



# Standard Terms & Conditions for the Provision of Goods (single purchase)



## 1 Supply of Goods

- (a) The Supplier must supply the Goods to the Authority in accordance with the Specification and otherwise in accordance with these Conditions.
- (b) The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by the Authority or deemed to have occurred.

## 2 Acceptance or rejection of Goods

- (a) If the Goods conform with the Specification or sample, the Authority will promptly accept the Goods in writing. If the Goods do not conform, the Authority may reject the Goods within 30 days by written notice giving reasons. If the Authority does not accept or reject the Goods within 30 days of delivery, delivery will be deemed to have then occurred.
- (b) The Supplier must at its cost collect and remove any Goods that have been rejected as soon as practicable or the Authority may return the Goods to the Supplier at the Supplier's expense.

## 3 Invoicing and payment

- (a) The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.
- (b) The Supplier must submit to the Authority a tax invoice for the Purchase Price following the supply of the Goods which contains 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. The tax invoice must be sent to the address specified in the Purchase Order.
- (c) The Authority will pay the invoiced amount within 30 days of 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 in dispute. The parties will endeavour to resolve any such dispute.
- (d) Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (e) 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)*.

## 4 Title and risk

Title in the Goods will pass to the Authority upon payment for the Goods. Risk in the Goods will pass to the Authority when the Goods are delivered to the Delivery Point.

## 5 Warranties

The Supplier warrants to the Authority that:

- (a) **(Title)** it has the right to sell and transfer title to and property in the Goods to the Authority;
- (b) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods;
- (c) **(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
- (d) **(Goods)** the Goods:
  - (i) are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - (ii) conform in all respects with the Specification;
  - (iii) are free from defects (including defects in installation); and

- (iv) are of merchantable quality and comply with all Laws.

Further, the Supplier must obtain, where provided for in the Specification, for the Authority the benefit of any manufacturer's warranties.

## 6 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 deliver the Goods in accordance with the Agreement or any other breach of the Agreement.

## 7 Intellectual Property Rights

The Supplier grants to the Authority a non-exclusive, perpetual, royalty-free licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Authority the full use and enjoyment of those Goods and the Supplier must, upon request by the Authority, do all things as may be necessary (including executing any documents) to give full effect to such rights.

## 8 Insurance

- (a) The Supplier must obtain and maintain insurance cover 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 supply of the Goods, including product liability insurance to the value of the Purchase Order and, if applicable, public liability insurance. Product liability insurance must match any warranty period or 3 years after acceptance of the Goods, whichever is the greater.
- (b) On request, the Supplier must provide the Authority with evidence of the currency of any insurance it is required to obtain.

## 9 Confidentiality and privacy

- (a) 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.
- (b) The Supplier hereby consents to the Authority publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods) 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)*.
- (c) 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 supply of the Goods in the same way as the Authority would have been bound had the relevant act been done or engaged in by the Authority.

## 10 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 in a safe and lawful manner and comply with the safety standards and policies of the Authority (as notified to the Supplier).

## 11 Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the supply of the Goods without the prior written consent of the Authority (which may be given or withheld in its absolute discretion).
- (b) 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.

## 12 Compliance with Law

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

## 13 GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) 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.

## 14 General

- (a) 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.
- (b) Time is of the essence in relation to the supply of the Goods.

## 15 Interpretation

In these Conditions, unless the context otherwise requires:

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

**Authority** means the Victoria State Emergency Service. 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 Supply of Goods.

**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:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or

- (d) 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 departments, as amended from time to time.

**Delivery Point** means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

**Goods** means the goods (or any of them) specified in the Purchase Order.

**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:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions; and
- (c) 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).

**Purchase Order** means any form of order or acceptance from the Authority for the supply of the Goods which incorporates these Conditions.

**Purchase Price** means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered.

**Specification** means the specifications to which the Goods must comply, as set out in the Purchase Order or as otherwise incorporated in the Agreement.

**State** means the Crown in the right of the State of Victoria.

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

**Time for Delivery** means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

**Unit Price** means the price per item of each of the Goods, as specified in the Purchase Order.