

Flinders Council
SUPPLY AND DELIVERY AGREEMENT
AGREEMENT DETAILS

FLINDERS COUNCIL:

Name: Flinders Council	ABN: 75 754 974 669
Address: 4 Davies Street, Whitemark TAS 7255	Ph: (03) 6359 5001
Flinders Council Representative: Brian Barnewall	Email: brian.barnewall@flinders.tas.gov.au

SUPPLIER:

Name:	ABN:
Address:	Ph:
	Email:
Supplier's Representative:	Supplier's Representative Ph: Supplier's Representative Email:

PRODUCT

The Product is Road Stabilisation which complies with the Specification set out in Annexure A.

SUPPLY FEE

Per square metre of Product.

DELIVERY SCHEDULE AND DELIVERY SITE

The Delivery Schedule is set out in Annexure B.
The Delivery Site is the Flinders Council Works Depot, Patrick St, Whitemark

FLINDERS COUNCIL POLICIES:

- Applicable workplace health and safety policies as notified by Flinders Council to the Supplier from time to time.

INSURANCES:

Public Liability Insurance:	\$20,000,000 per event
Workers Compensation Insurance:	As required by law

DATES:

Commencement Date:	26/10/2020
Expiry Date:	1/3/2021

EXECUTED as an Agreement on

EXECUTED for and on behalf of **FLINDERS COUNCIL**
(ABN 75 754 974 669) in the presence of:

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Signature of witness

.....
Name of witness (print)

EXECUTED by pursuant to section 127 of the
Corporations Act 2001 by:

.....
Director Signature

.....
Director Full Name (print)

.....
*Director/*Secretary Signature

.....
*Director/*Secretary Signature Full Name(print)

(*please strike out inapplicable *If Sole Director/Secretary write 'Sole')

Appendix 1

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

In this Agreement, unless the contrary intention is expressed, defined terms have the meanings set out below and in the Agreement Details:

Agreement means this Agreement including the Agreement Details, these General Terms and Conditions and all appendices or annexures to those documents.

Agreement Details means that part of this Agreement referred to as such.

Approval means any licence, permit, authorisation, consent, determination, accreditation, certificate or other requirement of any Authority.

Authority means any government authority, administrative or judicial body or tribunal, public authority or statutory corporation.

Business Day means a day that is not a Saturday, Sunday or statutory holiday as defined in the *Statutory Holidays Act 2000* (Tas).

Consequential Loss means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, the following: loss of profits, loss of revenue; loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity and indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of this Agreement. An overall liability cap of no greater than the contract sum shall apply.

Corporations Act means the *Corporations Act 2001* (Cth).

Defect means any defect, fault, error, malfunction, omission or problem in or arising from the design, material, manufacture or workmanship of the Product (or any component of the Product) including any defect, fault, error, malfunction, omission or problem relating to, or arising from:

- (a) non-compliance with the Specification; or
- (b) a breach by the Supplier of this Agreement.

Force Majeure means an event or cause listed below to the extent that the event or cause is beyond the reasonable control of the relevant party:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout, or other labour difficulty but not a strike or lockout at the premises of the party claiming force majeure;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockage, revolution, riot, insurrection civil commotion or epidemic; or
- (d) the effect of any applicable laws, orders, rule or regulations of any government or other competent authority.

Flinders Council Policies means the policies set out in the Agreement Details which may be reasonably amended from time to time at Flinders Council's discretion.

GST has the meaning given in the GST Act.

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

Insolvency Event means the happening of any of the following events in relation to the Supplier:

- (a) the Supplier is unable to pay all of its debts as and when they become due and payable or the Supplier has failed to comply with a statutory demand as provided in section 459F of the Corporations Act or the Supplier is deemed to

be unable to pay the Supplier's debts under section 585 of the Corporations Act;

- (b) notice is given of a meeting of creditors with a view to the Supplier entering a deed of company arrangement;
- (c) the Supplier enters into a deed of company arrangement with creditors;
- (d) an application is made to a court for the Supplier to be wound up or a winding up order is made in respect of it;
- (e) a controller, administrator or liquidator is appointed, as defined in the Corporations Act; or
- (f) anything analogous or having substantially similar effect to any of the events listed above happens under any Legislative Requirement or applicable jurisdiction.

