

Purchase Order Terms & Conditions

These terms and conditions ("PO Terms") are applicable to the Supply of Goods and/or Services pursuant to Purchaser Orders issued by the VBA to suppliers.

Upon the Supplier agreeing to Supply to the VBA the Goods and/or Services specified in a Purchase Order ("the Purchase Order"), the Supplier shall be bound to Supply the Goods and/or Services to the VBA in accordance with the terms and conditions contained in the Purchase Order (including any document or material attached thereto) and these PO Terms.

The Supplier may agree to Supply the Goods and/or Services expressly in writing to the VBA or impliedly, including by commencing the Supply of the Goods and/or Services specified in the Purchase Order.

These PO Terms are subject to any Pre-Existing Supply Contract relevant to the Supply of the Goods and/or Services (if any).

1. Provision of Goods and Services

- (a) In consideration of payment of the Fees by the VBA, the Supplier must Supply to the VBA the Goods and/or Services and any associated Materials in accordance with the Purchase Order and these PO Terms.
- (b) The Supplier must commence Supplying the Goods and/or Services from the Commencement Date and complete the Supply of the Goods and/or Services by the Completion Date and in accordance with any other dates for the Supply of the Goods, Services and/or Materials specified in the Purchase Order.
- (c) The Supplier must, and must ensure the Supplier's Personnel, at all times Supply the Goods and/or Services promptly, carefully and to the highest possible standards, with all due care, skill and judgement, in an efficient and cost effective manner and in accordance with the best professional and business practises adopted by a prudent, reputable and experienced supplier providing goods or services (as the case may be) in the nature of the respective Goods and/or Services under similar circumstances.
- (d) Notwithstanding any other clause contained in these PO Terms, the VBA has no obligation of any kind under the Purchase Order to purchase any or a minimum amount of the Goods or Services (as the case may be).

2. Equipment

The Supplier must, at its own cost, supply any and all equipment which is necessary for the Supply of the Goods and/or Services unless otherwise agreed with the VBA in writing.

3. Fees

- (a) The Fees payable to the Supplier for the Goods and/or Services are set out in the Purchase Order and are fixed.
- (b) The Fees are inclusive of any and all:
 - (i) taxes, duties, fees or other government levies and charges which may be imposed on or in respect of the Supply of the Goods and/or Services; and
 - (ii) costs, expenses and disbursements incurred by the Supplier or the Supplier's Personnel, unless the Purchase Order expressly states otherwise and the prior written approval of the VBA (which may be given or withheld in its absolute discretion) is obtained before the expense is incurred by the Supplier.

4. Cancellation

- (a) The VBA may cancel all or part of the Purchase Order at any time for any reason, by written notice to the Supplier and on receipt of such notice, the Supplier must:
 - (i) promptly and without delay acknowledge receipt of such notice;
 - (ii) immediately cease the Supply of the Goods and/or Services specified in the Purchase Order; and
 - (iii) take all reasonable steps to mitigate any loss or prevent any further costs being incurred with respect to such Goods and/or Services or otherwise by the VBA.
- (b) Subject to clause 4(c), if the VBA cancels any part of the Purchase Order, it will pay the Supplier for Goods and/or Services Supplied to it prior to the cancellation, but no other costs whatsoever shall be payable to the Supplier in relation to such cancellation (including, without limitation loss of profits).
- (c) Notwithstanding any other clause contained in these PO Terms, under no circumstances will the VBA be required to pay the Supplier for Goods and/or Services where:
 - (i) the Goods and/or Services were not supplied in accordance with the Purchase Order or these PO Terms;
 - (ii) the VBA, in its absolute discretion, is not satisfied with the Goods/or and Services it has received; or
 - (iii) the Purchase Order is cancelled by the VBA due to a breach by the Supplier.

