Engaged Entities, whether or not the Modern Slavery occurs or is suspected to occur in the performance of this Contract.

30.3 Failure to comply with clause 30.2 may lead to the termination of this Contract by the Council.

## 31. Disability Inclusion Action Plan

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31.1 The Supplier agrees and acknowledges that by entering into this Contract and supplying the Goods or Services under it, it will not and does not breach the Disability Inclusion Laws.

31.2 By entering into this Contract, the Supplier acknowledges that it has read and acknowledges the *Cumberland Disability Inclusion Action Plan 2022-2026* (which is available on the Council's website).

## 32. Public Interest Disclosure Requirements

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*This clause only applies if the contractor is engaged to act on behalf of the council or as an agent or representative of the Council.*

In this clause:

**'Agency'** has the meaning given to it in s16 of the PID Act.

**'Agency Service Contract'** has the meaning given to it in s82 of the PID Act.

**'Contracting Agency'** has the meaning given to it in s82 of the PID Act.

**'PID Act'** means the *Public Interest Disclosures Act 2022* (NSW).

32.1 The PID Act applies to a contract or subcontract (Agency Service Contract) under which a person or body is engaged to provide services on behalf of Council (Contracting Agency), including an engagement to exercise a function for Council.

32.2 The Supplier engaged under an Agency Service Contract for Council, agrees and acknowledges that it must:

- (1) comply with the PID Act; and
- (2) must notify Council of a voluntary public interest disclosure of which the Supplier becomes aware where either:
  - (a) the disclosure relates to Council; or
  - (b) the maker of the disclosure is known to be a public official associated with Council.

32.3 The Supplier must notify the Council of any serious wrongdoing committed, or alleged to be committed, by its Personnel, Engaged Entity or Related Entity in connection the Contract.

32.4 The Supplier must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of Council or any other Agency.

32.5 The Supplier must ensure that any of its Personnel, Engaged Entity or Related Entity connected with the provision of the Goods or Services under the Contract acknowledge that:

- (1) Council has an obligation to take corrective action under s.66 of the PID Act; and
- (2) Council has a right to terminate the Contract in response to a finding of serious wrongdoing or other misconduct involving the Supplier (including the Supplier's Personnel, Engaged Entity, Related Entity of the Supplier).

32.6 Subject to clause 18.1, if the Supplier subcontracts the Contract in whole or in part, the Supplier must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding in this clause 32.

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### 33. Variation

Any variations to this Contract must be agreed by the parties in writing.

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### 34. Confidentiality, Publicity and Privacy

34.1 Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to the other party or its business (which is or has been disclosed to the Recipient by the other party, its Personnel or professional advisers) or the terms of this Contract, except:

- (1) where the information is in the public domain as at the date of this Contract (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
- (2) if the Recipient is required to disclose the information by applicable Law or the rules of any recognised securities exchange, provided that the Recipient has (to the extent practicable having regard to those obligations and the required timing of the disclosure) consulted with the provider of the information as to the form and content of the disclosure;
- (3) where the disclosure is expressly permitted under this Contract;
- (4) if disclosure is made to its Personnel or professional advisers, to the extent necessary to enable the Recipient to properly perform its obligations under this Contract (or to conduct their business generally), in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- (5) where the disclosure is required for use in legal proceedings regarding this Contract; or
- (6) if the party to whom the information relates has consented in writing before the disclosure.

34.2 Clause 34.1 survives termination or expiry of this Contract.

34.3 The parties must not issue any press release or otherwise publish any statement or information concerning the subject matter of this Contract without the prior written consent of the other party.

34.4 The parties must comply with all Privacy Laws, as amended from time to time.

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### 35. General

35.1 The Supplier must not sub-contract or assign this Contract to any other party without consent in writing from the Council.

35.2 Waiver by the Council of any default by the Supplier will not constitute a waiver by the Council of its rights arising out of any further default by the Supplier.

35.3 If any term or condition is unenforceable it shall be read down so as to be enforceable, or, if it cannot be read down, the term or condition shall be severed from this Contract without affecting the enforceability of the remaining terms and conditions of this Contract.

35.4 The Contract constitutes the entire understanding between the Council and the Supplier in relation to the subject matter of this Contract and supersedes any other agreement or arrangement between the parties in respect of the supply.