Legislative Requirements means acts, laws, ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local.

Loss includes damage, loss (including Consequential Loss), cost, claim, liability or expense.

Supplier's Personnel means any person who is a Worker of the Supplier.

Term means the term referred to in clause 2.

Worker has the meaning given to that term in section 4 of the *Work Health and Safety Act 2012* (Tas).

2 TERM

This Agreement commences on the Commencement Date and, subject to clauses 14.5 and 15, continues until the Expiry Date (**Term**).

3 SUPPLY OF PRODUCT

3.1 General requirements

The Supplier must supply the Product:

- (a) with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in supplying the Product and items similar to the Product;
- (b) in accordance with the Delivery Schedule;
- (c) in accordance with this Agreement (including the Specification set out at Annexure A);
- (d) together with all documents required to transfer ownership of the Product to Flinders Council;
- (e) in accordance with Flinders Council's reasonable directions and policies (including Flinders Council's Policies); and
- (f) in accordance with all relevant Legislative Requirements.

3.2 Regulatory compliance

The Supplier warrants that at all times during the Term, it will:

- (a) obtain and maintain, at its cost, all licences, Approvals, authorisations, consents or permits necessary for the Supplier to supply the Product in accordance with this Agreement; and
- (b) comply with all regulations, codes of conduct and requirements of relevant Authorities in relation to the supply of the Product.

4 DELIVERY SCHEDULE

4.1 Delivery

Subject to clause 4.2, the Supplier must deliver the Product to the Delivery Site on the dates, at the times and in the volumes specified in the Delivery Schedule.

Appendix 1

GENERAL TERMS AND CONDITIONS

4.2 Delayed delivery

- (a) No later than 3 days prior to the date of delivery of a batch of Product as specified in the Delivery Schedule, Flinders Council may notify the Supplier that it requires the delivery of all or part of the relevant batch of Product to be delayed.
- (b) Notice given in accordance with clause 4.2(a) must specify:
 - (i) the relevant batch (or part of that batch) delivery of which is to be delayed; and
 - (ii) the revised date for delivery of the delayed batch (or part thereof).
- (c) The Supplier must comply with any notice given by Flinders Council pursuant to clause 4.2(a).
- (d) In the event that a notice is issued pursuant to clause 4.2(a), the parties will mutually agree any consequential amendments to the Delivery Schedule and any disputes as to such amendments will be dealt with in accordance with clause 19. Nothing in this clause 4.2(d) affects or modifies the Supplier's obligation under clause 4. Reasonable Costs incurred due to a delay under clause 4.2 (a) shall be paid upon supply of evidence to such costs.

5 QUALITY AND VOLUME OF PRODUCT

5.1 Quality

All Product must conform strictly with the Specification and otherwise be of merchantable quality and fit for purpose.

5.2 Volume

Each batch of Product delivered by the Supplier must contain the volume of Product specified in the Delivery Schedule for that delivery.

5.3 Rejection of Product

If Flinders Council is not satisfied that the Product meets the Specification (**Non-Complying Product**) Flinders Council may reject the Non-Complying Product and notify the Supplier of:

- (a) the date of delivery of the Non-Complying Product;
- (b) the estimated volume of Non-Complying Product; and
- (c) the reasons for rejection.

5.4 Rejected Product

If Flinders Council rejects any Product under clause 5.3, the Supplier must within 7 days of the Supplier receiving notification of the rejection, and without prejudice to the Flinders Council's rights otherwise arising under this Agreement or at law:

- (a) remove the Non-Complying Product from the Delivery Site (at the Supplier's cost); and
- (b) as soon as practicable replace, without cost to Flinders Council, the Non-Complying Product with Product that complies in all respects with this Agreement.

