



## **Section C Conditions of Contract**

### **For Supply Of One used low hour Caterpillar 140 M Motor Grader Or Similar**

**TENDER NO:** T01-18-19

**CONTACT INFORMATION:**

Superintendent: David Ciosmak  
Telephone: **0407 304 662**  
Email: David.Ciosmak@tiwiislands.nt.gov.au

**TENDER CLOSING INFORMATION:**

Date: 9-NOV-2018  
Time: 2:00 pm

All tenders for this Contract must be lodged through the Tiwi Islands Regional Council electronic tender portal <https://www.tenderlink.com/tiwiislands/>



### Reference Schedule

<b>Council</b>	Tiwi Islands Regional Council
<b>you</b>	<b>&lt;Here insert name of contractor&gt;</b>
<b>Council's service address and postal address</b>	Lot 834 Puti Drive Wurrumiyanga, NT, 0822 Postal: PMB 267 Winnellie, NT, 0822
<b>Superintendent</b>	The person nominated in writing from time to time by: the Works Centre Manager, Tiwi Islands Regional Council
<b>Council's email address</b>	As notified in writing from time to time by Council's superintendent
<b>your service address</b>	<b>&lt;Here insert contractor's address&gt;</b>
<b>your email address</b>	<b>&lt;Here insert contractor's email address&gt;</b>
<b>your representative</b>	<b>&lt;Here insert name of contractor's representative&gt;</b>
<b>commencement date</b>	<b>&lt;Here insert commencement date&gt;</b>
<b>expiry date</b>	<b>&lt;Here insert commencement date, if applicable, or delete if not applicable&gt;</b>
<b>insurances</b>	Workers compensation insurance as required by statute; Public liability insurance in the sum of not less than \$20M for each occurrence;



**1 Agreement**

You agree to ensure that the goods supplied under this contract are of reasonable quality and fit for purpose. The Council agrees to pay you the contract price, for the goods supplied.

**2 Superintendent**

The superintendent shall be the person named in the Reference Schedule or such other person as is nominated by Council from time to time. Only the superintendent has authority to bind Council.

**3 Your Representative**

Your representative must have sufficient command of the English language to be able to read, converse and receive instructions in English.

**4 Your General Obligations**

You must:

- a. Supply the goods in accordance with the specifications set out in Annexure 1;
- b. Install all components necessary for the operation for the equipment, which Council is not obliged to install
- c. Before handover to Council, test the equipment and ensure it is operating correctly in accordance with the Specifications
- d. Successfully demonstrate all equipment functions and capabilities to Council staff;
- e. Provide to Council all information and documentation necessary for Council to obtain the benefit of any manufacturer warranties;
- f. Provide to Council all equipment start up training and training manuals.

**5 Your Particular Obligations**

***[Here insert specific obligations based on the goods to be supplied and/or services to be performed]***

**6 Council's Obligations**



As required from time to time, at its own cost, the Council will provide to you the following information, documents and records, in hard copy or electronic form:

- a. **<here insert information to be provided by Council>**; and
- b. **<here insert information to be provided by Council>**.

## **7 Making a Claim for Payment**

7.1 You are entitled to payment for the **equipment** in accordance with the **payment schedule** and at the time specified as set out in Annexure 2. Unless expressly stated otherwise in Annexure 2, all amounts are expressed exclusive of GST.

7.2 To make a claim for payment you must supply a valid tax invoice to the Council in respect of equipment supplied.

7.3 Your invoice must include the following:

- a. The Council purchase order number or Instruction to Contractor number;
- b. The amount of the payment you claim and the basis for calculation;
- c. The amount of any GST paid or payable you with respect to the payment;
- d. The date of delivery of the equipment;
- e. A description (including any additional fittings or attachments) of the equipment;
- f. Your address and/or bank account details for payment;

## **8 Responding to a Claim for Payment**

8.1 Provided that the Council is reasonably satisfied that the equipment in each case fit the description in the relevant purchase order and are in the quantity specified in the relevant purchase order, your tax invoice will be paid within <28> days of its receipt by the Council.

8.2 If Council is not reasonably satisfied in accordance with subclause 1 of this clause, then within <28> days of receipt of your claim for payment, Council will pay to you the amount (if any) which Council reasonably believes is due and payable to you and will provide to you a summary of why Council believes the full amount of your claim is not payable, including any necessary calculations, and including details of any setoff or counterclaim which Council maintains in respect of your claim for payment.



## **9 Compliance with Laws and Standards**

- 9.1 Throughout the term, in supplying the equipment, you must comply with all laws.
- 9.2 Throughout the term, in supplying the equipment, where any Australian Standard applies to the equipment you must comply with the relevant Australian Standard unless the Council authorises you otherwise in writing.
- 9.3 If after the commencement date any applicable Australian Standard is amended, the superintendent may direct you to comply with such amendment, in which case that direction will be treated as a variation under this contract.

