GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

Bega Valley Shire Council (BVSC) wishes to engage the Contractor to provide the goods or services set out in a Purchase Order on the terms and conditions set out below.

BVSC and the Contractor agree that the Purchase Order and these terms and conditions (General Conditions) form part of the Contract between the parties and have been read and understood.

The Contract applies to all transactions between BVSC and the Contractor relating to the provision of the Goods or Services. This includes all quotations, contracts and variations. All additions and alterations to these General Conditions must be in writing and attached as special conditions (Special Conditions) to the Contract. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter will prevail.

1 Alterations

No changes to the Contract are to be made by the Contractor without the written agreement of the BVSC.

2 Price

The price stated in the Purchase Order is firm subject to any Special Conditions. Prices include customs duty (unless specifically exempt), packaging, marketing, handling, freight and delivery, insurance, GST where the Contractor is registered for GST, and any other applicable costs and charges.

3 Delivery and delivery documents

Where appropriate, the Contractor will the Seller will dispatch packing lists, shipping documents and certified invoices to the BVSC's office as instructed by BVSC unless a different method or date of dispatch (or both) is agreed in writing by the parties.

All delivery dockets must show quantity, description and name of Goods, correct BVSC Purchase Order number, delivery docket number and date (separate number for each delivery).

Title to the Goods vests in BVSC when BVSC accepts or is deemed to have accepted them. The risk of any loss or damage to the Goods remains with the Contractor until acceptance by BVSC.

Suitable and adequate packaging is to be used for each Good and all Goods must receive in good condition by BVSC.

4 Payment

The Contractor must issue BVSC with a valid tax invoice in accordance with a New Tax System (Goods and Services Tax) Act 1999 (GST Act).
All invoices must be complying tax invoices containing the following items:

(a) BVSC as the customer. All invoices for goods or services must be addressed to the Bega Valley Shire Council.

(b) **Purchase Order Number.** It is essential that each invoice makes reference to BVSC’s Purchase Order number which will be specific to the transaction being processed.

(c) **Name** of the individual (i.e. BVSC employee) who placed the order.

(d) Your **registered business name** and **ABN**.

(e) A unique **invoice number** and an **invoice date**.

(f) **Short description** of the goods or services sold to BVSC and the date of the sale/ date(s) works undertaken.

(g) **Sale amount** with the following GST considerations:

   i. If you are registered for GST, the words "**tax invoice**" must be included. The GST amount (if any) payable, can be shown separately or, if the GST amount is exactly one-eleventh of the total price, as a statement such as 'Total Price Includes GST'.

   ii. If you are not registered for GST, do not include the words "tax invoice" and do not indicate that the invoiced amount includes GST.

The Contractor is entitled to recover from BVSC the amount of any GST payable on taxable supplies, within the meaning of the GST Act, provided under this Contract.

BVSC standard terms of payment are 30 days from acceptance of the Goods and Services and receipt of a correctly rendered tax invoice, unless otherwise agreed by the parties.

5 Packing costs and standard

The Contractor and any of its agents or suppliers must not include a charge to BVSC for wrapping, packing, cartons or crating unless authority for such charge is expressly incorporated in the Contract.

Where Goods are to be shipped by a third party carrier then in that event the Goods should be packed in accordance with the carriers’ reasonable requirements in order to secure reasonable transportation and insurance rates.

Pallet weight must not exceed 1,200kg per pallet.

Any hazardous materials are to be clearly identified. If insufficient warning is shown, Goods may be rejected by BVSC. All hazardous materials are to be supplied with material safety data sheets.

All Goods and Services supplied must comply with the relevant Australian Standards and have WorkCover NSW Approvals where applicable. All Goods must be supplied with safety instructions and material safety data sheets with respect to any chemical product.

Open top truck deliveries.
Any open or flat top truck deliveries are to be covered in order to avoid loss or damage of Goods during transport unless otherwise specified in the Purchaser Order.

Bagged deliveries

Each bag of a delivery of Goods is to be marked with the name of the Good and the net weight per bag in kilograms. The parties will agree on a fixed quantity per pallet and standard palleting pattern on every delivery.

Drummed deliveries

Any Goods delivered in drums must display on the side of each drum the name of the Good, the name of the Contractor and any drum deposit and value (if applicable). The side or trap of each drum is to be marked with the net weight (or net volume) and if possible tare and gross weight per drum in kilograms.

6 Cancellations

BVSC reserves the right to cancel a Purchase Order if the Goods ordered are not delivered to the specified premises on a delivery date specified under the Purchase Order.

Where BVSC cancels a Purchase Order under this clause 6 within two days after the delivery date has elapsed, the Contractor does not have and may not prosecute any claim whatsoever at law or in equity against BVSC. This is provided that the failure of the Contractor to deliver the Goods on the delivery date was not due to the conduct of BVSC.