5. Invoicing and payment

- (a) Unless otherwise specified in the Purchase Order, the Supplier must submit to the VBA a valid, itemised tax invoice (as defined in the GST Act) in respect of the Goods and/or Services once all the Goods and/or Services the subject of the Purchase

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Order have been Supplied to the VBA in accordance with the Purchase Order and these PO Terms.

- (b) Each tax invoice from the Supplier must provide sufficient information to allow the VBA to identify the Goods and/or Services Supplied by the Supplier to which the tax invoice relates and must be accompanied by such supporting documentation as the VBA requires.
- (c) Subject to the Supplier complying with the terms contained in these PO Terms and the Purchase Order and Supplying the Goods and/or Services to the VBA's absolute satisfaction, the VBA will pay for Goods and/or Services Supplied by the Supplier within 30 days of receipt of an accurate invoice.
- (d) If the VBA disputes a tax invoice issued by the Supplier for any reason, it may notify the Supplier of the amount it believes is due for payment and pay the undisputed amount (if any). Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Purchase Order or these PO Terms but must instead be taken only as payment on account.

6. Failure to perform

- (a) If the Supplier fails to Supply any of the Goods or Services in accordance with the Purchase Order or these PO Terms, the VBA may (without limiting any other available remedy), but is not under any obligation to, require the Supplier to:
 - (i) remedy any default; or
 - (ii) re-Supply the Goods and/or Services within the time specified in a notice, in which case the Supplier will not be entitled to any payment in respect of the Goods and/or Services unless or until this clause 6(a) has been complied with by the Supplier to the absolute satisfaction of the VBA.
- (b) If the VBA elects not to provide the Supplier with an opportunity to remedy a default or re-Supply the Goods and/or Services under clause 6(a) or the Supplier fails to do so within the time required by the VBA, the VBA may, at its sole discretion, elect to:
 - (i) have the default remedied or have the Goods and/or Services re-Supplied by a third party; or
 - (ii) remedy the default, Supply the Goods and/or Services itself.
- (c) The Supplier must pay all costs incurred by the VBA, without reduction or set-off, as a result of any action taken by it under clause 6(b) on a full indemnity basis.

7. Warranties

- (a) The Supplier warrants that:
 - (i) it and the Supplier's Personnel have the capacity, experience and resources to Supply the Goods and/or Services to the

VBA in accordance with the Purchase Order and these PO Terms.

- (ii) the Goods and/or Services supplied by the Supplier are suitable for the purpose for which the VBA requires them.
 - (iii) it and the Supplier's Personnel will, at all times, act in good faith and having regard to the best interests of the VBA.
 - (iv) during the Term, it and all the Supplier's Personnel which are involved in the Supply of the Goods and/or Services hold all authorisations, consents, permits and licences required under any Law necessary to Supply the Goods and/or Services.
 - (v) the provision of the Goods and/or Services (including and any and all Material), comply with the requirements of all Laws of any kind and will not infringe any third party's intellectual property rights.
 - (vi) ownership of Goods Supplied (if any) passes to the VBA absolutely and free from any charge or encumbrance whatsoever upon the Supply of the Goods to the VBA.
 - (vii) where the Supplier Supplies Goods that have been procured from a third party, it will assign to the VBA, to the extent practicable and permitted by Law, the benefits of the warranties given by the third party in connection with those Goods.
 - (viii) it and the Supplier's Personnel do not as at the date of the Purchase Order and will not at all material times:
 - (1) hold any office;
 - (2) possess any property;
 - (3) engage in any business or activity; nor
 - (4) otherwise owe any obligations, that gives rise to an actual or perceived conflict of interest with its duties, interests or obligations under the Purchase Order or these PO Terms.
 - (ix) it will immediately notify the VBA as soon as it becomes aware of any matter which may give rise to an actual or potential conflict of interest contrary to clause 7(a)(vi).
- (b) All Services, Materials and Goods Supplied to the VBA must, during the Term and for a period of 12 months following the completion of the Supply of the Goods and/or Services ("**Warranty Period**"), conform to the specifications contained in the Purchase Order and these PO Terms.
 - (c) Without limiting any other rights of the VBA, the Supplier will promptly rectify any defect in the Goods, Services and/or Materials arising during the Warranty Period at no charge to the VBA.