## **10 Assignment**

You shall not assign the contract, or assign, mortgage, charge or encumber any of the moneys payable under the contract or any other benefit whatsoever arising under this contract.

## **11 Insurances**

- 11.1 By no later than the commencement date you must take out and maintain for the term the insurance specified in the Reference Schedule.
- 11.2 You must take out insurance with an insurer approved of by Council.
- 11.3 You must produce to Council evidence of the currency of these insurance policies when reasonably required by Council to do so.

## **12 Directions, Notices and Disputes**

- 12.1 You must comply with any direction either orally or in writing given or served upon you by the superintendent. Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing.
- 12.2 You must observe any safety rules, regulations and procedures, which may be issued, verbally or in writing, by the superintendent, from time to time, during the performance of this contract.
- 12.3 No animals belonging to persons engaged and/or employed within the terms of this contract shall be permitted in the work area.



### **13 Confidentiality**

- 13.1 Information collected under this contract remains the property of the Council. You or your employees, agents, directors, partners, shareholders or consultants shall not disclose to any person any information or documentation relating to the Council, of the affairs of others which may have come to you or to their knowledge as a result of the contract or performance under this contract. All necessary precautions shall be taken to prevent unauthorised access to such information regarding the nature of progress of the supply of equipment or give any publicity concerning the supply of equipment except with the written consent of the superintendent.
- 13.2 You must not furnish any information or issue any document or other written or printed material concerning the supply of equipment for publication in the media without the prior written approval of the superintendent. You must refer any enquiries from the media concerning the supply of equipment to the superintendent.

### **14 Supplier's Warranties and Obligations**

You warrant that:

- (a) you have the right and shall transfer title to the equipment to the Council
- (b) the equipment is of merchantable quality and fit for their purpose
- (c) the equipment supplied have been manufactured or assembled at the place disclosed by you
- (d) the equipment supplied are free from defects and conform to any legally applicable standards
- (e) the equipment conforms to the Specifications;

### **15 Delivery and Acceptance**

- 15.1 You are required to deliver the equipment to the place (or places) nominated by the Council and shall obtain a receipt of their delivery.
- 15.2 Delivery of equipment must occur within <30 days> of an order being placed by the Council to you, unless otherwise agreed between the two parties
- 15.3 Property and risk in the equipment passes on delivery.
- 15.4 Delivery and receipt of the equipment shall not be an acceptance of the equipment.
- 15.5 Receipt of delivery, acceptance or payment shall not prejudice the right of the Council to maintain an action for breach of condition or warranty should the equipment prove to be of inferior quality or in any respect contrary to the requirements of the Contract.



## **16 Warranty Period**

16.1 Without limiting any other warranty implied by statute or generally at law:

- a. you shall obtain for Council the benefit of any manufacturer's warranty and provide certificates.

## **17 Default and Termination**

17.1 If you fail to supply the equipment specified in a particular purchase order in accordance with the requirements of this contract Council may serve a notice of default on you.

17.2 A notice of default served by the Council shall specify the default and nominate a period of time (which shall not be less than 14 days) to rectify the default.

17.3 If you fail to rectify the default within the time specified in the default notice the Council may, by further notice in writing to you, cancel that purchase order in whole or in part. In that event the Council shall not be liable to pay the whole or part of the purchase order which has been cancelled, and neither shall the Council be liable for any costs you may have incurred in attempting to fulfil the purchase order.

## **18 Termination on Insolvency**

18.1 If you are a natural person and enter into a Part X arrangement or become bankrupt, this contract is automatically terminated.

18.2 If you are a corporation and you enter into external administration pursuant to the *Corporations Act*, this contract is automatically terminated.

## **19 General Provisions**

19.1 This contract may only be amended in writing, signed by appropriately authorised representatives of the parties.

19.2 The laws of the Northern Territory apply to the interpretation of this contract and the parties submit to the jurisdiction of the courts of the Northern Territory.

19.3 Any uncertainty regarding the interpretation of this contract will not be determined unfavourably to the Council merely for the reason that the Council prepared this contract.



- 19.4 Any clause in this contract which appears to be intended to operate after the expiration or termination of this contract does not merge upon that expiration or termination, but continues to operate.

## **20 Interpretation**

The Reference Schedule forms part of this contract. A term or phrase listed in the left hand column of the Reference Schedule has the meaning attributed to it in the right hand column of the Reference Schedule.

## **21 Definitions**

Terms used in this contract and in the Specifications have the following meanings: