

THE CITY OF
GREATER GEELONG

PURCHASE ORDER TERMS & CONDITIONS

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1. AGREEMENT

- 1.1 On the Supplier accepting the Purchase Order or commencing to supply Goods and/or Services in accordance with the Purchase Order, an Agreement is formed between the City and the Supplier comprising the Purchase Order (including any documents incorporated into it by reference) and these Terms and Conditions.
- 1.2 Any terms and conditions in any document issued by the Supplier are excluded and do not form part of the Agreement (even if such terms are included in a document incorporated into a Purchase Order by reference).
- 1.3 If there is any inconsistency between these Terms and Conditions and the Purchase Order, these Terms and Conditions will prevail to the extent of that inconsistency.

2. SUPPLY

- 2.1 The Supplier must supply the Goods and/or Services to the City in accordance with the Agreement by the date and to the location specified in the Purchase Order (or as otherwise directed by the City). The Supplier must immediately notify the City of any actual or anticipated delay in supply.
- 2.2 The Supplier, and all Goods and/or Services supplied by the Supplier, must comply with all laws and with any specifications or requirements of the City stated or referenced in the Purchase Order.
- 2.3 All Goods supplied must be new, of merchantable quality, free from any defects and fit for the purpose for which they are supplied. Delivery of Goods will not be taken to have occurred until acknowledged in writing by the City. Title in Goods supplied will pass to the City on delivery. Risk in Goods supplied will pass to the City on delivery.
- 2.4 All Services must be supplied using a standard of care, skill and diligence as would reasonably be expected from an expert and experienced supplier of services similar to the Services. The Supplier must supply all labour, materials and equipment required to supply the Services. The Supplier must comply with the City's *Code of Conduct*, *Child Safe Standards Policy* and *CitySafe Heat and UV Protection Procedure* and any other policies of the City notified or made available to the Supplier.
- 2.5 When entering the premises of the City, the Supplier must 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 City (as notified to the Supplier).
- 2.6 The City may reject any Goods and/or Services that do not comply with the requirements in the Agreement by giving notice to the Supplier. The City is not liable to pay for any Goods and/or Services rejected under this clause and the Supplier must, at its own cost, remove rejected Goods and/or resupply rejected Services as directed by the City.

3. PRICE AND PAYMENT

- 3.1 The price for the Goods and/or Services is the price specified in the Purchase Order and is fixed for the term of the Agreement. Expenses may only be charged if specified in the Purchase Order. Unless the Purchase Order states otherwise, the price is inclusive of all costs incurred by the Supplier to supply the Goods and/or Services (including labour, material, packaging, transport, delivery, insurance, loading, unloading and storage) and all applicable taxes (excluding GST).
- 3.2 Unless the Purchase Order states otherwise, the Supplier must invoice the City on or after delivery of the Goods and/or completion of the Services. Invoices must contain:
 - 3.2.1 the Purchase Order number; and
 - 3.2.2 any other information requested by the City to justify the amount claimed.
- 3.3 Invoices will be paid by the City within 30 days of the end of the month in which the invoice is issued (or earlier, if agreed with the City) unless the invoice is disputed. If the City disputes an invoice:

- 3.3.1 payment of the disputed amount is not required until the dispute is resolved; and
- 3.3.2 the parties must act reasonably and endeavour to resolve the dispute.
- 3.4 Payment of an invoice is payment on account and not evidence that the Goods and/or Services have been supplied in accordance with the Agreement.