5.5 Short supply

If at any time Flinders Council determines that a batch of Product contains less Product than the volume required by the Delivery Schedule, Flinders Council will notify the Supplier of:

- (a) the date of delivery of the relevant batch of Product; and
- (b) the shortfall in volume.

5.6 Rectification of short supply

If Flinders Council gives notice under clause 5.5 the Supplier must, without prejudice to the Flinders Council's rights otherwise arising under this Agreement or at law, supply a volume of Product equal to the relevant shortfall to the Delivery Site at the Supplier's own cost as part of the delivery of the next batch of Product as specified by the Delivery Schedule.

5.7 Disputes

Any dispute in relation to the quality or volume of Product supplied by the Supplier to Flinders Council must be dealt with in accordance with clause 19.

5.8 Costs

Council will not be liable to pay for:

- (a) any Non-Complying Product or for any damages or costs arising from inspection or rejection of the Non-Complying Product; or
- (b) any damages or costs arising from a short-fall in the volume of Product, including the Supplier's costs of complying with any notice issued pursuant to clause 5.5.

6 WARRANTIES

6.1 General warranties

The Supplier warrants to Flinders Council that as at the date of this Agreement and for the duration of the Term:

- (a) it has entered into this Agreement in its own capacity and not as trustee of a trust;
- (b) all Products are free from all liens and encumbrances and the Supplier has good title to the Products; and
- (c) the Supplier is legally entitled to transfer, and will transfer, ownership of the Product to Flinders Council.

6.2 Product warranty

- (a) The Supplier warrants that:
 - (i) at the date of delivery the Product will in all respects comply with the Specification and be free of any Defects

7 TITLE AND RISK

- (a) Title in, and risk of loss of or damage to, the Product will only pass to Flinders Council once the Product has been delivered to and securely deposited on the Delivery Site.
- (b) The parties acknowledge and agree that the Supplier is responsible for all costs and risks associated with the Product until the Product is delivered to and securely deposited on the Delivery Site.

8 FEES AND PAYMENT

8.1 General

- (a) Flinders Council will pay the Supplier the Supply Fee for Product supplied by the Supplier in accordance with this clause 8.
- (b) Subject to clauses 8.2 and 8.3, 7 days following the delivery of a batch of Product, the Supplier will invoice Flinders Council in an amount equal to the Supply Fee for that batch of Product.
- (c) Flinders Council will pay all invoices issued by the Supplier in accordance with this clause 8 within 14 of receipt.
- (d) All invoices issued by the Supplier pursuant to this clause 8 must be GST compliant.

8.2 Non-Complying Product

The Supplier must not invoice Flinders Council for Non-Complying Product.

8.3 Short supply invoicing

If Council has issued a notice under clause 5.5:

- (a) the Supplier must only invoice Flinders Council for the volume of Product actually supplied in the relevant batch to Flinders Council in accordance with this Agreement;

Appendix 1

GENERAL TERMS AND CONDITIONS

and

- (b) following delivery of the short-fall of Product in accordance with clause 5.6, the Supplier may invoice Flinders Council for the shortfall.

8.4 Disputed invoice

In the event that Flinders Council disputes all or part of any invoice issued by the Supplier pursuant to this clause 8, Flinders Council will notify the Supplier of the dispute within 10 Business Days of the date of receipt by Flinders Council of the relevant invoice.

9 VARIATION TO PRODUCT AND DELIVERY SCHEDULE

Neither party may vary the Product or the Delivery Schedule unless both parties agree in writing in relation to the scope of any such variation and any effect the variation may have on the Supply Fee.

10 ACCESS TO DELIVERY SITE

10.1 Access to Delivery Site

Flinders Council will provide the Supplier with access to:

- (a) the Delivery Site; and
- (b) any other site owned, leased or otherwise controlled by Flinders Council (**Site**) as is reasonably necessary for the Supplier to deliver the Product subject to the requirements contained in clauses 10.2 and 11.