35.5 A notice (and any other documents) shall be deemed to have been given if addressed or delivered by hand, email, mail or facsimile to the relevant address provided in this Contract or last communicated in writing to the person giving the notice. A notice (and other documents) shall be deemed to have been received:

- (1) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
- (2) in the case of emailing, once sent unless the sender receives notice that the email has not been delivered;
- (3) in the case of posting, three Business Days after dispatch; or
- (4) in the case of facsimile, when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily.

35.6 The Contract is governed by and construed in accordance with the law of New South Wales.

35.7 The parties submit to the jurisdiction of the courts of New South Wales and the courts of appeal from them.

35.8 The Contract may be executed in counterparts. All executed counterparts constitute one document.

### **Schedule 1: Definitions**

**'Acceptance'** has the meaning given to it in clause 8.1.

**'ACL'** means the Australian Consumer Law, which includes the *Competition and Consumer Act 2010* (Cth) or State Fair Trading Acts or their equivalents; and the *Competition and Consumer Regulations 2010* (Cth).

**'Approvals'** means certificates, licences, consents, permits, or the requirements of any authority.

**'Authorised Officer'** means an officer of the Council duly authorised to receive the Goods on behalf of Council.

**'BNG Contractor Services'** means BNG Contractor Services Pty Ltd trading as Conserve (ABN 68 123 053 618) located in Bella Vista, NSW.

**'Business Day'** means day on which banks are open for business in New South Wales, other than a Saturday, Sunday, or Public Holiday.

**'Civil Liability Law'** means the *Civil Liabilities Act 2002* (NSW).

**'Claim'** means includes any claim, allegation, debt, cause of action, demand, remedy, suit, injury, Loss, liability, action, proceeding, complaint and right of action of any nature howsoever arising and whether present, future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise in connection with this Contract and the Goods supplied under it.

**'Council'** means Cumberland City Council (ABN 22 798 563 329) of 16 Memorial Avenue, Merrylands NSW 2160.

**'Defects'** means any errors, omissions, defects, failures, or other faults.

**'Deliverable'** means any Documents which are created by and given by the Supplier to the Council as a component of the Services.

**'Defective'** refers to Goods that contain Defects.

**'Delivery Address'** means 16 Memorial Avenue, Merrylands, NSW 2160, or as otherwise notified by the Council.

**'Delivery Date'** means the date specified in the Purchase Order for delivery of the Goods.

**'Delivery Docket'** means the document provided by the Supplier to the Authorised Officer at the time of delivery.

**'Disability Inclusion Laws'** means the *Disability Inclusion Act 2014* (NSW) and the *Disability Inclusion Regulation 2014* (NSW).

**'Engaged Entity'** means any direct suppliers, subcontractors, consultants, and contractors engaged by a party (or by its directors, officers, or employees) in direct connection with this Contract.

**'Force Majeure'** means any event or circumstance that:

- (1) is not within a party's reasonable control;
- (2) cannot reasonably be prevented by a party taking reasonable precautions and cannot reasonably be circumvented by that party; and
- (3) prevents, hinders or delays a party from performing any of its obligations under this Agreement,

including, without limitation:

- (a) any act of God, flood, bushfire, drought, earthquake, landslide, storm, lightning strike, cyclone or other natural disaster;
  - (b) epidemic, pandemic or other public health and safety emergency as characterised by the Australian Government Department of Health;
  - (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, blockade or breaking off of diplomatic relations;
  - (d) terrorist attack, civil war, civil commotion or riots;
  - (e) sabotage, malicious damage or vandalism;
  - (f) nuclear, chemical or biological contamination;
  - (g) maritime, aviation, or space industry or space object disaster;
- (4) any relevant Law coming into force after the date of this Contract or any action taken by a government agency, including without limitation:
- (a) imposing an export or import restriction, quota or prohibition; or
  - (b) failure to obtain or delay in obtaining an Approval where the relevant party has taken all reasonable steps to obtain that Approval;
  - (c) any labour or trade dispute, strikes, industrial action or lockouts (other than any such action by employees or contractors of the party seeking to rely on clause 28.1, or a Related Body Corporate of that party, that does not form part of any national, state or industry-wide activity);
  - (d) non-performance by suppliers or subcontractors (other than by any Related Body Corporate of the party seeking to rely on clause 28.1);
  - (e) any breakage, failure or malfunction of, or accident involving, any plant, equipment, machinery or other facility owned or operated by a party or its Related Bodies Corporate that occurs notwithstanding that the party or Related Body Corporate has taken all reasonable steps to avoid or guard against such an event;
  - (f) collapse of buildings, fire, explosion or accident (other than in the case of a party's fraud, negligence or wilful misconduct); and

- (g) interruption, material reduction in the rate of, or failure of any utility service (other than where the interruption, reduction or failure of that utility service is caused by an act or omission of the party seeking to rely on clause 28.1.