4. TERM AND CANCELLATION

- 4.1 The Agreement commences on the date that the Supplier accepts the Purchase Order or commences supplying the Goods and/or Services (whichever is earlier) and continues until the Goods and/or Services are supplied as required by the Agreement (or until all Goods and/or Services are cancelled in accordance with clause 4.2 or the Agreement is terminated in accordance with clause **Error! Reference source not found.**).
- 4.2 The City may cancel supply of the Goods and/or Services (or vary or reduce the quantity of Goods and/or Services to be supplied) no less than 28 days before delivery by giving notice to the Supplier. If the City gives such notice to the Supplier:
 - 4.2.1 the City must pay for all Goods and/or Services supplied as required by the Agreement before the notice is given but is not liable to pay any further amounts to the Supplier; and
 - 4.2.2 the Supplier must refund to the City (as a debt due and payable) any amounts paid by the City for Goods and/or Services that have not been supplied as required by the Agreement before the notice is given.
- 4.3 Without limiting any other rights, if the Supplier defaults in the performance or observance of any obligation it has under the Agreement:
 - 4.3.1 if in the City's reasonable opinion, the default cannot be remedied, the City may terminate the Agreement immediately by notice to the Supplier; or
 - 4.3.2 if in the City's reasonable opinion, the default can be remedied, it may give the Supplier a notice requiring it to remedy the default and/or overcome its effects. If the Supplier fails to comply with the notice within 28 days, the City may terminate the Agreement immediately by notice to the Supplier.
- 4.4 Without limitation, the following clauses survive cancellation or expiry of the Agreement: 2.6, 5, 6, 7, 8, 9, 10, 12.2, 12.9, 13.7.1, 13.8.

5. WARRANTIES

- 5.1 The Supplier warrants to the City that:
 - 5.1.1 it has the power to enter into and perform its obligations under the Agreement;
 - 5.1.2 it is not engaged in any business or activity or subject to any obligation which conflicts with its obligations under the Agreement;
 - 5.1.3 it has the right to sell and transfer title to Goods to the City free of any encumbrances; and
 - 5.1.4 it is entitled to use and deal with any intellectual property rights used by it in connection with the Agreement.
- 5.2 The Supplier assigns to the City the benefit of, and must assist the City to enforce, any manufacturer warranties or guarantees applying to the Goods.
- 5.3 Without limiting any of the City's other rights, for a period of 90 days after the City accepts Goods (or such other period as specified in the Purchase Order), the Supplier must, at its own cost, remedy any defects in the Goods notified to it by the City within 7 days of receiving the City's notice (or replace such Goods).

6. INSURANCE

- 6.1 The Supplier must effect and maintain insurance coverage at all relevant times sufficient to cover any loss or damage that the Supplier may be liable for under the Agreement, including at least the insurances specified below, and provide evidence of such insurance to the City on request:
- 6.1.1 \$20 million public liability insurance;
 - 6.1.2 workers compensation insurance required by law;
 - 6.1.3 if the Purchase Order includes professional services, \$20 million professional indemnity insurance;
 - 6.1.4 if the Purchase Order includes works, works insurance for the full value of the works; and
 - 6.1.5 if the Purchase Order includes supply of products manufactured by the Supplier, \$5 million product liability insurance.

7. LIABILITY

- 7.1 The Supplier indemnifies the City from and against all actions, claims, losses, damages, penalties, demands or costs suffered or incurred by the City in connection with any negligent act or omission of the Supplier, its employees, agents or subcontractors, or any breach of the Agreement by the Supplier (including any delay in supplying the Goods and/or Services).
- 7.2 The Supplier's obligation to indemnify the City will not apply to the extent that any liability is directly caused by any negligent act or omission of the City.
- 7.3 Neither party will have any liability to the other party in connection with any indirect or consequential losses incurred by the other party in connection with this Agreement.
- 7.4 The aggregate liability of the City to the Supplier in connection with the Agreement is limited to an amount equal to the amount payable by the City in accordance with clause 3.

8. CONFIDENTIALITY AND PRIVACY

- 8.1 The Supplier must not, during or after the Agreement, use or disclose, or cause or permit the use or disclosure of, any Confidential Information except as required to perform the Agreement.
- 8.2 At the request of the City, the Supplier must return or destroy (at the City's election) all Confidential Information.

