

PURCHASE ORDER WORKS CONDITIONS

1 FORMATION OF CONTRACT

The Principal has issued a Purchase Order for the Works. The Purchase Order creates a contract between the Supplier and the Principal on the terms referred to in the definition of the word "Contract" in clause 2.

2 DEFINITIONS

In the Contract, the following terms shall, if not inconsistent with the context, have the meanings indicated:

"Contract" means the Contract evidenced by the Purchase Order Works Conditions, the Purchase Order and any other documents to which reference is made in the Purchase Order as forming part of the Contract;

"GST" means the goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"OH&S" means occupational health and safety;

"Principal" means the Greater Geelong City Council;

"Purchase Order" means the purchase order referred to in clause 1 which initiates the Contract;

"Site" means the location where the Works are to be performed, as indicated in the Purchase Order;

"Supplier" means the party nominated as such in the Purchase Order; and

"Works" means -

- 2.1 the performance of work;
- 2.2 the supply of materials; and
- 2.3 all other things required to be done -

under the Contract by the Supplier as indicated in the Purchase Order and includes any matters reasonably to be inferred from the Contract or trade usage.

3 INTERPRETATION

3.1 In the Contract, unless inconsistent with the context:

- 3.1.1 headings and underlinings are for convenience only and do not affect interpretation;
- 3.1.2 words expressed in the singular include the plural and vice versa;
- 3.1.3 where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- 3.1.4 a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;

- 3.1.5 a reference to a party in a document includes that party and its legal representatives, successors, permitted assigns, receivers, receivers and managers, liquidators and administrators;
- 3.1.6 a reference to any Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act,
- 3.1.7 a reference to any Act, regulation, planning scheme, proclamation, local law or by-law includes all Acts, regulations, planning schemes, proclamations, local laws and by-laws amending, consolidating or replacing same;
- 3.1.8 a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document; and
- 3.1.9 a reference to the Supplier includes, where appropriate, the Supplier's:
 - (a) employees; and
 - (b) sub-contractors and the employees of such sub-contractors.
- 3.2 The Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Works are to be performed by the Supplier. All previous negotiations and understandings between the parties on this subject matter shall cease to have effect from the date of the Contract.
- 3.3 The law of the State of Victoria governs the Contract and any legal proceedings under the Contract.
- 3.4 If the Supplier consists of two or more parties, the Contract shall bind each of them severally and jointly.
- 3.5 If a provision, or part of a provision, in this Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision, or part of a provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, or part of a provision, as required in this clause, that provision, or part of a provision, is severable without affecting the validity or enforceability of the remainder of the Contract.

4 THE WORKS

- 4.1 The Supplier must perform the Works:
 - 4.1.1 by any date stated in the Purchase Order or, if no date is stated, within a reasonable time;
 - 4.1.2 in a diligent manner;
 - 4.1.3 in conformity with all applicable standards issued by Standards Australia and the International Organization for Standardisation;
 - 4.1.4 in accordance with the principles of quality assurance;
 - 4.1.5 in a proper and workmanlike manner;
 - 4.1.6 with a level of care, skill, knowledge and judgement in accordance with best industry practice;

- 4.1.7 in a manner which meets and is fit for the Principal's intended purpose in having the Works performed;
 - 4.1.8 using only new materials, unless specified otherwise in the Purchase Order; and
 - 4.1.9 in accordance with the Contract.
- 4.2 The Principal must give the Supplier such access to the Site as the Supplier reasonably requires to perform the Works. The Contractor must not use, or permit the Site to be used, for any purpose other than the performance of the Works. The Supplier must take all reasonable steps to ensure the security of the Site. The Supplier must comply with all directions of the Principal with respect to the Site and the behaviour of the Supplier's staff at the Site. The Supplier must keep the Site in a clean and tidy condition.
- 4.3 The Supplier must take all measures necessary to avoid, if possible, or otherwise to minimise, any noise, dust, disturbance or nuisance at the Site or adjacent to the Site.
- 4.4 The Supplier must promptly restate any damage arising during the performance of the Works.
- 4.5 The Supplier must promptly rectify any defect in the Works or other breach of the Contract of which it is given notice by the Principal.
- 4.6 The Supplier will remain responsible for the performance of the Works notwithstanding the acceptance or review of the Works, or any element of the Works, by the Principal or any member of the Principal's staff.
- 4.7 If the Purchase Order names the persons who are to perform the Works, the Supplier must ensure that the Works are performed by and only by the named persons.
- 4.8 The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Works or the Contract.