10.2 Workplace health and safety

The Supplier acknowledges and agrees that it must comply with, and ensure that the Supplier's Personnel comply with, all:

- (a) applicable Legislative Requirements in relation to workplace health and safety; and
- (b) any direction given by Flinders Council which is reasonably necessary to ensure that Flinders Council complies with its Legislative Requirements and the Flinders Council Policies,

at all times while on the Delivery Site, the Site or otherwise when supplying the Product.

11 INSURANCE AND RISK

11.1 Insurances

The Supplier must take out and maintain for the Term the following insurance policies:

- (a) public liability insurance for at least the amount specified in the Agreement Details (noting Flinders Council as an interested party); and
- (b) workers' compensation insurance as specified in the Agreement Details.

11.2 Certificates of currency

The Supplier must provide certificates of currency for each insurance policy referred to in clause 11.1 to Flinders Council:

- (a) prior to the Commencement Date; and
- (b) at any time after the Commencement Date upon receiving a request from Flinders Council.

11.3 Insurance of Supplier's Personnel

The Supplier must ensure that the Supplier's Personnel are insured to a level commensurate with the insurance obligations of the Supplier under this clause 11.

11.4 Survival

This clause 11 survives any termination or expiry of this Agreement.

12 INDEMNITIES

12.1 Suppliers' indemnity

The Supplier is liable for and agrees to indemnify and keep indemnified Flinders Council, its officers, employees, agents, contractors and consultants against all Loss (including legal costs and expenses on a solicitor/own client basis), liability (including for any liability for loss or damage to property, or injury or death to any person) and claims, actions or demands by any person, arising directly or indirectly from or in connection with any one or more of the following:

- (a) the supply of the Product by the Supplier including without limitation the transport and shipping of the Product;
- (b) the breach of any provision of this Agreement by the Supplier or any of the Supplier's Personnel;
- (c) the breach of any Legislative Requirement by the Supplier or any of the Supplier's Personnel;
- (d) the breach of, or any failure to have or maintain, any required licences, Approvals, authorisations or permits in respect of the supply of the Products or this Agreement by the Supplier or any of the Supplier's Personnel;
- (e) any act, omission or negligence of the Supplier or any of the Supplier's Personnel in respect of this Agreement; or
- (f) any liability of the Supplier or any of the Supplier's Personnel to pay any tax, duty, levy, impost or other charge arising in relation to the supply of the Product,

except to the extent that any loss, liability or claim is caused or contributed to by any act, omission, negligence or default of Flinders Council.

12.2 Survival of indemnities

The indemnities in this clause 12 are continuing obligations of the Supplier separate and independent of any other obligations under this Agreement and survive the termination or expiry of this Agreement.

13 NEGATION OF EMPLOYMENT AND AGENCY

13.1 Exclusion of relationships

The parties acknowledge and agree that this Agreement and the performance of this Agreement does not represent or imply a partnership, agency, fiduciary relationship, employment relationship, joint venture, distribution or any other category of commercial or personal relationship between the parties recognised at law or in equity as giving rise to forms of specific rights and obligations.

13.2 Independent Supplier

The Supplier acknowledges that:

- (a) it is an independent contractor and supplies the Product in that capacity only;
- (b) under no circumstances will the Supplier be considered to be the employee, servant or agent of Flinders Council; and
- (c) the Supplier will have no claim against Flinders Council in respect of any entitlement more commonly associated with employment relationships including annual leave, public holidays, personal leave, long service leave, or otherwise nor in respect of claims under any workers' compensation legislation.

14 FORCE MAJEURE

14.1 Consequences of Force Majeure

A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than an obligation to pay money) (**Obligation**) under this Agreement caused by Force Majeure.

Appendix 1

GENERAL TERMS AND CONDITIONS

14.2 Notification of Force Majeure

The Affected Party must notify the other party as soon as practical of any anticipated delay or failure caused by an event referred to in clause 14.1 (**Event**).