9. PRIVACY

- 9.1 The Supplier must comply with the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014 (Vic)* with respect to any act done or practice engaged in by the Supplier under or in connection with the Agreement in the same way and to the same extent as the City would have been bound had the relevant act or practice been done or engaged in by the City.
- 9.2 Without limiting this obligation, the Supplier must not transfer any 'personal information' (as defined in the *Privacy and Data Protection Act 2014 (Vic)*) handled in connection with the Agreement outside Victoria without the prior written consent of the City.

10. INTELLECTUAL PROPERTY RIGHTS

Unless the Purchase Order provides otherwise, the Supplier grants to the City a non-exclusive, perpetual, irrevocable, royalty-free and transferable licence to use any intellectual property rights in the Goods and/or Services supplied under the Agreement.

11. SUBCONTRACTING

- 11.1 The Supplier must not subcontract any of its obligations under the Agreement without the prior written consent of the City.
- 11.2 If the City consents to a subcontracting arrangement, the Supplier will remain liable for the performance of the Agreement and for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

12. SOFTWARE

12.1 Application and interpretation

This clause only applies if the Purchase Order is for the supply of Software. If there is any inconsistency between this clause 12 and any other clause in these Terms and Conditions, this clause 12 will prevail to the extent of that inconsistency. This clause survives cancellation or expiry of the Agreement.

In this clause:

- 12.1.1 **Acceptance Tests** means tests determined by the City to be appropriate to demonstrate that the Software conforms with its Specifications.
- 12.1.2 **Defect** means a failure of the Software to conform with its Specifications.
- 12.1.3 **Documentation** means any documentation supplied with the Software.
- 12.1.4 **Licence Term** means the licence term or period specified in the Purchase Order (or, if no term or period is specified, perpetual).
- 12.1.5 **Software** means software specified in the Purchase Order to be licensed to the City under the Agreement (which is also a Good for the purposes of the Agreement).
- 12.1.6 **Specification** means any specifications or requirements for the Software stated or referenced in the Purchase Order.
- 12.1.7 **Support Services** means Services to maintain and support the Software, including the Services described in clause 12.6.3.
- 12.1.8 **System** means the City's existing computer systems, software and hardware.
- 12.1.9 **Warranty Period** means the period commencing on the date that the Software is accepted by the City under clause 12.5.3 and continuing for the period specified in the Purchase Order (or, if no period is specified, for 90 days).

12.2 Licence

The Supplier grants to the City an irrevocable, non-exclusive licence for the Licence Term to:

- 12.2.1 install and use the Software on the System;
- 12.2.2 to copy the Software into machine-readable form to the extent permitted under the *Copyright Act 1968* (Cth);
- 12.2.3 to use, reproduce, revise, adapt and modify the Documentation; and
- 12.2.4 to make the number of copies of the Software as specified in the Purchase Order.

12.3 Installation and configuration

- 12.3.1 The Supplier must install and configure the Software and provide training to the City's personnel at the times and to the extent specified in the Purchase Order. Without limiting its

obligations under the Agreement, the Supplier must ensure that the Software is supplied, delivered, installed, fully integrated, configured and properly interfaced with the System.

12.3.2 The City will provide the Supplier with all reasonable assistance required by the Supplier to facilitate the Supplier's delivery and installation of the Software.

12.4 Warranties

12.4.1 The Supplier warrants to the City that:

12.4.1.1 the Software conforms with its Specifications;

12.4.1.2 the function and performance of the System will not be materially and adversely affected following the installation and integration of the Software;

12.4.1.3 the use of the Software by the City in accordance with the Agreement will not infringe the intellectual property rights of any third party; and

12.4.1.4 no virus will be introduced into the System as a result of the Software or any act or omission by the Supplier in providing a Service.

12.4.2 The Supplier must promptly rectify any Defect in the Software at no charge to the City if the Supplier becomes aware of the Defect during the Warranty Period.

