

PURCHASE ORDER TERMS AND CONDITIONS

Purchase Orders are subject to these Terms and Conditions and they are acknowledged, understood and accepted by the Seller.

1. Definitions

1.1 In these Terms and Conditions, unless inconsistent with the subject matter, the following definitions apply:

Buyer means Greater Bendigo City Council and its successors.

day means a calendar day, which includes weekends and public holidays.

Deliverables means any materials, reports, drawings, sketches, designs, advices, plans, specifications, data, models, samples, patterns, calculations, computations, reports, photographs, statements, diagrams, software or information and the like which:

- a) the Seller is required to prepare or provide under the Purchase Order; or
- b) are necessary for the Seller to prepare in order to provide the Goods, Services or Works in accordance with the Purchase Order;

Formal Conditions of Contract means contracts issued or approved by the Governance unit, including but not limited to:

- a) works minor agreement
- b) works major agreement
- c) services agreement (one off)
- d) services agreement (recurrent)
- e) consultant minor agreement (construction)
- f) consultant major agreement (construction)
- g) IT services agreement - short form
- h) IT services agreement - long form
- i) goods (single supplier - one-off)
- j) goods (single supplier - recurrent)
- k) panel services agreement
- l) panel supply agreement (goods)
- m) panel works agreement; and
- n) any other agreement of a similar nature.

Goods where applicable means the goods the subject of and described on the Purchase Order.

GST means goods and services tax in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*.

IP Rights' means all intellectual property rights (whether registered or unregistered) including any processes, technology, systems, reports, specifications, patents, trademarks, service marks, trade names, designs, design rights, brands and company names, trade secrets, copyright works, URLs, drawings, inventions, technical data, research data, formulae, computer programs, software, know-how, logos, symbols, and similar industrial or intellectual property rights;

Legal Requirement means:

- (a) all laws (including statutes, regulations, the common law, codes and standards) relevant to the Goods, Services and Works provided; and
- (b) the requirements of all authorities or persons having jurisdiction over or in respect of any part of the Site or the Goods, Services and/or Works;

Price means the amount to be paid by the Buyer to the Seller as specified in the Purchase Order;

Privacy Laws means any Legal Requirement which relates to the privacy of information about individuals and with which the Seller must comply, including the *Privacy Act 1988 (Cth)*, the Australian Privacy Principles and any applicable code of practice;

Purchase Order means the Purchase Order to which these conditions apply.

Seller means the person, supplier, firm, partnership, company or other legal entity to whom the Purchase Order is issued to provide the goods to perform the services and works as the case may be and includes its servants, agents and sub-contractors.

Services where applicable means the services the subject of and described on the Purchase Order.

SOP Act means the *Building and Construction Security of Payment Act 2002 (Vic)*.

Tax Invoice has the same meaning as the definition contained in the *A New Tax System (Goods and Services Tax) Act 1999*.

Termination Event means if the Seller becomes insolvent commits an act of bankruptcy, stops payment of debts, calls a meeting of or enters into an arrangement with or for the benefit of the Seller's creditors or has a receiver /

manager, manager administration, controller or liquidator appointed to its undertaking or assets or any part thereof of a winding up petition is presented against the Seller or the Seller goes into liquidation.

Works where applicable means the works the subject of and described on the Purchase Order.

2. Whole understanding and precedence

- 2.1 In the event Formal Conditions of Contract exist between the parties, such Formal Conditions of Contract constitute the whole understanding between the parties and embodies all terms on which the Goods, Services and/or Works are to be provided by the Seller. Formal Conditions of Contract will have precedence over the Purchase Order or any other document or representation.
- 2.2 In the event Formal Conditions of Contract do not exist between the parties, the Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods, Services and/or Works are to be provided by the Seller, the Purchase Order will have precedence.

3. Price

- 3.1 The Seller shall provide all necessary resources including Goods, labour, materials, tools, equipment and supervision required for the price section on the Purchase Order, which price includes all applicable taxes (including GST), insurance, supervision, costs and other direct and indirect costs of whatever character and description.
- 3.2 If the Buyer complies with its obligations under the Purchase Order, the Seller may make a claim for payment on the date of Goods, Services or Works provided (being the 'reference date' for the purpose of the SOP Act and the Buyer must pay the Price to the Seller within 30 days after receipt of a valid payment Tax Invoice.

