

PURCHASE ORDER TERMS AND CONDITIONS

1. FORMATION OF CONTRACT

The Principal has issued a Purchase Order for the supply of the Goods and/or the Services and/or for the works. The Purchase Order creates a contract between the Supplier and the Principal on the terms referred to in the definition of the word "Contract" in clause 2.

If the Purchase Order refers only to the supply of Goods, references to "Services" and "works" shall be disregarded and vice versa. For the avoidance of doubt, a Purchase Order may refer to the supply of both Goods and Services.

2. DEFINITIONS

In the Contract, the following terms shall, if not inconsistent with the context, have the meanings indicated:

"Conflict of Interest" means any circumstance, condition or thing which may adversely affect the Supplier's ability to perform the Services efficiently, effectively and in accordance with the highest standards of probity, integrity and honesty, including, without limitation, any interest of a Relevant Party;

"Contract" means the Contract evidenced by the Purchase Order Goods and Services Conditions, the Purchase Order and any other documents to which reference is made in the Purchase Order as forming part of the Contract;

"Goods" means the goods to be supplied by the Supplier, as indicated in the Purchase Order;

"GST" means the goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Intellectual Property" means copyrights, patents, trademarks, designs (registered or unregistered), trade secrets and know how;

"OH&S" means occupational health and safety;

"Personal Information" means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"Principal" means Maribyrnong City Council;

"Purchase Order" means the purchase order referred to in clause 1 which initiates the Contract;

"Relevant Party" means:

2.1 The Supplier and the Supplier's employees, agents or sub-contractors;

2.2 An associate of the Supplier or the Supplier's employees, agents or sub-contractors;

2.3 A company in which the Supplier or the Supplier's employees, agents or sub-contractors are involved, whether as an officer, shareholder, employee or otherwise; or

2.4 Any other person with whom the Supplier or Supplier's employees, agents or sub-contractors has or have a financial or business association, whether directly or indirectly;

"Site" means the location where the Works are to be performed, as indicated in the Purchase Order
"Services" means the services to be performed by the Supplier, as indicated in the Purchase Order and includes any matters reasonably to be inferred from the Contract or trade usage; and

"Supplier" means the party nominated as such in the Purchase Order.

"Works" means -

2.5 The performance of work;

2.6 The supply of materials; and

2.7 All other things required to be done -

Under the Contract by the Supplier as indicated in the Purchase Order and includes any matters reasonably to be inferred from the Contract or trade usage.

3. INTERPRETATION

3.1 In the Contract, unless inconsistent with the context:

3.1.1 Headings and underlining are for

convenience only and do not affect interpretation;

3.1.2 Words expressed in the singular include the plural and vice versa;

3.1.3 Where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;

3.1.4 A reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;

3.1.5 A reference to a party in a document includes that party and its legal representatives, successors, permitted assigns, receivers, receivers and managers, liquidators and administrators;

3.1.6 A reference to any Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act,

3.1.7 A reference to any Act, regulation, planning scheme, proclamation, local law or by-law includes all Acts, regulations, planning schemes, proclamations, local laws and by-laws amending, consolidating or replacing same;

3.1.8 A reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document; and

3.1.9 A reference to the Supplier includes, where appropriate, the Supplier's:

(a) Employees; and

(b) Sub-contractors and the employees of such sub-contractors.

3.2 The Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Goods are to be supplied and/or the Services and/or the works are to be performed by the Supplier. All previous negotiations and understandings between the parties on this subject matter shall cease to have effect from the date of the Contract.

3.3 The law of the State of Victoria governs the Contract and any legal proceedings under the Contract.

3.4 If the Supplier consists of two or more parties, the Contract shall bind each of them severally and jointly.

3.5 If a provision, or part of a provision, in this Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision, or part of a provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, or part of a provision, as required in this clause, that provision, or part of a provision, is severable without affecting the validity or enforceability of the remainder of the Contract.