14.3 Remedy Force Majeure

- (a) The Affected Party must remedy the Force Majeure to the extent reasonable practicable and resume performance of its obligations as soon as practicable.
- (b) A party is not required under this clause 14.3 to settle any labour disputes against its will or to test the validity or refrain from testing the validity of Federal, State or local law, order, rule or regulation.

14.4 Suspension of obligations

The performance of the Affected Party's Obligation is suspended for the period of delay caused by the Event.

14.5 Termination right

In the event that:

- (a) performance of an Obligation is prevented by an Event for more than 14 days; or
- (b) a delay caused by the Event exceeds 28 days,

the non Affected Party may terminate this Agreement at the expiration of not less than 10 days notice to the Affected Party.

14.6 Extension of Term

Unless mutually agreed in writing between the parties pursuant to clause 9, the Delivery Schedule will not be extended by the period of Force Majeure.

15 TERMINATION

15.1 Termination for Default

- (a) Either party (the **Non-Defaulting Party**) may terminate this Agreement by giving the other party (the **Defaulting Party**) notice if:
 - (i) the Defaulting Party repudiates its obligations under this Agreement; or
 - (ii) the Defaulting Party does not comply with an obligation under this Agreement and, in the Non-Defaulting Party's reasonable opinion, either the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party notice to remedy it or the non-compliance cannot be remedied
- (b) Where this Agreement is terminated:
 - (i) the Defaulting Party indemnifies the Non-Defaulting Party against any liability or loss arising and any cost incurred (whether before or after termination of this Agreement) in connection with the Defaulting Party's breach of this Agreement and the termination of this Agreement;
 - (ii) the Non-Defaulting party must take reasonable steps to mitigate its loss;
 - (iii) the parties are relieved from future performance of this Agreement without prejudice to any right of action that has accrued prior to the date of termination; and
 - (iv) rights to recover damages are not affected by the termination.

15.2 Termination for insolvency

Flinders Council may terminate this Agreement immediately if an Insolvency Event occurs by giving the Supplier written notice.

15.3 Termination for convenience

- (a) Either party may also terminate this Agreement at any time for its sole convenience, and for any reason, by giving 14 days written notice to the other party. The termination will be effective from the date stated in the notice.
- (b) If this Agreement is terminated under this clause 15.3, Flinders Council will only be liable for payment for any Product delivered by the Supplier in accordance with this Agreement up to date of termination.

15.4 Latent Defects

The Supplier acknowledges and accepts that, for the purposes of any alleged breach of this Agreement concerning an alleged Defect (latent or otherwise) in the quality of the Product, the relevant breach will be taken to have occurred on either:

- (a) the date that the relevant Defect is first discovered by Flinders Council; or
- (b) the date on which the relevant Defect ought reasonably to have been first discovered by Flinders Council,

whichever if the first to occur.

16 ASSIGNMENT AND SUB-CONTRACTING

- (a) Subject to clause 16(b), the Supplier shall not assign or subcontract any of the Supplier's obligations under this Agreement without the prior written consent of Flinders Council.
- (b) The Supplier may subcontract the transport and shipping of the Product to the Delivery Site.
- (c) The Supplier:
 - (i) remains responsible for the supply of the Product despite the fact that the Supplier may have subcontracted or assigned any part of its obligations under this Agreement; and
 - (ii) must ensure that the Supplier's Personnel have and retain the insurances required under clause 11.

17 ENTIRE AGREEMENT

- (a) The covenants, warranties, agreements and provisions contained in this Agreement comprise the entire agreement between the parties about its subject matter.
- (b) The Supplier's standard or usual terms and conditions of supply (if any) are expressly excluded with the effect that this Agreement exclusively applies and constitutes the entire agreement between the parties.