5 VARIATIONS

The Works may only be varied by written direction of the Principal.

Prior to the direction of any variation, the parties must agree on any adjustment to the amount payable under the Contract with respect to the variation or the mechanism by which such adjustment must be calculated.

6 DELAYS

If the Supplier is delayed in performing the Works by -

- 6.1 any act or omission of the Principal or the Principal's staff or agents; or
- 6.2 any other cause beyond the reasonable control of the Supplier -

the Supplier must give immediate written notice to the Principal and the date for completion of the Works must be extended by such period as the Principal, acting fairly and reasonably, considers appropriate. The Principal must give notice to the Supplier of its determination.

7 FINANCIAL PROVISIONS

- 7.1 If the Supplier complies with its obligations under the Contract, the Principal must, unless different terms of payment are specified in the Purchase Order, make the payment or payments specified in the Purchase Order within 30 days of the beginning of the month following its receipt of a valid tax invoice for the amount payable. The Principal will not make payment on any tax invoice, unless it specifies the Purchase Order number issued by the Principal. Unless otherwise specified in the Purchase Order, the Supplier must not forward a tax invoice to the Principal until all of the Works have been completed.
- 7.2 If a payment under clause 7.1 is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("**GST Amount**"). The GST Amount must be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST. The Supplier must provide to the Principal a valid tax invoice prior to the time of, and as a condition of, payment of any GST Amount.
- 7.3 All payments to the Supplier will be made by way of electronic funds transfer. The Supplier must, prior to the commencement of the Works, provide details of the Supplier's BSB and bank account to enable payments to be made by this means.

8 DEFAULTS AND TERMINATION

- 8.1 If the Supplier defaults in the performance or observance of any obligation it has under the Contract, the Principal may terminate the Contract without prior notice to the Supplier. If the Principal terminates the Contract under clause 8.1, the Principal shall not be liable to make any payments to the Supplier with respect to the termination of the Contract or the performance of the Works.
- 8.2 The Principal may terminate the Contract at any time by written notice to the Contractor. If the Principal terminates the Contract under clause 8.2, the Principal must make reasonable payment to the Contractor for the performance of the Works until the date of the termination of the Contract.

9 SUB-CONTRACTING AND ASSIGNMENT

The Supplier must not sub-contract the whole or any portion of its obligations under the Contract or assign any of its rights under the Contract, except with the prior written consent of the Principal. Except in so far as any consent given by the Principal under clause 9 expressly provides otherwise, no sub-contractor or assignee will have any rights under the Contract against the Principal or be entitled to receive any payments under the Contract from the Principal.

10 INSURANCES

- 10.1 The Supplier must, at all times while performing the Works, be the holder of:
- 10.1.1 a current public liability policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$10,000,000; and
 - 10.1.2 a WorkCover policy of insurance with respect to all of its employees.
- 10.2 The Supplier must:
- 10.2.1 ensure that any sub-contractor to the Supplier effects insurances in the terms stated in clauses 10.1.1 and 10.1.2; and

- 10.2.2 provide the Principal with certificates of currency in respect of the insurances referred to in clauses 10.1.1 and 10.1.2 within two (2) days after a written request being made by the Principal.

11 INDEMNITY

The Supplier must indemnify, keep indemnified and hold harmless the Principal, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from any negligent act or omission, breach of statute, breach of intellectual property rights or breach of the Contract in the performance or purported performance of the Supplier's obligations under the Contract. The Supplier's obligation to indemnify the Principal under clause 11 shall not apply to the extent that any liability is caused by any negligent act or omission of the Principal.

12 OCCUPATIONAL HEALTH AND SAFETY

The Principal is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health.

The Supplier must itself, and must ensure that any sub-contractors of the Supplier, at all times identify and take all necessary precautions for the health and safety of all persons, including the Supplier's employees and sub-contractors, staff of the Principal and members of the public, who may be affected by the performance of the Works.

The Supplier must immediately comply with any and all directions by the Principal relating to OH&S.

The Supplier must -

12.1 comply with; and

12.2 ensure that its employees, sub-contractors and agents comply with -

any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Works.

The Supplier must prepare an OH&S management plan (including a safe work method statement) for the performance of the Works and submit it to the Principal for approval. The Contractor must not commence the performance of the Works until the OH&S management plan is approved, in writing, by the Principal.