4. Goods, Services and Works

- 4.1 All Goods, Services and Works provided shall be delivered in strict accordance with the Terms and Conditions herein, all of which form part of the Purchase Order.
- 4.2 Material Safety Data Sheets must be supplied with Goods (where applicable).
- 4.3 Environmental Product Declarations (EPDs) must be supplied with Goods (where applicable).
- 4.4 The Seller provides all Goods, Services or Works as an independent contractor and not an employee of the Buyer and has no authority to represent or act on behalf of the Buyer.

5. Seller's primary obligations – Goods

Where the Seller is supplying the Goods, the Seller warrants that:

- 5.1 Preference for Goods will be for those of a reused, refurbished or recycled content. If not available the Goods will be new, unless agreed otherwise.
- 5.2 The Goods will be fit for the purpose for which items of the same kind are commonly supplied.
- 5.3 The Goods are of merchantable quality and free from defects; the Good will comply with all Legal Requirements and relevant Buyer's policies and procedures at the time that the Goods are delivered to the delivery point.
- 5.4 The Seller is capable of passing title in the Goods free of encumbrances and all other adverse interest at the time they are supplied to the Buyer.
- 5.5 The quantity of Goods delivered shall be as directed by the Buyer as directed in writing (if applicable).
- 5.6 The Goods must be delivered to the delivery destination as directed by the Buyer. Description of the Goods, quantity, Purchase Order number and reference to Invoice number must be stated on a Delivery Docket, which is to accompany the Goods. The Seller must ensure that the Goods are checked and the Delivery Docket signed by an employee or an agent of the Buyer.
- 5.7 In accordance with any Acts, regulations and Buyer's policies and procedures in any way applicable to the performance of the Purchase Order, including, without limitation, any occupational health and safety legislation

6. Seller's primary obligations – Services

Where the Seller is performing Services, the Seller must carry out and complete its obligations under the Purchase Order:

- 6.1 With the professional skill, care and diligence that would be expected of a competent and experienced Seller.
- 6.2 So as to achieve completion and delivery on or before the Services completion date.
- 6.3 Using suitably qualified personnel.
- 6.4 So that the Deliverables comply with the requirements of the Purchase Order, are coordinated and consistent, free from errors and are fit for the purpose stated in or which is reasonably ascertainable from the Purchase Order.
- 6.5 By maintaining the area at which the Services are provided in a safe, clean and tidy condition at all times and provide measures to ensure the safety of the public including the provision and maintenance of all necessary barricades, guards, fencing, temporary roadways and footpaths, signs, lighting and any other measures necessary to ensure the safety of the public.
- 6.6 By leaving the area at which the Services are provided in a safe, clean and tidy condition after completion.

