

## General Conditions for the Provision of Services (single purchase)

### 1 Provision of Services

The Supplier must provide the Services to the Authority in accordance with the Agreement, and must:

- (a) complete the Services by the Completion Date and any other dates for delivery specified in the Purchase Order;
- (b) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (d) act in good faith and in the best interests of the Authority; and
- (e) provide any and all equipment necessary for the performance of the Services.

### 2 Price for the Services

The Rates or Fees applicable to the Services are set out in the Purchase Order and are fixed. Expenses may only be charged in accordance with the Purchase Order.

### 3 Cancellation

The Authority may cancel the Services at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services. The Authority must pay all reasonable amounts due in accordance with **clause 2** for all work performed by the Supplier up until cancellation (but not any loss of prospective profits).

### 4 Invoicing and payment

- (f) The Supplier must submit to the Authority a tax invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the Authority may reasonably require and be sent to the address specified in the Purchase Order.
- (g) The Authority will pay the invoiced amount within the timeframe specified by the supplier on receipt of an accurate invoice. However, if the Authority disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount the Authority believes is due for payment. The parties will endeavour to resolve any such dispute.
- (h) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (i) The Authority will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983 (Vic)*.

### 5 Failure to perform

- (j) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, the Authority will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).
- (k) If the default referred to in **clause 5(a)** is not capable of being remedied or the Services are not capable of being re-performed, or

the Supplier fails within the time specified to remedy the default or re-perform the Services, the Authority may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the Authority in doing so.

### 6 Warranties

The Supplier warrants to the Authority that:

- (l) **(Purpose)** where the Authority has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (m) **(Conflict)** it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and
- (n) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services.

### 7 Liability

The Supplier must indemnify the Authority and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to provide the Services in accordance with these Conditions or any other breach of the Agreement.

### 8 Intellectual Property Rights

- (o) Subject to **clause 8(c)**, all Contract Intellectual Property vests in and is the property of the Authority from the time of its creation and the Supplier irrevocably and unconditionally assigns to the Authority, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property. The Supplier must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (p) The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Contract Intellectual Property a written assignment of all Intellectual Property Rights of such persons in the Contract Intellectual Property as necessary to give effect to **clause 8(a)** and a written consent from all individuals involved irrevocably consenting to the Authority exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.
- (q) All Pre-Existing Intellectual Property used by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the Supplier or its licensors. However, the Supplier hereby irrevocably and unconditionally grants to the Authority, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property.

### 9 Insurance

- (r) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.

- (s) On request, the Supplier must provide the Authority with evidence of the currency of any insurance it is required to obtain.

#### 10 Confidentiality and privacy

- (t) The Supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.
- (u) The Supplier hereby consents to the Authority publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required:
- (i) to comply with the Contracts Publishing System;
  - (ii) by the Auditor-General; or
  - (iii) to comply with the *Freedom of Information Act 1982 (Vic)*.
- (v) The Supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done in connection with the provision of the Services in the same way as the Authority would have been bound had the relevant act been done by the Authority.

#### 11 Access

When entering the premises of the Authority, the Supplier must and must ensure that its employees, agents and sub-contractors use reasonable endeavours to protect people and property, prevent nuisance and act and in a safe and lawful manner and comply with the safety standards and policies of the Authority (as notified to the Supplier).

#### 12 Sub-contracting

- (w) The Supplier must not sub-contract to any third person any of its obligations in relation to the Services without the prior written consent of the Authority (which may be given or withheld in its absolute discretion).
- (x) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

#### 13 Compliance with Law

The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services.

#### 14 GST

- (y) Terms used in this clause have the same meanings given to them in the GST Act.
- (z) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Purchase Order or these Conditions are exclusive of GST.
- (aa) If GST is imposed on any supply made under or in accordance with these Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

#### 15 General

- (bb) The Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (cc) Time is of the essence in relation to the provision of the Services.

#### 16 Interpretation

In these Conditions, unless the context otherwise requires:

**Agreement** means the agreement for the provision of the Services of which these Conditions and the Purchase Order form part.

**Authority** means the Authority, Body or Agency of the State issuing the Purchase Order. Any reference to the Authority will be read as a reference to the State.

**Code of Practice** means a code of practice as defined in, and approved under, the *Information Privacy Act 2000 (Vic)*.

**Conditions** means these General Conditions for the Provision of Services.

**Completion Date** means the date set out in the Purchase Order by which provision of the Services must be effected by the Supplier.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in anyway related to, the Authority, including any information designated by the Authority as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (dd) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (ee) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (ff) which the Supplier can demonstrate was independently developed by the Supplier; or
- (gg) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

**Contracts Publishing System** means the policy of the Victorian Government requiring publication of details of contracts entered into by Victorian Government Authorities, as amended from time to time.

**Fees** means a fixed fee payable to the Supplier for the provision of the Services.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Information Privacy Principles** means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

**Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means the law in force in the State and the Commonwealth of Australia, including common law and legislation.

**Overdue Amount** means an amount (or part thereof) that:

- (hh) is not, or is no longer, disputed;
- (ii) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions; and
- (jj) which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems which are the property of the Supplier and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

**Purchase Order** means any form of order or acknowledgment from the Authority for the provision of the Services which incorporates these Conditions.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services.

**Services** means the services (or any of them) specified in the Purchase Order.

**Supplier** means the person supplying the Services under these Conditions.