

**TERMS****1. Definitions**

The following terms will, if not inconsistent with the context, have the meanings indicated:

**"Intellectual Property"** means any and all current and future intellectual property rights (including without limitation all copyright, design and trade mark rights).

**"Purchase Order"** means the Purchase Order preceding and including these Terms

**"Goods"** means the goods described in this Purchase Order.

**"Services"** means the services described in this Purchase Order.

**"Supplier"** means the party described as such in this Purchase Order

**2. Completion**

The Supplier must complete the Services on or before the Delivery Date in accordance with this Purchase Order.

**3. Goods**

3.1 The Supplier must supply Council with the Goods.

3.2 Unless expressly stated in the Purchase Order, the Purchase Price includes all applicable packaging, transport, insurance, loading, unloading, storage and all other costs of the Supplier up to the point of delivery of the Goods to Council.

3.3 The Supplier must deliver the Goods to the Delivery Point by the Delivery Date. If the Goods do not conform to the description in the Purchase Order or are otherwise considered by Council to be defective, Council may reject the Goods. If Council does not accept or reject the Goods within 30 days, the Goods are deemed to be accepted.

3.4 Council is not required to pay for rejected Goods and the Supplier must, at its own expense, collect and remove those Goods within 7 days of receiving notice.

3.5 Risk in the Goods will pass to Council when Council accepts delivery of the Goods in accordance with the Terms. Title in the Goods will pass to Council on payment of the Purchase Price.

**4. Warranty Period for Goods**

The Supplier warrants, for the period of 12 months commencing on the date that Council accepts the Goods, that the Goods:

- (a) are new when delivered and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
- (b) conform in all respects with the description given to Council;
- (c) are free from defects (including defects in installation); and
- (d) are of merchantable quality and comply with all laws.

**5. Warranties applicable to Services**

The Supplier warrants that:

5.1 the Services will be supplied with all due care;

5.2 the Supplier has the qualifications, experience and expertise represented to the Council;

5.3 the Supplier has no conflict of interest in supplying the Services; and

5.4 the Services will conform to the reasonable requirements of the Council.

**6. Invoices**

6.1 Unless otherwise agreed by Council, the Supplier may only invoice Council for Goods or Services after they are accepted by Council.

6.2 All invoices must contain a reference to a purchase order number. Any invoices which do not contain this reference may be returned to the Supplier unpaid.

6.3 All payments will be made within 30 days of Council receiving an invoice which complies with the Terms of the Purchase Order.

**7. Variation or Termination**

7.1 The Council may, at any time, by giving written notice to the Supplier, terminate this Purchase Order and the Supplier must on receipt of such notice immediately cease all work and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Supplier in accordance with this Purchase Order but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.

7.2 The Council may at any time give written notice to the Supplier proposing a variation to the scope of the Services. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Services. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Purchase Order will continue as if no proposal under this sub-clause had been made.

**8. Status of Services**

Upon request by the Council, the Supplier will promptly provide the Council with a written report giving details of the status of the Services, including tasks completed, tasks yet to be completed and estimated completion dates.

**9. Confidentiality**

The Supplier will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to the Council or its affairs which may come to its or their knowledge in connection with the provision of the Goods or Services. This obligation survives the Delivery Date.

**10. Intellectual Property****10.1 Material Created**

The ownership of all Intellectual Property created as a result of the supply of the Goods or Services will vest in Council. The Supplier assigns ownership of all such Intellectual Property rights to Council.

**10.2 Indemnity**

The Supplier indemnifies and will at all times keep the Council indemnified against any action, claim, suit or demand in respect of any breach of any third party's Intellectual Property rights relating to the supply of the Goods or Services.

**11. Rejection of Services**

The Council may reject any of the Services which do not comply in all respects with this Purchase Order.

**12. Goods and Services Tax ("GST")**

The Purchase Price is exclusive of GST. If GST is payable on the supply, the amount representing GST will only be payable by the Council to the Supplier where the Supplier supplies to the Council a tax invoice for GST purposes, in a form approved by the Council.

**13. Default by Supplier**

13.1 If the Supplier defaults in the performance or observance of any obligation under this Purchase Order, Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.

13.2 If, within 14 days after receipt of the notice, the Supplier fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under this Purchase Order or at common law against the Supplier) may:

13.2.1 suspend payment under this Purchase Order; or

13.2.2 terminate this Purchase Order and any other purchase order between the parties.

**14. Sub-Contracting and Assignment**

The Supplier must not, except with the written consent of the Council, sub-contract or assign the whole or any portion of its rights and obligations under this Purchase Order, and no sub-contractors or assignees will have any rights under this Purchase Order against the Council or be entitled to receive any payments under this Purchase Order from the Council.

**15. Statutory Requirements**

The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of this Purchase Order, including (but not limited to):

15.1 the Information Privacy Principles described in the *Privacy and Data Protection Act 2014*, as if that Act applied to it; and

15.2 section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*, as if that sub-section applied to it.

**16. Occupational Health & Safety**

The Supplier must comply with all relevant occupational health and safety laws. Upon request, the Supplier must provide a health and safety plan and a safe work method statement for the provision of the Goods or Services. The Supplier must agree to complete a site induction if required by the Council.

**17. Indemnity and Advance Release**

The Supplier indemnifies and holds harmless the Council, its Councillors and staff from and against all actions, claims, losses, damages, penalties or demands consequent upon, occasioned by or arising from its performance or purported performance of its obligations under this Purchase Order, including, without limitation, any acts or omissions of the Supplier's agents and employees.

**18. Amendment**

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

**19. Time of the Essence**

Time is of the essence as regards all dates, periods of time and times specified in this Purchase Order.

**20. No Relationship**

Nothing in this Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Purchase Order authorises or empowers any of the parties to act as agent for or with any other party.

**21. Whole Understanding**

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods or Services are supplied.

**22. Governing Law**

The law of the State of Victoria governs this Purchase Order.

**23. Joint and Several Obligations**

If the Supplier consists of two or more parties, this Purchase Order binds each of them severally and jointly.

**24. Insurance**

24.1 The Supplier must hold Public liability insurance cover of not less than \$10 million per event. The supplier must hold any other insurance applicable to this Purchase Order i.e. professional indemnity insurance cover of not less than \$1 million per event and WorkCover insurance.

24.2 Upon Council's request, the Supplier must provide a certificate of currency of its insurance policies prior to delivering the Goods or completing the Services.

**25. Child Safe Standards**

If the supply of Goods or Services involves the Supplier being in the physical proximity of children, the Supplier must, in the supply of the Goods or Services, comply with the Child Safe Standards made under section 17(1) of the *Child Wellbeing and Safety Act 2005* as if it were an applicable entity under that Act.