8. Liability

- (a) The Supplier indemnifies the VBA and each of its employees, agents and contractors on a full indemnity basis against any loss, damage, injury, death, claim, action or expense (including any legal expense) suffered or incurred by, or brought against the VBA or its employees as a result of:
- the conduct of, or a failure to act by, the Supplier or the Supplier's Personnel; or
 - a failure by the Supplier to Supply the Goods and/or Services or otherwise perform its obligations in accordance with the Law or in accordance with the Purchase Order or these PO Terms.

9. Title and Risk

- (a) Title in the Goods (if any) passes to the VBA upon the earlier of payment of the Fees or delivery of the Goods to the VBA.
- (b) Risk in the Goods (if any) passes to the VBA when the Goods are delivered to the VBA and one of the VBA's employees takes possession of the Goods.

10. Intellectual Property Rights

Contract Intellectual Property

- (a) All rights, ownership or otherwise, in respect of any Contract Intellectual Property vest in the VBA upon creation of those rights.
- (b) The VBA grants to the Supplier a non-exclusive and non-transferable licence to use, reproduce, adapt, modify, publish, distribute and communicate any Contract Intellectual Property for the limited purpose of providing the Goods and/or Services.

Pre-Existing Intellectual Property

- (c) All rights, ownership or otherwise, in respect of Pre-Existing Intellectual Property used by the VBA or the Supplier in connection with the Purchase Order remain the property of each party (or its licensors, if applicable).
- (d) The Supplier irrevocably and unconditionally grants to the VBA, 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 necessary for the VBA to enjoy, the Goods and/or Services or any items created by the Supplier (including Contract Intellectual Property) for any reasonable purpose contemplated by the Purchase Order.

Ownership of Data

- (e) All rights, including Intellectual Property Rights, in relation to Data will vest in the VBA upon creation of those rights.

11. Insurance

- (a) During the Term and for a period of five years after the Completion Date, the Supplier must obtain and

maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be directly or indirectly incurred and for which the Supplier is liable in connection with provision of the Goods and/or Services, including:

- Professional indemnity insurance of not less than \$5,000,000.00 for any one occurrence;
 - Public liability insurance in the amount of \$10,00,000.00 for any one occurrence;
 - Workers compensation as required by Law and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for death, injury or illness of or to any person employed by the Supplier; and
 - any other insurance which is required by the Laws or which may be reasonably required by the VBA having regard to the nature of the Goods and/or Services.
- (b) On request, the Supplier must provide to the VBA a certificate of currency as evidence that the Supplier holds any insurance required under these PO Terms.

12. Confidentiality, and privacy and data

protection

- (a) The Supplier and the Supplier's Personnel must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier hereby consents to the VBA publishing or otherwise making available information in relation to the Supplier (and provision of the Goods and/or Services) as may be required:
- for it to comply with its legal obligations as a government entity;
 - for it to comply with the Contracts Publishing System;
 - by the Auditor-General and/or any other Victorian government entity for the purposes of an audit or investigation, whether formal or informal; or
 - to comply with the Freedom of Information Act 1982 (Vic).
- (c) The Supplier is bound by and the Supplier must ensure that the Supplier's Personnel comply with the Privacy Laws with respect to any act done or practice engaged in by the Supplier or the Supplier's Personnel for the purposes of or in connection with the Purchase Order or these PO Terms, in the same way and to the same extent as the VBA or the State of Victoria.
- (d) Where the Supplier Supplies any Services to the VBA under the Purchase Order, the Supplier acknowledges that it is a contracted service provider (as defined in the Privacy Act) and warrants that it will, and will ensure that the Supplier's Personnel, at all times abide by and

comply with the IPP in relation to any acts or practices engaged in by the Supplier.