Where:

(a) the Contractor delivers the Goods after the delivery date;

(b) BVSC has cancelled the Purchase Order within two days of the delivery date pursuant to this clause 6; or

(c) the Contractor’s failure to deliver the Goods was not as a result of the BVSC’s conduct,

the Contractor must, in addition to any other liability it may have under to this agreement, pay the costs of removing the Goods from BVSC’s premises.

7 Standard to conform to specifications

The Contractor must ensure that the Goods or Services are in accordance with and conform to any specifications, drawings, samples or other description (if any) furnished by BVSC to the Contractor. Any in-progress inspection by BVSC’s employees or agents or other representative does not affect this requirement.

8 Warranties

The Contractor warrants that all Goods will:

(a) be new and comply with the highest relevant commercially accepted standards;
(b) be fit for the purpose for which Goods of the same kind are commonly supplied and any other reasonable purpose made known to the Contractor (unless varied by a Special Condition);

(c) be of merchantable quality and to be free from defect in material and workmanship; and

(d) carry any applicable manufacturer’s warranty which passes on to any buyer or customer from BVSC without liability to BVSC. The Contractor must assign to BVSC at the request of BVSC the benefit of any warranty or guarantee that the Contractor has received from any supplier (whether under contract or by implication or operation of law).

The Contractor warrants that all Services will:

(a) be rendered with due skill and care; and

(b) that the materials supplied in connection with the Services will be fit for purpose.

9 Inspection and acceptance of Goods or Services

All Goods are received subject to inspection of the Goods within 14 days after delivery or before delivery at BVSC’s discretion irrespective of date of payment.

Signed delivery dockets do not mean acceptance by BVSC of Goods delivered, but only acceptance of the number of packages or cartons delivered.

BVSC will promptly notify the Contractor of any defects appearing, and hold Goods so found to be defective for the Contractor’s instructions and at the Contractor’s risk for a reasonable period not exceeding 30 days from the date that BVSC notifies the Contractor under this clause.

If the Contractor’s instructions are not received within 30 days, the Buyer may return the defective Goods to the Contractor’s premises at the Contractor’s expense and risk. Any reasonable expense incurred by BVSC in such return is payable by the Contractor and may be set off by BVSC against any moneys otherwise due by BVSC to the Contractor.

BVSC retains the right to reject Goods after acceptance if the Goods are found to be faulty or not in accordance with the Contract. The Contractor must make good or replace these Goods at no additional cost, including removal and incidental costs, within the time specified by BVSC.

If there is a defect in performance of the Services or they are incomplete, BVSC may, by notice, require the Contractor to remedy the defect in performance, complete the Services, or re-do the Services at no additional cost to BVSC. The Contractor has 30 days from the date of the notice to comply.

10 Intellectual Property Rights

The Contractor warrants that neither the supply of the Goods and Services by the Contractor nor their provision or use by BVSC infringes any Intellectual Property Right of any person. The indemnity in this clause applies to any claim arising out of a breach of this warranty.

The Contractor agrees to defend, protect and indemnify BVSC, its successors and assigns, from and against any claim arising from the lawful use of the Goods by BVSC or third parties. This includes all claims for actual or alleged infringement of any letters patent, trademarks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or
any foreign state or the common law. This is provided that the Contractor will not indemnify BVSC, its successors and assigns from or against any claim to the extent that such claim arises as a result of the negligence, willful misconduct, fraud or breach of duty of BVSC, its successors and assigns or any of their partners, employees or agents.

If the Contractor makes any representation or statement directly or indirectly to BVSC that the Goods ordered are protected by one or more patents and any such patent is found to be invalid, BVSC may cancel the related Purchase Order or any contract arising from such Purchase order and recover any money paid to the Contractor under this agreement as a liquidated debt.

Unless specifically agreed in writing between BVSC and the Contractor, all Intellectual Property Rights in any works created by the Contractor on behalf of BVSC vest in and remain the property of BVSC. The Contractor agrees to assign to BVSC all Intellectual Property Rights generated wholly or partly for the purposes of this Contract.

11 Specifications to be retained in confidence

Any Goods or work made or done according to BVSC’s design or specifications or developed for BVSC at the direction of BVSC, or any original or copy designs or specifications supplied by BVSC are held by the Contractor on BVSC’s behalf and at BVSC’s disposal and must not be disclosed or furnished to any other person, firm or government without BVSC’s written consent or as required by law. The Contractor must take all reasonable precautions to protect such confidentiality.