- 6.7 In accordance with any Acts, regulations and Buyer's policies and procedures in any way applicable to the performance of the Purchase Order, including, without limitation, any occupational health and safety legislation.
- 7. Seller's primary obligations – Works**
The Seller must carry out and complete its obligations under the Purchase Order:
- 7.1 In a proper and workmanlike manner.
- 7.2 With the professional skill, care and diligence that would be expected of a competent and experienced Seller.
- 7.3 So as to achieve completion on or before the completion date.
- 7.4 Using suitably qualified personnel.
- 7.5 In accordance with all directions given by the Buyer.
- 7.6 By maintaining the area at which the Works are provided in a safe, clean and tidy condition at all times and provide measures to ensure the safety of the public including the provision and maintenance of all necessary barricades, guards, fencing, temporary roadways and footpaths, signs, lighting and any other measures necessary to ensure the safety of the public.
- 7.7 By leaving the area at which the Works are provided in a safe, clean and tidy condition after completion.
- 7.8 In accordance with any Acts, regulations and Buyer's policies and procedures in any way applicable to the performance of the Purchase Order, including without limitation, any occupational health and safety legislation.
- 8. Completion and delivery**
- 8.1 The Services and Works shall be completed by the time specified (if any) on the Purchase Order or as otherwise agreed with the Buyer.
- 8.2 The Goods shall be delivered to the place and date specified on the Purchase Order unless otherwise agreed between the Buyer and the Seller.
- 8.3 The Seller is responsible for all delivery costs, including insurance, for any Goods, Services or Works (as applicable).
- 8.4 The Goods will comply with all legal requirements and relevant Buyer's Policies and Procedures at the time that the Goods are delivered.
- 8.5 The Seller is capable of passing title in the Goods (as applicable) free of encumbrances and all other adverse interest at the time they are supplied to the Buyer.
- 8.6 Time is of the essence so far as it applies to the obligations of the Seller. If any Goods are not delivered, or Services or Works are not completed within the time specified (if any) in the Purchase Order the Buyer may either (where appropriate):
- a) in the case of Goods:
 - i. refuse to accept the Goods and terminate forthwith the Purchase Order; and
 - ii. cause the Seller to deliver the Goods by the most expeditious means and any additional delivery charges shall be borne by the seller; or
 - b) in the case of Services or Works: obtain a reduction in the price paid for the Services or Works specified in the Purchase Order.
- 9. Buyer's primary obligation**
If the Seller complies with its obligations under the Purchase Order, the Buyer must pay the Price stated in the Purchase Order to the Seller upon Completion of the Goods, Services and/or Works provided.
- 10. Loss or damage in transit**
- 10.1 The Buyer shall notify the Seller of any loss or damage to or defect in the Goods at the end of the thirty (30) days of the date of delivery or intended date of delivery (as the case may be) and the Seller at its own expense shall make good to the Buyer any loss or damage to or defect in Goods as notified by the Buyer.
- 11. Inspection**
The Seller agrees that the Buyer and its agents shall have the right to inspect all Goods, Services and/or Works provided pursuant to the Purchase Order while in any stage of engineering, manufacture or installation of Goods (if a part of Works) prior to their dispatch, the Seller shall make this is a condition of any Works performed pursuant to the Purchase Order by any third party. Any such inspection shall not relieve the Seller of any obligations contained in the Purchase Order or required by law.
- 12. Rejection**
- 12.1 The Buyer may reject any of the Goods, Services or Works which do not comply in all respects with the Purchase Order.
- 12.2 Should any of the Goods, Services or Works be rejected pursuant to clause 12.1 above, the Seller shall reimburse the

Buyer for:

- a) any purchase price paid (including GST) by the Buyer with respect to rejected Goods, Services or Works; and
- b) any costs reasonable incurred by the Buyer in connection with the rejection of the Goods, Services or Works.

13. Variation

- 13.1 The Buyer may, at any given time, give written notice to the Seller proposing a variation to the Goods, Services or Works.
- 13.2 The Seller must, as soon as possible, or in any event within 7 days, provide a written proposal for any variation to the Price, that will apply to the varied Goods, Services or Works.
- 13.3 The Buyer may (but is not obliged to) accept the varied Price proposal within 7 days of receipt by giving a written acceptance to the Seller.
- 13.4 In the absence of such acceptance the Purchase Order will continue as if no proposal under this clause had been made.

14. Alteration, addition and cancellation

- 14.1 No alterations or additions to the Services, Works or the character or description of the Goods shall be made by the Seller unless the Seller has first obtained written approval from the Buyer's authorised officer.
- 14.2 The Buyer may at its discretion, cancel any undelivered or unprovided Goods. In that event the Buyer shall only be required to take delivery or accept provision, of, and pay for Goods which have been expressly manufactured to the specifications of the Buyer.

15. Confidentiality

- 15.1 The Buyer must:
 - a) not disclose; and
 - b) will ensure that its employees, agents and sub-contractors do not disclose any confidential information relating to the Buyer or of its affairs which may come to its or their knowledge arising from or in connection with the Purchase Order.

16. Privacy

The Seller must:

- 16.1 comply, and ensure that its sub-contractors comply with, the Privacy Laws; and
- 16.2 must not, and must ensure its sub-contractors do not, cause the Buyer to breach its obligations under the Privacy Laws.

17. Title and risk

- 17.1 Title to and risk of loss in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Purchase Order but without prejudice to any right of rejection or other rights which may apply to the Buyer under these conditions.