- (e) If the Supplier or any of the Supplier's Personnel are requested to disclose any information which would interfere with, or receives any complaint alleging an interference with, the privacy of an individual relating to Personal Information, the Supplier must immediately notify the VBA of that fact in sufficient time to enable the VBA to institute such proceedings as it may consider appropriate to protect the Personal Information.
- (f) The Supplier acknowledges that it will be bound by and will ensure that the Supplier's Personnel complies with the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the VBA, under or in connection with the Purchase Order.

13. Access

The Supplier must, and must ensure that the Supplier's Personnel at all times when present at premises owned or used by the VBA, take all reasonable steps to protect people and property, prevent nuisance, act in a safe and lawful manner and comply with any related policies referred to in clause 15(b).

14. Sub-contracting

- (a) The Supplier must not sub-contract any of its obligations under the Purchase Order or these PO Terms (whether in whole or in part), without the prior written consent of a Director or the Chief Executive Officer of the VBA (which may be given or withheld at the VBA's absolute discretion).
- (b) The Supplier acknowledges that even if the VBA provides the Supplier with written consent to a sub-contracting arrangement, the Supplier remains responsible to the VBA for the performance of any and all obligations under the Purchase Order and these PO Terms and will be liable for all acts and omissions of the sub-contractor or the sub-contractor's employees or contractors, as if those acts or omissions were the actions of the Supplier.

15. Compliance with Law and Policy

- (a) The Supplier must, in performing its obligations under the Purchase Order and these PO Terms, comply with the Laws affecting the provision of the Goods and/or Services by the Supplier or otherwise applicable to the Purchase Order.
- (b) Without limiting clause 15(a), at all times during the Term, the Supplier must, and must ensure that the Supplier's Personnel comply with such VBA policies and procedures as the VBA considers relevant (in its absolute discretion) having regard to the Goods

and/or Services to be Supplied under the Purchase Order including, but not limited to the VBA's:

- (i) Occupational Health and Safety Policy;
- (ii) Managing Discrimination, Harassment and Bullying Policy;
- (iii) Privacy Policy; and
- (iv) VBA Conflicts of Interest Policy.

16. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all Fees or other sums payable or consideration for a taxable supply made by the Supplier under or in connection with the Purchase Order are inclusive of GST.
- (c) Subject to the recipient being provided with a valid tax invoice in respect of a taxable supply, if GST is imposed on any supply made under or in connection with the Purchase Order, the recipient of that supply must pay to the supplier an amount equal to the GST payable in respect of the taxable supply, at the same time and in the same manner as the consideration payable for that supply.
- (d) For the avoidance of doubt, the VBA is not obliged to pay the Supplier GST in respect of a taxable supply made by the Supplier under or in connection with the Purchase Order unless the VBA is provided with a valid tax invoice for that taxable supply.

17. General

- (a) Where there is any conflict, ambiguity or inconsistency between the provisions contained in a Pre-Existing Supply Contract (if any), these PO Terms and/or the Purchase Order, to the extent of the conflict, ambiguity or inconsistency (as the case may be), the Pre-Existing Supply Contract (if any) shall have priority over the Purchase Order and these PO Terms, and the Purchase Order shall have priority over these PO Terms.
- (b) The Purchase Order and these PO Terms are governed by, and are to be construed in accordance with, the Laws in force in Victoria.
- (c) 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.
- (d) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership, and the Supplier does not have the right or authority to act on behalf of or bind the VBA.
- (e) Time is of the essence in relation to the Supply of the Goods and/or Services.

18. Entire Understanding

- (a) The Purchase Order and these PO Terms constitute the entire agreement in respect of the Supply of the Goods and/or Services.
- (b) Any terms or conditions the Supplier attempts to impose in connection with the Supply of the Goods and/or Services (whether in or attached to any quotation, tax invoice or other document or communication) or any variations to the Purchase Order or these PO Terms shall be null and void.
- (c) In Supplying the Goods and/or Services the Supplier has not relied on any representations made by the VBA apart from those expressly made in the Purchase Order and these PO Terms.