12 NHVL (National Heavy Vehicle Law)

National Heavy Vehicle Law (NHVL) and Regulations and the National Heavy Vehicle Regulator (NHVR) Chain of Responsibility (CoR)

BVSC endorse the requirements of the NHVR CoR.

Where BVSC is a consignee within the supply chain process then BVSC require that all Contractors take positive action towards encouraging transport drivers to ensure:

- Heavy vehicles are maintained to a roadworthy standard.
- Cargo and equipment loaded, complies (Mass, Dimension and Loading) National Regulation.
- The correct load restraint equipment has been used and in serviceable condition and load secured in accordance with Load Restraint Guide 2018.
- Not to drive while impaired by fatigue, alcohol and other drugs and the time frame for goods delivery realistic and does not breech NHVR Fatigue and Speeding laws.

Where a Contractor engaged under this contract breaches the HVNL and/or HVNR CoR then BVSC may cancel any outstanding Purchase Orders placed with the Contractor.

Cancellation of a Purchase Order in accordance with sub-clause 12 will not give rise to any claim against the BVSC by the Contractor.
13 Indemnity

The Contractor indemnifies and keeps indemnified BVSC against all loss of or damage incurred or suffered by BVSC and from and against any claim, demand, action, cost or expense (including reasonable legal costs), suit or proceeding that may be made or brought by any person against BVSC or employees, professional consultants or agents of BVSC arising out of or in connection with the sale or delivery of the Goods or the supply or provision of the Services by the Contractor or its employees, agents or sub-contractors (Claim) and also from any costs and expenses that may be incurred in connection with any such Claim.

Notwithstanding above, the Contractor will not be liable for personal injury to or the death of any person or loss of or damage to property resulting from any material breach by BVSC of any provision of the Contract or any gross negligent act or omission of BVSC, or its employees or agents.

14 Termination

BVSC may terminate this Contract for convenience by giving 30 days' written notice to the Contractor.

BVSC may immediately terminate this Contract if:

(a) the Contractor is in material breach of any of its obligation under this Contract;

(b) the breach is capable of remedy, but the Contractor fails to remedy the breach during a period of 10 days after receipt of a written notice from BVSC requiring rectification of the breach; and

(c) the Contractor or any of its Personnel is involved in the supply of the Goods or Services commits fraud, dishonesty or any other serious misconduct.

This Contract will automatically terminate if the Contractor enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).

15 Existing Contracts and standing offers

Where this Contract is issued under the terms of a standing offer or to extend the terms of an existing contract, the terms of that standing offer or existing contract shall prevail over the General Conditions of this Contract, but not over the Special Conditions.

16 Assignment and subcontracting

The Contractor must obtain the prior written approval of BVSC to assign or subcontract the Contract or any part thereof. Any purported assignment of this Contract without such approval will be void. Approval to assign or subcontract will not relieve the Contractor from any of its obligations under the Contract or impose any liability upon BVSC to an assignee or a subcontractor.

BVSC may assign any of its rights or obligations under this Contract to a third party by giving written notice to the Contractor.
17 Insurance

The Contractor must take out and maintain a comprehensive public and products liability policy to cover all sums which it may become legally liable to pay as a compensation consequent upon:

(a) death of, or bodily injury (including disease or illness) to, any person; and

(b) loss of, or damage to, property

happening anywhere in Australia arising out of or in connection with this Contract. The limit of liability provided by this policy must, in respect of public liability, be not less than $20 million for any one event and unlimited in aggregate and must, in respect of product liability, be not less than $20 million for any one event and in aggregate. BVSC must be named as an insured under the public liability insurance policy.

The Contractor must also maintain a workers compensation insurance policy in respect of its employees and any other insurances notified to the Contractor by BVSC.

The Contractor must provide a current copy of all required insurance policies prior to taking any action under the Purchase Order and Contract. Failure to submit this documentation may result in termination of the Contract.

18 Environmental considerations

BVSC is committed to local environment controls and safeguards to protect the built and natural environment. The Contractor will be required to effect adequate controls in accordance with statutory requirements to ensure protection of the environment.

19 Risk management, WH&S and compliance with laws

The Contractor must comply with all relevant obligations under the Work Health and Safety Act 2011, Work Health and Safety Regulation 2011 and Protection of the Environment Operations Act 1997 and must comply with all other laws.

20 Government Information (Public Access) Act

The Contractor acknowledges that during the term of the Contract, it may be required to assist BVSC fulfil its obligations under Government Information (Public Access) Act 2009 (GIPA Act).