**'GIPA Act'** means the *Government Information (Public Access) Act 2009* (NSW).

**'Goods'** means the goods supplied by the Supplier to the Council as described in the Purchase Order and in accordance with these Terms & Conditions.

**'GST'** means the Goods and Services Tax as defined in the GST Act.

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

**'Heavy Vehicle'** means a vehicle defined as a "*heavy vehicle*" or a "*fatigue related heavy vehicle*" by sections 6 and 7 (respectively) of the *Heavy Vehicle National Law Act 2013* (NSW).

**'Intellectual Property (IP)'** includes patents, trademarks, registered design, copyright, and includes all moral rights.

**'Laws'** includes:

- (1) legislation;
  - (2) codes (including codes of practice), standards, certificates, licences, consents, permits, approvals, requirements of organisations and requirements of any authority;
  - (3) Australian Standards, the Building Code of Australia and any other relevant standards;
  - (4) fees, rates and charges payable in connection with the foregoing,
- as amended, replaced, or updated from time to time.

**'Loss'** means losses, damages, liabilities, costs, charges or expenses and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses.

**'Modern Slavery'** means any conduct that constitutes or would constitute a modern slavery offence, being an:

- (1) offence described in or an offence of attempting to or incitement to commit an offence described in Schedule 2 of the *Modern Slavery Act 2018* (NSW);
- (2) includes any conduct that constitutes or would constitute an offence under any of the Modern Slavery Laws as amended from time to time, including an offence of attempting or incitement to commit such an offence; and
- (3) includes conduct engaged in elsewhere than in NSW that, if it occurred in NSW, would

constitute a Modern Slavery offence under paragraphs (1) or (2) above.

**‘Modern Slavery Laws’ means:**

- (1) *Modern Slavery Act 2018* (Cth);
- (2) *Modern Slavery Act 2018* (NSW);
- (3) Divisions 270 and 271 - *Commonwealth Criminal Code*;
- (4) s176(1A) - *Public Works and Procurement Act 1912* (NSW);
- (5) s438ZE - *Local Government Act 1993* (NSW); and
- (6) any other Law and international conventions aimed at combatting Modern Slavery from time to time in force in or ratified by Australia and, where relevant, in or by other jurisdictions in which the parties operate.

**‘Personnel’** means a director, officer, employee, contractor, or subcontractor of a party.

**‘Privacy Laws’ means:**

- (1) *Privacy and Personal Information Protection Act 1998* (NSW);
- (2) *Privacy Act 1988* (Cth); and
- (3) any other Laws that are associated with the protection, collection, storage and use of personal information.

**‘Price’** means the ‘price’ specified in the Purchase Order payable by Council to the Supplier for the provision of the Goods or Services.

**‘Purchase Order’** means the written agreement between the Council and the Supplier in relation to the supply of the Goods or the Services, which specifies:

- (1) a unique ‘purchase order number’,
- (2) a description of the Goods, and
- (3) the Price payable for the Goods.

**‘Related Body Corporate’** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**‘Related Entity’** means, in respect of a party, a Related Body Corporate of that party.

**‘Security Interest’** means any ‘security interest’ as defined in s12 of the *Personal Property Securities Act 2009* (Cth).

**‘Services’** means the services provided by the Supplier to the Council as described in the Purchase Order and in accordance with these Terms & Conditions.

**‘Site’** refers to any land, building or location designated by the Council for the purpose of receiving the Services.

**‘Supplier’** means the person or entity named in the Purchase Order, being the party supplying the Goods or Services under this Contract.

**‘Terms & Conditions’** means the terms and conditions contained in this document.

**‘Variation’** means an increase, decrease, substitution, omission, or change to any part of the Services.

**‘Variation Order’** means a written direction given by the Council to perform a Variation.

**‘Vehicle Laws’** means all applicable Laws relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including Laws relating to fatigue management, driving under the influence of drugs or alcohol and speeding) for heavy vehicles, including but not limited to the *Heavy Vehicle National Law 2013* (NSW) and the equivalent legislation of each Australian state or territory in force as at the date of this Contract

**‘WHS’** means work health safety.

**‘WHS Law’ means:**

- (1) *Work Health and Safety Act 2011* (NSW);
  - (2) *Work Health and Safety Regulation 2017* (NSW); and
  - (3) any other Laws applicable to WHS.
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