4. SERVICES

4.1 The Supplier must provide the Services and or preform the works:

4.1.1 By any date stated in the Purchase Order (or, if no date is stated, within a reasonable time) in accordance with this Contract. Time is of the essence in respect of any date stated in the Purchase Order.

4.1.2 In a diligent manner;

4.1.3 In conformity with all applicable standards issued by Standards Australia and the International Organization for Standardisation;

4.1.4 In accordance with the principles of quality assurance;

4.1.5 In accordance with the highest professional standards

4.1.6 With a level of care, skill, knowledge and judgement in accordance with best industry practice;

4.1.7 In a manner which meets and is fit for the Principal's intended purpose (including, without limitation, ensuring that any 4.1.8 document produced as part of the Services is fit for the Principal's purposes);

4.1.8 Using only new materials, unless specified otherwise in the Purchase Order; and

4.1.9 In accordance with the Contract.

4.2 The Supplier will remain responsible for the performance of the Services notwithstanding the acceptance or review of the Services, or any element of the Services, by the Principal or any member of the Principal's staff.

4.3 The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Services or the Contract.

4.4 If the Purchase Order names the persons who are to perform the Services, the Supplier must ensure that the Services are performed by and only by the named persons.

4.5 The Principal must give the Supplier such access to the Site as the Supplier reasonably requires to perform the Works. The Contractor must not use, or permit the Site to be used, for any purpose other than

the performance of the Works. The Supplier must take all reasonable steps to ensure the security of the Site. The Supplier must comply with all directions of the Principal with respect to the Site and the behaviour of the Supplier's staff at the Site. The Supplier must keep the Site in a clean and tidy condition.

4.6 The Supplier must take all measures necessary to avoid, if possible, or otherwise to minimise, any noise, dust, disturbance or nuisance at the Site or adjacent to the Site.

4.7 The Supplier must promptly restate any damage arising during the performance of the Works.

4.8 The Supplier must promptly rectify any defect in the Works or other breach of the Contract of which it is given notice by the Principal.

4.9 The Supplier will remain responsible for the performance of the Works notwithstanding the acceptance or review of the Works, or any element of the Works, by the Principal or any member of the Principal's staff.

4.10 The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Works or the Contract.

5. PROPERTY

Ownership of, and the Intellectual Property in, any documents, data, designs, models, computer software and other information created by

5.1 The Supplier in the course of performing the Services vests in the Principal. The Supplier must: deliver all such documents, data, designs, models, computer software and other information to the Principal at the conclusion of the performance of the Services, or earlier termination of the Contract, if they have not previously been delivered to the Principal in accordance with the Contract; and

5.2 On demand, execute any waivers, notices or assignments necessary to enable the Principal to register or otherwise obtain title to the Intellectual Property in such documents, data, designs, models, computer software and other information.

6. CONFLICTS OF INTEREST

6.1 The Supplier warrants that it is unaware at the date of the Contract of any Conflict of Interest existing or likely to arise during the performance of its obligations under the Contract.

6.2 The Supplier must:

6.2.1 Not enter into any contract or arrangement, or do any other thing, which may give rise to a Conflict of Interest with respect to its obligations under the Contract; and

6.2.2 Use its best endeavours to ensure that no Relevant Party enters into any contract or arrangement, or does any other thing, which may give rise to a Conflict of Interest with respect to the Supplier's obligations under the Contract.

6.3 The Supplier must immediately make a full disclosure in writing to the Principal of the existence,

nature and extent of any actual or potential Conflict of Interest with respect to the Supplier's obligations under the Contract.

7. DELAYS

If the Supplier is delayed in performing the Works by -

7.1 Any act or omission of the Principal or the Principal's staff or agents; or

7.2 Any other cause beyond the reasonable control of the Supplier -

The Supplier must give immediate written notice to the Principal and the date for completion of the Works must be extended by such period as the Principal, acting fairly and reasonably, considers appropriate. The Principal must give notice to the Supplier of its determination.