18. Insurance

- 18.1 The Seller shall maintain at its own expense adequate and current insurance including without limitation:
 - a) public liability insurance of an amount per event of at least \$10,000,000;
 - b) all other applicable insurances i.e. professional indemnity insurance for an amount of at least \$5,000,000 and workcover, automotive and other means or transportation or freight liability Insurance; and
 - c) product insurance on such terms or for such amounts as are reasonable in the circumstances of the Purchase Order.
- 18.2 The Buyer may request, in which case the Seller shall provide, a 'certificate of currency' in proof of the above insurance cover prior to the Seller undertaking the Services, Works or delivering the Goods.

19. Work on Premises

If the Purchase Order, involves any Goods, Services or Works to be performed on the Buyer's premises then the Seller must ensure that its employees, its sub-contractors and their employees and any other person associated with the Seller:

- 19.1 will adhere to any regulations and requirements including, without limitation, any occupational health and safety legislation.
- 19.2 complete the Buyer's online Contractor Induction System as provided by email via the prequalification system.

20. Terms of payment

20.1 The Seller shall promptly render a Tax Invoice for the Goods, Services or Works in accordance with the Buyer's instructions. In the absence of any special arrangement between the parties in writing, the Buyer shall effect payment to the Seller within thirty (30) days of the commencement of the month following invoice.

20.2 All Tax Invoices must also include reference to:

- a) The words 'Tax Invoice'
- b) The Buyer's Purchase Order number,
- c) Seller's identity, such as business name,
- d) Seller's Australian business number (ABN)
- e) Delivery Docket number (if applicable),
- f) Invoice date issued,
- g) Invoice number,
- h) Quantity,
- i) Price per unit,
- j) GST amount, and
- k) Total invoice value.

All Tax Invoices MUST be sent as a PDF attachment to invoices@bendigo.vic.gov.au. Failure by the Seller to comply with this clause may delay payment.

21. Goods and Services Tax ("GST")

21.1 Unless otherwise stated, the Price is exclusive of GST. Where the Buyer is required to pay the Seller any amount under the Purchase Order on account of GST, the amount representing GST will only be payable by the Buyer to the Seller where the Seller supplies to the Buyer a tax invoice for GST purposes, in a form approved by the Buyer.

22. Security of payment

22.1 If the Seller is entitled to make an adjudication application under the SOP Act, the Seller must make such adjudication application to one of the Authorised Nominating Authorities:

- a) The Resolution Institute (Victorian Chapter);
- b) Rialto Adjudications Pty Ltd; and
- c) RICS Dispute Resolution Service.

22.2 The Seller must indemnify and keep indemnified the Buyer on demand from and against all loss, damages and expenses suffered or incurred by the Buyer arising out of or in connection with a suspension by a sub-contractor under the SOP Act for goods, works and / or services which form part of the Goods, Services or Works.

23. Subcontracting and assignment

23.1 The Seller must not assign its rights or obligations under these Terms and Conditions, sub-contract the Services, Works or the provision of the Goods pursuant to the Purchase Order without the prior written consent of the Buyer, and any such consent shall not relieve the Seller of its responsibility for the Services, Works or the Goods pursuant to the Purchase Order or of any other obligations contained in the Purchase Order.

24. Packaging and freight

24.1 Goods shall be properly packed to avoid being damaged during delivery or loading and unloading. All packages shall be clearly marked with the Purchase Order number and location of delivery.

24.2 The Seller shall comply with all applicable Australian and international laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.

24.3 The Seller must minimise packaging or ensure that the packaging is 100% recycle packaging for any Goods delivered.

25. IP Rights, data and moral rights

25.1 Subject to this clause, the IP Rights in all Deliverables vest in the Buyer upon creation. The Seller must do everything necessary to protect such vesting.

25.2 The Buyer grants to the Seller a royalty free, non-transferable, revocable, non-exclusive licence to use the IP Rights vested in the Buyer under this clause only to the extent necessary for providing the Goods, Services or Works.

25.3 All data provided by the Buyer to the Seller for the purposes of this purchase order should only be used for the purpose of fulfilling this purchase order and no other purpose. Once the Seller has discharged their duties in completing this purchase order all Buyer's data provided to the Seller should be returned to the Buyer or securely disposed of.