19. Interpretation

In these PO Terms, unless the context otherwise requires:

Commencement Date means the date specified in the Purchase Order as the date that the Supplier is required to commence the Supply of the Goods and/or Services or, if no date is specified, the date of the Purchase Order.

Completion Date means the date specified in the Purchase Order as the date that the Supplier must complete the Supply of the Goods and/or Services or, if no date is specified, the earliest date which is reasonably practicable having regard to the usual time that it takes to Supply such Goods and/or Services.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the VBA and includes, without limitation, any Personal Information and information designated by the VBA as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (1) which is in or subsequently enters the public domain other than as a result of a breach of these PO Terms;
- (2) which the Supplier can demonstrate was in its lawful possession prior to the date of the Purchase Order (contemporaneous evidence of which must be provided by the Supplier to the VBA);
- (3) which the Supplier can demonstrate was independently developed by the Supplier; or
- (4) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any Materials created by or on behalf

of the Supplier in the course of providing the Goods and/or Services.

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

Data means any data (including Personal Information), datasets or databases created (including by modification of existing data, datasets or databases) by or on behalf of the Supplier in the course of providing the Goods and/or Services.

Fees means the fixed fee payable to the Supplier for the provision of the Goods and/or Services as specified in the Purchase Order.

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

Goods and Services means the Goods and/or Services to be Supplied by the Supplier as specified in the Purchase Order.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (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.

IPP means the Information Privacy Principles set out in Schedule 1 of the Privacy Act.

Laws means the law in force in Australia and Victoria, including common law, legislation and subordinate legislation, and ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

Material includes, but is not limited to, any report, memorandum or advice required by the VBA or provided to the VBA by the Supplier as part of, or in connection with, the Supply of the Goods and/or Services.

Personal Information has the same meaning as it has under the Privacy Act.

PO Terms means this document entitled Purchase Order Terms and Conditions, which sets out the

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terms and conditions on which the VBA has agreed to purchase, and the Supplier has agreed to Supply, the Goods and/or Services.

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

Pre-Existing Supply Contract means a contract for the Supply of all or any part of the Goods and/or Services that was entered into by the VBA and the Supplier prior to the date of the Purchase Order and, as at the date of the Purchase Order, is afoot and binding on the parties.

Privacy Act means the Privacy and Data Protection Act 2014 (Vic).

Privacy Laws means:

- (1) the Privacy Act;
- (2) the IPPs; and
- (3) the VBA's "Privacy Policy", as amended from time to time.

Protective Data Security Standard means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).

Purchase Order means a form of order for Goods and/or Services entitled 'Purchase Order', issued by the VBA, and includes any document, plan or material attached thereto which contains any specifications, particulars, designs, scope of works, timeframes, delivery addresses or other provisions of relevance to the Supply of the Goods and/or Services.

Supplier means the entity named on the Purchase Order as the entity Supplying the Goods and/or Services.

Supplier's Personnel means all the Supplier's:

- (1) employees, partners, directors and shareholders; and
- (2) agents, consultants and contractors (including all their employees) which are involved in any way in the Supply of the Goods and/or Services (if any).

Supply means:

- (1) in respect of Goods, the supply and delivery of the Goods to the VBA; and
- (2) in respect of Services, the performance and completion of the Services,

in accordance with the Purchase Order and these PO Terms.

Term means the period commencing on the Commencement Date and ending on the earlier of the Completion Date as specified in the Purchase Order or the date on which the VBA cancels the Purchase Order.

VBA means the Victorian Building Authority (ABN 78 790 711 883), being a body corporate established under the *Building Act 1993* (Vic), of 733 Bourke Street, Docklands, Victoria 3008 and its authorised agents, employees, heirs and successors