8. GOODS

8.1 The Supplier must supply the Goods specified in the Purchase Order by any date stated in the Purchase Order (or, if no date is stated, within a reasonable time) in accordance with this Contract. Time is of the essence in respect of any date stated in the Purchase Order.

8.2 Any Goods must be delivered by the Supplier to the place stated in the Purchase Order and unloaded in accordance with any directions given by the Principal.

8.3 It is a condition of the Principal's purchase of any Goods that:

8.3.1 The Goods will be new, unless otherwise specified in the Purchase Order;

8.3.2 If the Contract states the purpose for which the goods are required by the Principal, the Goods will be fit for that purpose;

8.3.4 If the Contract does not state the purpose for which the Goods are required by the Principal, the Goods will be fit for the purpose for which items of the same kind are commonly supplied;

8.3.5 The Goods will be merchantable quality; and

8.3.6 The Goods will carry any applicable manufacturer's warranties (which will be passed to the Principal on supply of the Goods).

8.4 Title to the Goods, free of encumbrances and all other security interests and adverse interests, will pass to the Council upon the Goods coming into the possession of the Principal or its employees or agents. The Supplier warrants that it is able to provide title to the Goods to the Principal in accordance with this clause.

9. LEGAL OBLIGATIONS

The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the supply of the Goods and/or Services or the Contract.

10. CONFIDENTIALITY

The Supplier must not and must ensure that its employees, sub-contractors and agents do not

disclose any information or documents obtained in the course of performing the Services to any third party without the prior written consent of the Principal.

11. PERSONAL INFORMATION

11.1 The Supplier agrees with respect to any information held or obtained by the Supplier under or in connection with the Contract:

11.1.1 To use Personal Information only for the purposes of fulfilling its obligations under the Contract;

11.1.2 To comply at all times with the *Privacy Act 1988* (Cth) and the *Privacy and Data Protection Act 2014* and all other legislation in force at any time while the Contract is operative relating to the privacy of Personal Information;

11.1.3 At the time of collecting Personal Information, to obtain all necessary consents and authorisations from the persons to whom that Personal Information relates to enable any use of the Personal Information necessary for the performance of the Services; and

11.1.4 To take all reasonable measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure.

11.2 Without limiting clause 16, the Supplier indemnifies the Principal in respect of any loss, liability or expense suffered or incurred by the Principal arising out of or in connection with a breach of the obligations of the Supplier under this clause, or any misuse of Personal Information by the Supplier or any of its employees, sub-contractors or agents, or any disclosure by the Supplier or any of its employees, sub-contractors or agents in breach of an obligation of confidence, whether arising under the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* or otherwise.

12. FINANCIAL PROVISIONS

12.1 If the Supplier complies with its obligations under the Contract, the Principal must, unless different terms of payment are specified in the Purchase Order, make the payment or payments specified in the Purchase Order within 30 days of the beginning of the month following its receipt of a valid tax invoice for the amount payable. The Principal will not make payment on any tax invoice, unless it specifies the Purchase Order number issued by the Principal. Unless otherwise specified in the Purchase Order, the Supplier must not forward a tax invoice to the Principal until all of the Services have been completed.

12.2 If a payment under clause 0 is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("GST Amount"). The GST Amount must be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST. The Supplier must provide to the Principal a valid tax invoice prior to the time of, and as a condition of, payment of any GST Amount.

12.3 All payments to the Supplier will be made by way of electronic funds transfer. The Supplier must, prior to commencing the supply of the Goods or the provision of the Services, provide details of the Supplier's BSB and bank account to enable payments to be made by this means.

13. DEFAULTS AND TERMINATION

13.1 If the Supplier defaults in the performance or observance of any obligation it has under the Contract, the Principal may terminate the Contract without prior notice to the Supplier. If the Principal terminates the Contract under this clause 0, the Principal shall not be liable to make any payments to the Supplier with respect to the termination of the Contract, the performance of the Services or the supply of the Goods.

13.2 The Principal may terminate the Contract at any time by written notice to the Contractor. If the Principal terminates the Contract under this clause 0, the Principal must make reasonable payment to the Contractor for the supply of any Goods and/or Services received prior to the date of the termination of the Contract.

