

Purchase Orders – Terms and Conditions

DEFINITIONS

BSC	Banana Shire Council
Supplier	A person or business that provides a product or service to another entity, acting as an intermediary between manufactures and retailers
GST	Good and Services Tax
WHS	Work Health and Safety

1. INTERPRETATION

In this Contract, unless the context otherwise requires:

- a) Headings do not affect the interpretation of this Contract.
- b) Words denoting the singular include the plural and vice versa.
- c) Words denoting any gender include all genders.
- d) Other grammatical forms of a defined term have a corresponding meaning.
- e) An expression denoting a natural person, company, partnership, corporation or any government body includes any other of them.
- f) A reference to anything or any property includes a part of that thing or property.
- g) A reference to a party includes that party's successors and permitted assigns.
- h) Mentioning anything after the words includes or including does not limit the meaning of anything mentioned before those words.
- i) A reference to any legislation includes subordinate legislation made under it and any amendment to, or replacement for, any of them.

A reference to the Banana Shire Council (BSC) includes any delegate acting on behalf of the Council.

2. SUPPLY OF THE GOODS/SERVICES

The Supplier must:

- a) Supply the Goods/Services to the BSC.
- b) Supply the Goods/Services with due care and skill, and to a standard, reasonably to be expected of a person both competent and experienced in providing services similar to the Goods/Services.
- c) Ensure that the Goods/Services conform to the Specifications and requirements of BSC.
- d) Ensure that the Goods/Services are covered by all warranties/workmanship as deemed by applicable laws and Australian Standards.
- e) Ensure that the Goods/Services comply with, and are delivered following, all applicable laws and applicable Australian Standards.
- f) Not infringe the intellectual property rights of any third person in connection with the delivery of the Goods/Services.
- g) Ensure that it, and its employees, hold all accreditations, permits and licenses necessary to deliver the Goods/Services.

3. PAYMENT OF THE CONTRACT SUM

No payment is due to the Supplier until the BSC has received a correctly rendered tax invoice. Invoices must quote the order number and can be emailed to:

accounts.payable@banana.qld.gov.au

or posted to Council's address:

Banana Shire Council
PO BOX 412, Biloela QLD 4715.

BSC is not required to make any payment to the Supplier if the Supplier is in breach of this Contract. BSC reserves the right to reject, and refuse payment of, any invoice for the supply of goods or services that have not been approved before supply by an authorised council employee. BSC will supply a signed purchase order indicating that the goods/services are approved to be supplied.

4. INSURANCE

The Supplier must take out and maintain the insurances applicable to their business requirements. The Supplier must produce evidence of those insurances when requested by the Council.

5. INDEMNITY OF SUPPLIER

The Supplier indemnifies the Council against:

- a) Claims in respect of any injury to, or death of, any person.
- b) Claims in respect of damage to the property of any person.
- c) Loss of, or damage to, property of the BSC.
- d) Arising from, or attributable to, supply of the Services.

The Supplier's liability under the indemnity is to be reduced proportionately to the extent that the claim, loss or damage is caused or contributed to by an act or omission of the BSC or any of its employees or agents.

The indemnity is a separate and independent obligation of the Supplier. The indemnity survives the termination of this Contract.

6. DEFAULT AND TERMINATION

The BSC may terminate this Contract immediately, by written notice, if the Supplier:

- a) Being an individual, becomes insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cwlth), or any action is taken which could result in that event.
- b) Being a company, becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001* (Cwlth)) or a person becomes a controller (as defined in section 9 of the *Corporations Act 2001* (Cwlth)) of any of its property.
- c) Breaches any of its obligations under this Contract, and that breach continues for five (5) business days after the date on which the Council serves notice on the Supplier specifying the breach.
- d) Repudiates this Contract by its conduct.
- e) Ceases, or threatens to cease, to carry on its operations, or threatens to dispose of all, or a substantial part, of its undertaking.
- f) Convenes a meeting of its creditors or proposes or enters into any scheme of the arrangement, reconstruction or composition with all or some of its creditors.

Without limiting the conduct that may constitute a repudiation of this Contract by the Supplier, the Supplier will be taken to have repudiated this Contract for the purposes of paragraph (d) if the Supplier commits four (4) or more breaches of this Contract in any period of twenty (20) consecutive business

days (being breaches which have been the subject of a notice under paragraph (c) and regardless of whether those breaches have been rectified).

7. AMOUNTS PAYABLE ON TERMINATION UNDER CLAUSE 6

This clause applies if this Contract is terminated under clause 6.

If the Contract Sum is a lump sum amount, the amount payable by the Council to the Supplier, in respect of the termination of this Contract, is limited to the Relevant Proportion of the Contract Sum *less* any payments in respect of the Contract Sum previously paid by the BSC.

The **Relevant Proportion of the Contract Sum** is that amount that bears the same proportion to the Contract Sum as the proportion of the total Services completed up to the date of termination.

If the Contract Sum is calculated based on rates, the amount payable by the Council to the Supplier, in respect of the termination of this Contract, is limited to the amount payable for any Services provided by the Supplier up to date of termination, calculated in accordance with the applicable rates, and not previously paid for by the Council.

In addition to any amounts payable under this clause, the Council must pay or reimburse to the Supplier any out-of-pocket expenses or disbursements (if any) incurred by the Supplier before the date of termination, and which the Council is required to pay or reimburse under clause 6.

Except to the extent provided for in this clause, no other amounts are payable by the Council to the Supplier in respect of the termination of this Contract under clause 6.

8. TERMINATION FOR CONVENIENCE

- a) The BSC may terminate this Contract for convenience by giving the Supplier notice in writing.
- b) Subject to paragraph (c), if the Council terminates this Contract for convenience under paragraph (a), the Council must pay to the Supplier:
 - i. the amount that would have been payable to the Supplier under clause 7 if the termination of this Contract had occurred under clause 6; and
 - ii. any loss incurred by the Supplier as a result of the early termination of this Contract, being a loss that the Supplier cannot reasonably avoid or mitigate.
- c) The maximum amount payable by the Council to the Supplier in respect of the termination of this Contract under paragraph (a) is not to exceed the amount of the Contract Sum that has not been paid to the Supplier as at the date of termination.

9. INTELLECTUAL PROPERTY MATTERS

- a) The title to, and property (including all intellectual property) in, all Contract Material vests in the BSC upon its creation. If required by the Council, the Supplier must, as directed by the Council, formally transfer to the Council all intellectual property rights in the Contract Material.
- b) On the expiration or earlier termination of this Contract the Supplier must, at its expense, promptly deliver all Contract Material and all BSC Material, in its possession or control, to the Council.
- c) Council Material remain the property of the Council. On the expiration or earlier termination of this Contract, the Supplier must immediately return all the Council Material to the Council. The Supplier must pay the cost of delivery.
- d) The Supplier warrants that the use of the Contract Material by the Council will not infringe the intellectual property rights of any third party.
- e) The Supplier unconditionally consents to any infringement of its moral rights in relation to any use of the Contract Material. If any third party has moral rights in any Contract Material, the Supplier must obtain the unconditional consent in writing of that third party to any infringement of those moral rights.
- f) In this clause **moral right** means a moral right granted under the *Copyright Act 1968* (Cwlth).

10. CONFIDENTIALITY IN RELATION TO CONTRACT MATERIAL AND COUNCIL MATERIAL

The Supplier must not, and must ensure that none of its employees, publicly disclose, or use for a purpose other than for the purposes of this Contract, any Contract Material or Council Material.

Nothing in this clause prevents the Supplier from disclosing Contract Material or Council Material: that is available to the public generally otherwise than as a result of a breach of this clause by the Supplier; if the disclosure of is required by law; if the disclosure is necessary to obtain an approval or license under the law; or if the disclosure is to the Supplier's professional advisers who, in relation to that disclosure, agree with the Council to keep the information confidential.

11. CONFIDENTIALITY IN RELATION TO THIS CONTRACT

Despite any confidentiality or intellectual property rights subsisting in this Contract, either party may publish, without reference to the other, all or any part of this Contract. Nothing in this clause derogates from a party's obligations under the *Local Government Act 2009* and the *Local Government Regulation 2012* or the *Queensland Information Privacy Act 2009*.

12. NO AGENCY

The Supplier is not the agent of the Council for the purposes of carrying out the Goods/Services. The Supplier must not represent itself to be and must ensure that none of the Supplier's employees represents themselves to be, an employee or agent of the BSC.

13. NOTICES

The addresses and facsimile numbers of the parties for the receipt of any Notice are:

- a) in the case of the Supplier:
 - i. if there is no formal instrument of agreement, as set out in the quotation form, or as subsequently notified by the Supplier to the Council; or
 - ii. if there is a formal instrument of agreement, as set out in the details part of that agreement, or as subsequently notified by the Supplier to the Council.

A Notice may be served by: delivering it by hand to the party; leaving it at the party's address referred to above; or by sending it by facsimile transmission to the party's facsimile number; or sending it by prepaid ordinary post to the party's address.

A Notice is taken to have been received: if hand-delivered to the party, when delivered; if left at the party's address, when left; if sent by facsimile transmission to the party's facsimile number, upon completion of sending; and if sent by post to the party's address, on the fifth (5th) business day after the day of posting.

A Notice must be in legible writing in the English language.

Notice means a notice or other communication for the purpose of this Contract.

14. VARIATIONS TO QUOTATION OR PURCHASE ORDER

Any variations required by the Principal or the Contractor to the goods to be supplied under this order will be mutually agreed upon and will be the subject of an order amendment raised by the authorised officer of the Principal.

15. GOVERNING LAW AND JURISDICTION

This Contract is governed by the law of Queensland. The parties submit to the jurisdiction of the courts of Queensland.

16. GST

In this clause, **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) and the related imposition *Acts of the Commonwealth*. Expressions defined in the *GST Act* have the same meaning when used in this clause.

If GST is imposed on any supply made by a party under this Contract, the recipient of the supply must pay to the person making the supply, in addition to any consideration payable, or to be provided by, the recipient under this Contract for that supply, an additional amount equal to the GST payable by the person making the supply for that supply. The additional amount is to be paid at the same time and in the same manner as the supply to which the GST relates.

17. WORKPLACE HEALTH AND SAFETY

Suppliers must work in accordance with the obligations defined in the *Work Health and Safety Act (2011)* including all subordinate WHS legislation. The Supplier is also bound by the BSC WHS Policy which can be found at www.banana.qld.gov.au.

18. INDUCTIONS

All workers who attend a worksite are required to complete a formal Council Contractors Induction and a Site Specific Induction. Inductions will be arranged at convenient times for the Contractor before commencement and must be renewed every 12 months. All Contractors must read and acknowledge the contents of this document before commencing work on Council worksites. All Contractors must comply with the wearing of Personal Protective Equipment/ Clothing whilst working in Council work locations.

19. SMOKING

Smoking is prohibited in Council offices, workshops, buildings, vehicles and on worksites within 4 metres of crib huts, facilities and other persons.

20. DRUGS AND ALCOHOL

Drugs and Alcohol are not permitted on any Council worksites or vehicles and in the operation of plant and vehicles. If you require any medication that may impact your ability to safely operate a vehicle / or machinery you must furnish a letter from your Medical Practitioner advising of the type, quantity and effects of the medication to the site Supervisor/manager.