25.4 In submitting a Deliverable the Seller represents and is taken to represent to the Buyer that each author of the

Deliverable has given a valid, effective and signed consent under the Copyright Act 1968 by which the author (to the full extent permitted by law) irrevocably and unconditionally consents to the Buyer, its employees, sub-contractors and agents and any person nominated or authorised by the Buyer (Beneficiaries):

- a) using, disclosing, reproducing, transmitting, adapting, publishing or otherwise exercising its rights in relation to the Deliverable in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Deliverable or of any adaptation of the Deliverable in a manner which, but for the consent, infringes or may infringe the author's Moral Rights (within the meaning of the *Copyright Act 1968*) in the Deliverable); and
- b) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its right in relation to the Deliverable or any adaptation thereof (or any part of the Deliverable or any adaptation) without making any identification of the author in relation to the Deliverable.

26. Governing law and statutes

- 26.1 The Purchase Order shall be governed in accordance with the Legal Requirements and the laws of Victoria and the parties hereto submit to the non- exclusive jurisdiction of the Courts of Victoria.
- 26.2 The Seller shall comply with all statutes, ordinances, by-laws and regulations in connection with its responsibilities under this Purchase Order.

27. Dispute resolution

- 27.1 If a dispute or difference between the parties arises in connection with the Contract, then either party may deliver by email, hand or send by registered post to the other party, a written notice of dispute identifying and providing details of the dispute.
- 27.2 Within 14 days of the receipt of a notice of dispute, the parties will confer and undertake good faith negotiations in an attempt to resolve the dispute.
- 27.3 If the dispute has not been resolved within 30 days after receipt of a notice of dispute, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer that dispute to litigation.
- 27.4 Nothing in this clause will prejudice the right of a party to seek urgent injunctive or declaratory relief of any matter arising out of the Purchase Order.

28. Default and termination

- 28.1 If the Seller defaults in the performance of any obligation under the Purchase Order, the Buyer may give written notice to the Seller specifying the failure and requiring such default be remedied within 10 days.
- 28.2 If, within 10 days after receipt of the notice, the Seller fails to remedy the default to the sole satisfaction of the Buyer, the Buyer (without prejudice to any other rights that it may have under the Purchase Order or at common law against the Seller) may:
 - a) Suspend payment under the Purchase Order; or
 - b) Terminate the Purchase Order by given written notice.
- 28.3 Should the Seller commit a Termination Event the Buyer may at its discretion or regardless of any default of failure and without prejudice to its other rights forthwith terminate or suspend the Purchase Order or any unfilled part of the Purchase Order.
- 28.4 In the event of termination or suspension as aforesaid, the Buyer shall not be liable for any loss, damages, costs or expenses however arising from such termination or suspension.

29. Indemnity and advance release

- 29.1 The Seller indemnifies and hold harmless the Buyer from and against all actions, claims, losses, damages, penalties or demands arising out of or in connection with the performance or purported performance of its obligations under the Purchase Order. This indemnity survives termination or expiration and completion of this Purchase Order.

30. Joint and several obligations

- 30.1 The relationship between the Buyer and the Seller is that of principal and independent contractor and nothing in the Purchase Order shall be taken as constituting the Buyer and the Seller or any of its sub-contractors, directors or employees as being in the relationship of joint venture, master and servant, employer and employee, or partners, nor shall anything in this Purchase Order constitute the Seller or any of its directors or employees as being agent of the Buyer.
- 30.2 If the Buyer consists of two or more parties, the Purchase Order binds each of them severally and jointly.

31. Corrupt behaviour

- 31.1 If the Seller becomes aware of, or has information indicating, fraudulent, dishonest or unfair activity in relation to this

purchase, the Seller must notify the Buyer's Manager Governance.

32. Notices

32.1 Any notices shall be in writing and shall be validly given only if signed by a duly authorised person on behalf of either party and addressed to the parties at the address specified on the Purchase Order and shall be deemed to be duly given or made;

- a) in the case of a letter, at the expiration of seventy-two (72) hours after the time of posting by pre-paid ordinary post or at the time of actual receipt by the addressee whichever occurs first.
- b) in the case of an email, when sent.
- c) in the case of a personal delivery, when delivered.

33. Acceptance

33.1 If written acceptance of these conditions of this Purchase Order is not communicated by the Seller to the Buyer the supply of the Goods or the commencement of Services or Works shall constitute acceptance by the Seller.