20.1 Access to Information (GIPA Act s121)

(a) The Contractor must, within seven days of receiving a written request by BVSC, provide BVSC with immediate access to the following information contained in records held by the Contractor:

(i) information that relates directly to the performance of the services provided to BVSC by the Contractor pursuant to the Contract;

(ii) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and

(iii) information received by the Contractor from BVSC to enable it to provide the services pursuant to the Contract.
(b) For the purposes of sub-clause (a), information does not include:

(i) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;

(ii) information that the Contractor is prohibited from disclosing to BVSC by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or

(iii) information that, if disclosed to BVSC, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to BVSC, whether at present or in the future.

(c) The Contractor will provide copies of any of the information in sub-clause 19.1(1), as requested by BVSC, at the Contractor's own expense.

(d) Any failure by the Contractor to comply with any request pursuant to this clause will be considered a breach of an essential term and will allow BVSC to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven day period to the satisfaction of BVSC, then the termination will take effect seven days after receipt of the notice.

20.2 Consultation (GIPA Act s54)

(a) BVSC will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to the Contract, in response to an access application under the GIPA Act, if it appears that:

(i) the information:

(A) includes personal information about the Contractor or its employees;

(B) concerns the Contractor's business, commercial, professional or financial interests;

(C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or

(D) concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);

(ii) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and

(iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

(b) If, following consultation between BVSC and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
In determining whether there is an overriding public interest against disclosure of government information, BVSC will take into account any objection received by the Contractor.

If the Contractor objects to the disclosure of some or all of the information but BVSC nonetheless decides to release the information, BVSC must not provide access until it has given the Contractor notice of BVSC's decision and notice of the Contractor's right to have that decision reviewed.

Where BVSC has given notice to the Contractor in accordance with sub-clause (d), BVSC must not provide access to the information:

(i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or

(ii) where any review of the decision duly applied for is pending.

The reference in sub-clause (e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

21 Dispute resolution

If a dispute arises between any parties in connection with this Contract, one of them may give the other party a notice of the dispute. For the next 30 days after the notice is received by the other party (or any other period agreed by the parties to the dispute), the parties to the dispute must meet and negotiate genuinely and in good faith to resolve the dispute. If the dispute is not resolved within 10 business days after the notice is received by the other party, the senior management of BVSC and the Contractor must try to resolve the dispute for the remainder of the 30 day period.

Only after this may either BVSC or the Contractor seek recourse to an external dispute resolution mechanism.

The parties agree that they must attempt to reach an objectively fair and reasonable solution to any dispute.

Nothing in this clause prevents either party from seeking urgent injunctive relief.

22 Miscellaneous

(a) This Contract is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

(b) This Contract supersedes all oral and written negotiations and communications by and on behalf of either of the parties.

(c) If any provision this Contract at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

(d) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

(e) A notice or other communication required or permitted to be given by one party to another must be in writing to the address of that party on a Purchase Order (or as
varied pursuant to this paragraph) and delivered personally or sent by pre-paid mail to the address of that party on a Purchase Order.

(f) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second business day after posting.

(g) A party may only change its address for service by giving notice of that change in writing to the other party.

(h) This Contract may be executed in counterparts (that is, separate copies of the same document, each signed by one or more parties). All executed counterparts constitute one Contract.

(i) Each party must do everything reasonably necessary (including executing documents, obtaining consents and getting documents completed and executed) to give full effect to this Contract and the transactions contemplated by it.

(j) This Contract may only be varied (including varying the parties by novation) or supplemented in writing signed by each party.

(k) A party's rights and remedies under this Contract:
   (i) are in addition to other rights and remedies given by a law independently of this Contract; and
   (ii) are not affected by anything which might otherwise affect them at law.

(l) Except where this Contract expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties and neither party has authority to act on behalf of, or bind, the other party.

23 Conflicts of Interest

Council considers unethical, fraudulent or corrupt conduct to be unacceptable. Councillors, employees, business and the community are encouraged to report any such matters or potential conflicts of Interests to Council's Governance area on (02) 6499 2222.

Reports will be dealt with promptly, professionally and confidentiality.

24 Definitions

Contract means the Purchase Order, these General Conditions and any Special Conditions.

Contractor means the party identified as such in the Purchase Order.

Goods means the goods, if any, described on the Purchase Order.

GST has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Right means rights to any of the following (whether registered or unregistered): trade marks, logos, service marks, trade names, business names, copyright, designs, patents, inventions, processes and other technical know-how and other rights in industrial property and
applications for them and licence agreements or other arrangements under which a person has the right to use any of the foregoing.

**Law** means:

(a) Commonwealth, State and Local government legislation including regulations, by-laws, orders, awards and proclamations;

(b) common law and equity;

(c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and

(d) guidelines of Authorities with which the Contractor is legally required to comply.

**Purchase Order** means the purchase order for Goods and/or Services issued by BVSC to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

**Services** means the services, if any, described on the Purchase Order.

_Last updated: 16 June 2020_