18 GST

- (a) Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are GST exclusive.
- (b) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

19 DISPUTES

19.1 Notice

If a party has a dispute or complaint against the other, that party (**Notifying Party**) must notify the other party in one of the ways described in clause 20 (**Dispute Notice**). The Notifying Party must ensure that the Dispute Notice contains specific details

Appendix 1

GENERAL TERMS AND CONDITIONS

identifying the nature of the dispute or complaint.

19.2 Best endeavours to resolve

Both parties within 21 days of the delivery of a Dispute Notice will meet and use their best endeavours to resolve the dispute or complaint to the mutual satisfaction of both parties as soon as possible.

19.3 Mediation

- (a) If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than 21 days after the date of receipt of the Dispute Notice) (**Dispute Period**), the dispute or complaint is by this clause 19.3 submitted to mediation.
- (b) The mediation must be conducted on Flinders Island.
- (c) The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (as at the date of this Agreement) as amended by this clause 19 apply to the mediation, except where they conflict with this clause 19.
- (d) If the parties have not agreed upon the mediator within 5 Business Days after the Dispute Period the mediator is the person appointed by the President of the Institute of Arbitrators and Mediators Australia, Tasmania Chapter (**President**) or the President's nominee, acting on the request of any party to the dispute or complaint.
- (e) The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- (f) If the mediation does not resolve the dispute or complaint within twenty 20 Business Days after the Dispute Period then either party may commence a court action or proceedings.

19.4 Exceptions

Nothing in this clause 19 prevents:

- (a) either party from seeking urgent interlocutory relief; or
- (b) Flinders Council from seeking recovery for any claim that it reasonably considers to be a monetary claim, from a Court of competent jurisdiction or, in the case of clause 19.4(b), from a debt collection agency, or by such other manner as is appropriate in the circumstances; or
- (c) either party from exercising its right to terminate this Agreement under clauses 14.5 or 15.

19.5 Continuing obligations

The parties agree to continue to perform their obligations under this Agreement, notwithstanding the existence of a dispute or complaint.

affect in any way the full right of that party to require that performance subsequently.

- (d) If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and does not affect the validity, operation or enforceability of any other provision of this Agreement, unless the severance would change the underlying principal commercial purpose or effect of this Agreement.
- (e) This Agreement is governed by the law of Tasmania, and the parties submit to the jurisdiction of the courts of Tasmania.

20 NOTICES

- (a) A notice or other communication to be given or made under this Agreement must be in writing and addressed to the Representative of each of the parties at the address or email address (as the case may require) outlined in the Agreement Details.
- (b) However, if the intended recipient has notified a changed postal address, or email address, then the communication must be to that postal address or email address.

21 GENERAL

- (a) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- (b) Each party must at its own cost do all things reasonably necessary to give effect to this Agreement.
- (c) The failure of a party at any time to require full or partial performance of any provision of this Agreement does not

ANNEXURE A

Specification

The Product is to be comprised of:

Price per square meter to Supply Plant, Equipment, Materials and Labour to:

1) Stabilise and compact 9,000 square metres of in situ material (Gravel and Bitumen Roads) with 5.4 kg of GP cement per square metre to a depth of 150mm; and

2) All freight, mobilisation and demobilisation costs to be included.

1.

3) Areas to stabilise are in various patches as per below and is estimated to take approximately 5 days.

2.

Length	Width	m2
100	6	600
300	6	1800
100	3	300
120	6	720
100	6	600
150	6	900
250	6	1500
50	6	300
90	3	270
30	3	90
30	3	90
25	6	150
75	6	450
150	3	450
20	6	120
20	6	120
20	6	120
20	6	120
20	6	120
20	6	120

Flinders Council has the following plant with operators that may be utilised with the works.

2 X Caterpillar 12H Graders

2 X 9000 lt Water Trucks

1 X Caterpillar 300C Multi Tyred Roller

Float available for stabiliser and flat drum roller (supplied by tenderer) moves.

Annexure B:

Delivery Schedule

Works to take place between February 8th 2021 and February 22nd 2021.

