

## TERMS

### 1. Definitions

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

**"Intellectual Property"** means any and all technology and information existing at the date of this Purchase Order which relates to the Services including but not limited to:

- (a) any confidential information, copyright, patent and trademarks, and includes any right to apply for registration of these intellectual property rights; and
- (b) any processes, formulae, designs, reports, drawings, specifications, software, blue-prints, patent applications, know-how and research data.

**"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. Warranties

In addition to other warranties in this Purchase Order or implied by law, it is a condition of the Council's purchase of the Services that:

- 3.1 the Services will be supplied with all due care;
- 3.2 the Supplier has the qualifications, experience and expertise represented to the Council;
- 3.3 the Supplier has no conflict of interest in supplying the Services; and
- 3.4 the Services will conform to the reasonable requirements of the Council.

### 4. Particular Obligations

The Supplier agrees that, in supplying the Services, it will comply with the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014*.

### 5. Variation or Termination

5.1 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.

5.2 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.

### 6. 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.

### 7. 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 during the term covered by this Purchase Order.

### 8. Intellectual Property

#### 8.1 Warranty by Supplier

The Supplier warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the supply of the Services.

#### 8.2 Material Created

The ownership of all Intellectual Property created as a result of the supply of the Services will vest in the Council. The Supplier assigns ownership of all such Intellectual Property rights to the Council and will ensure that its employees, sub-contractors and agents execute all documents necessary to assign to the Council all such rights.

#### 8.3 Indemnity

Without limiting Term 16, the Supplier indemnifies and will at all times keep the Council indemnified against any action, claim, suit or demand, including an action, claim, suit or demand for or liability to pay compensation or damages and costs or expenses, arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the supply of the Services.

### 9. Rejection of Services

The Council may reject any of the Services which do not comply in all respects with this Purchase Order. The Council is not required to make payment for any rejected Services.

### 10. Payment

If the Supplier complies with its obligations under this Purchase Order, the Council must pay the Purchase Price to the Supplier by the method specified in this Purchase Order.

### 11. Goods and Services Tax ("GST")

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under this Purchase Order on account of GST, 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.

### 12. Default by Supplier

12.1 If the Supplier defaults in the performance or observance of any obligation it has under this Purchase Order, the Council may give notice

to the Supplier specifying the default and requiring that such default be remedied within 14 days.

12.2 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:

12.2.1 suspend payment under this Purchase Order; or

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

### 13. Insolvency of Supplier

If the Supplier -

13.1 being a person, commits any act of bankruptcy; or

13.2 being a company, commits any act of insolvency - the Council may terminate this Purchase Order immediately.

### 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. Where the Council gives its consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under this Purchase Order.

### 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, without limitation, any occupational health and safety legislation.

### 16. Indemnity and Advance Release

The Supplier indemnifies and holds harmless the Council, its Councillors and staff from and against all liability for any injury, loss or damage and 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. The Supplier's obligation to indemnify and hold harmless will not apply to the extent that the liability, action, claim, loss, damage, penalty or demand is caused by any negligence or act of default of the Council, any Councillor or any member of Council staff.

### 17. Amendment

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

### 18. Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Purchase Order.

### 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 will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

### 21. Number and Gender

In this Purchase Order, a reference to:

21.1 the singular includes the plural and vice versa; and

21.2 a gender includes the other genders.

### 22. Whole Understanding

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Services are to be supplied by the Supplier. If the Supplier's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, this Purchase Order will have precedence unless otherwise agreed by the Council in writing.

### 23. Governing Law

The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.

### 24. Joint and Several Obligations

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

### 25. Method of Giving Notices

A notice required or permitted to be given by one party to another under this Purchase Order must be in writing, addressed to the other party and:

25.1 delivered to that party's address;

25.2 transmitted by facsimile to that party's facsimile number; or

25.3 sent by email to that party's email address.

### 26. Receipt of Notices

A notice given to a party in accordance with Term 25 must be treated as having been duly given and received:

26.1 if delivered to a party's address, on the day of delivery;

26.2 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission; or

26.3 if sent by email, only upon acknowledgement that the email has been received.