14. SUB-CONTRACTING AND ASSIGNMENT

The Supplier must not sub-contract the whole or any portion of its obligations under the Contract or assign any of its rights under the Contract, except with the prior written consent of the Principal. Except in so far as any consent given by the Principal under this clause 14 expressly provides otherwise, no sub-contractor or assignee will have any rights under the Contract against the Principal or be entitled to receive any payments under the Contract from the Principal.

15. INSURANCES

15.1 The Supplier must, at all times while performing the Services, be the holder of:

15.1.1 A current public liability policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$20,000,000; and

15.1.2 A WorkCover policy of insurance with respect to all of its employees.

15.2 For all consultancy services, the Supplier must also at all times while performing the Services, be the holder of:

15.2.1 A current professional indemnity policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$5,000,000 for consultancy services associated with building works or

15.2.2 A current professional indemnity policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$2,000,000 for all other types of consultancy services

15.3 The Supplier must:

15.3.1 Ensure that any sub-contractor to the Supplier effects insurances in the terms stated in clauses 0 and 0; and

15.3.2 Provide the Principal with certificates of currency in respect of the insurances referred to in clauses 0 and 0 within two (2) days after a written request being made by the Principal.

16. INDEMNITY

The Supplier must indemnify, keep indemnified and hold harmless the Principal, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from any negligent act or omission, breach of statute, breach of intellectual property rights or breach of the Contract in the performance or purported performance of the Supplier's obligations under the Contract. The Supplier's obligation to indemnify the Principal under clause 16 shall not apply to the extent that any liability is caused by any negligent act or omission of the Principal.

17. OCCUPATIONAL HEALTH AND SAFETY

The Principal is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health.

The Supplier must itself, and must ensure that any sub-contractors of the Supplier, at all times identify and take all necessary precautions for the health and safety of all persons, including the Supplier's employees and sub-contractors, staff of the Principal and members of the public, who may be affected by the performance of the Supplier's obligations under the Contract.

The Supplier must immediately comply with any and all directions by the Principal relating to OH&S.

The Supplier must -

17.1 Comply with; and

17.2 Ensure that its employees, sub-contractors and agents comply with -

Any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Supplier's obligations under the Contract.

If the Quotation Form for the Contract required the Supplier to submit details of its OH&S system, the Supplier must prepare an OH&S management plan (including a safe work method statement) for the performance of the Supplier's obligations under the Contract and submit it to the Principal for approval.

The Contractor must not commence the performance of the Supplier's obligations under the Contract until the OH&S management plan is approved, in writing, by the Principal.

18. VARIATION

18.1 Direction of Variations

The Principal may, if it is reasonable to do so, direct the Supplier to:

18.1.1 Alter the extent of any Services described in the Purchase Order;

18.1.2 Alter the character, quality or mode of performance of any Services described in the Purchase Order;

18.1.3 Carry out any work of a character similar to any Services described in the Purchase Order;

18.1.4 Make any other change to such Services that the Principal reasonably deems is necessary;

or

18.1.5 Make any other change to such Services which the parties agree to make.

18.2 Variations not to Vitiating Contract

The direction of a variation by the Principal under sub-clause 0 will not in any way vitiate or invalidate the Contract.

18.3 Valuation of Variations

The value, if any, of any variation must be added to or subtracted from any payment to the Supplier under clause 0. The value of each variation must be determined by the Principal by applying:

18.3.1 Any relevant rates or prices contained in the Purchase Order which are expressly stated to be provided for the purposes, or partly for the purposes, of this sub-clause 0; or

18.3.2 Reasonable rates or prices, if there are no rates or prices contained in the Purchase Order which are expressly stated to be provided for the purposes, or partly for the purposes, of this sub-clause 0. If the variation involves a decrease in the Services or the omission of part of the Services, the Principal must make a reasonable allowance for the Supplier's profit and overheads.