21. MACHINERY

- a) Hire machinery or machinery owned by contractors must comply with all relevant standards and maintenance records must be available on/with the machine and shown as requested.
- b) Contractors who operate machinery must be able to show proof of training, licenses and certificates of competency before the start of work, these must be available for inspection by the site supervisor or Council's WHS staff on request.
- c) Where applicable, machinery must provide a valid Weed/Seed Declaration Form.

22. INCIDENT AND HAZARD REPORTING

Incidents and near misses, including damage to Telstra, Ergon Energy or gas services, must be reported to the Supervisor immediately and a written report completed and given to Council's

Supervisor or Safety Advisors as soon as possible. Hazards must be assessed immediately and if they are not able to be adequately controlled, reported to the worksite supervisor.

23. ELECTRICAL EQUIPMENT

Electrical equipment that is to be used on Council sites must be tested and tagged to comply with *Electrical Safety Act and Regulations 2013*.

24. SAFETY PLANS

Safety Plans, in compliance with section 309 in the *WH&S Regulation 2011*, must be submitted for all specified work by contractors

25. FIRST AID KITS

First Aid Kits are to be provided by the Contractor for their own employees and subcontractors. A Council Incident Report Form must also be completed and entered into Myosh.

26. ASBESTOS REGISTER

Where work is to be carried out on any Council buildings, Contractors must first ask for the asbestos register for the particular premises from the Strategic Manager Building Services.

27. GENERAL CONSTRUCTION INDUCTION

It is the Contractor's obligation to ensure that all of their staff, who perform construction work for BSC, has a General Construction Induction Card (White/Blue Card) when entering any Council construction worksites. Any staff members who will be performing construction work will be required to present their card for verification on each worksite as part of the sign in process for the construction safety induction. Staff who cannot provide evidence of the White/Blue Card will not be permitted to perform any construction activities whilst on Council worksites

28. PRIVACY AND DATA PROTECTION OBLIGATIONS OF CONTRACTED SERVICE PROVIDERS

The Supplier acknowledges and agrees that in performing services under this Contract, it is bound by the *Information Privacy Act 2009* (Qld) (IP Act) in relation to any personal information it collects, uses or has access to, in connection with this Agreement. The Supplier must:

- a) Comply with the Queensland Privacy Principles (QPPs) as if it were Council.
- b) Not use personal information other than for the purposes directly related to carrying out the purpose of this agreement.
- c) Except as permitted under this agreement, not disclose personal information without prior written consent of Council.
- d) Ensure that access to Personal Information is restricted to those of your employees, volunteer workers and officers who require access to perform their duties.
- e) Ensure that your employees, volunteer workers and officers do not access, use or disclose personal information other than in the performance of their duties.
- f) If the Supplier does not have a compliant Privacy Policy and Data Breach Response Policy, adopt and comply with the Council's Privacy Policy and Data Breach Response Policy, available on Council's website.
- g) Notify the Council immediately upon becoming aware of any actual or suspected data breach involving personal information collected, held, or processed in connection with this Agreement.
- h) Comply with section 33 of the IP Act regarding the disclosure of personal information outside Australia.

- i) Cooperate fully with the Council in responding to privacy complaints, investigations, or audits conducted by the Office of the Information Commissioner or any other relevant authority.
- j) The Supplier must not engage any subcontractor to perform services involving personal information without the prior written approval of Council. If approved, the Contractor must ensure that any subcontractor is contractually bound to comply with privacy obligations equivalent to those in this clause and remains liable for any breach by the subcontractor.
- k) Upon termination or expiry of this Agreement, the Supplier must continue to comply with the privacy principles in relation to any personal information it retains. At Council's direction, the Supplier must return or securely destroy all personal information in its possession or control and provide written confirmation of such return or destruction.
- l) The Contractor must provide Council with access to any documents in its possession that are considered to be under Council's control for the purposes of the *Right to Information Act 2009* (Qld) or the IP Act.

NEED HELP?

► Contact the BSC Procurement Team:

Email: enquiries@banana.qld.gov.au 4992 9500
or
procurement@banana.qld.gov.au