12.5 Acceptance

12.5.1 The Software is subject to acceptance by the City in accordance with clauses 12.5.2 to 12.5.5.

12.5.2 The Supplier must notify the City when the Software is ready for Acceptance Tests.

12.5.3 After receiving notice from the Supplier under clause 12.5.2, the City will conduct Acceptance Tests to assess if the Software conforms with its Specifications. Within a reasonable time after completing Acceptance Tests, the City will notify the Supplier that it either:

12.5.3.1 accepts the Software; or

12.5.3.2 rejects the Software (which the City may only do if the Software does not conform with its Specifications). If the City rejects the Software, the Supplier must resupply the Software and related Services at no cost to the City until the Software conforms with its Specifications and is accepted by the City. If the City does not accept resupplied Software within 30 days of the City's rejection notice, the City may cancel this Agreement by notice to the Supplier (and the Supplier must refund all amounts paid by the City in connection with the Software as a debt due and payable to the City).

12.5.4 The Supplier must provide reasonable assistance to the City at its own cost (unless otherwise specified in the Purchase Order) in connection with the conduct of Acceptance Tests.

12.5.5 There will be no deemed acceptance of the Software, regardless of whether or not the City has used the item in a production environment.

12.6 Support

12.6.1 To the extent specified in the Purchase Order, the Supplier must provide the City with the Support Services.

12.6.2 The Support Services will commence on expiry of the Warranty Period (unless another date is specified in the Purchase Order) and will be renewable as specified in the Purchase Order.

12.6.3 Unless specified to the contrary in the Purchase Order, the Support Services must include:

- 12.6.3.1 ensuring, by responding to the City's notification of Defects, that the Software remains in conformity with the Specifications;
 - 12.6.3.2 ensuring the provision of a help desk service (if any) as specified in Purchase Order; and
 - 12.6.3.3 ensuring the correction of Documentation so that such Documentation is at all times complete, accurate and up to date.
- 12.6.4 Unless specified to the contrary in the Purchase Order, the Support Services do not include services involving:
- 12.6.4.1 correction of Defects caused by:
 - (a) use of the Software in a manner which breaches the City's obligations under the Agreement;
 - (b) failure by the City to operate the Software in accordance with the Specifications; or
 - (c) failure by the City to use the Software in accordance with the Documentation;
 - 12.6.4.2 equipment maintenance; or
 - 12.6.4.3 any other service expressly excluded in the Purchase Order.

12.7 Documentation

The Supplier must ensure that the Documentation is:

- 12.7.1 of a high standard in terms of presentation, accuracy and scope;
- 12.7.2 the most current, accurate and up-to-date versions available at the date of the Agreement; and
- 12.7.3 published in English with all key terms, words and symbols adequately defined or explained.

12.8 Upgrades and new releases

Unless otherwise specified in the Purchase Order, the Supplier must make available all upgrades to, and new releases of, the Software which become available during the Licence Term at no cost to the City. The City is not obliged to accept such upgrades or new releases.

12.9 Indemnity

- 12.9.1 The Supplier indemnifies the City from and against all actions, claims, losses, damages, penalties, demands or costs (excluding indirect or consequential losses) suffered or incurred by the City in connection with a claim made by a third party against the City in which it is alleged that any Software or Service (including the City's use of that Software or Service) infringes the intellectual property rights or moral rights of a third party.
- 12.9.2 If a claim of infringement of intellectual property rights or moral rights is made or threatened by a third party, the City will allow the Supplier, at the Supplier's cost, to either:
 - 12.9.2.1 obtain for the City the right to continued use of the Software or Service; or
 - 12.9.2.2 replace or modify the Software or Service so that the alleged infringement ceases so long as the Software or Service continues to provide the City with equivalent functionality and performance as specified in the Specifications.

13. HARDWARE

13.1 Application and interpretation

This clause only applies if the Purchase Order is for the supply of Hardware. If there is any inconsistency between this clause 13 and any other clause in these Terms and Conditions, this clause 13 will prevail to the extent of that inconsistency.

In this clause:

- 13.1.1 **Acceptance Tests** means tests determined by the City to be appropriate to demonstrate that the Hardware conforms with its Specifications.
- 13.1.2 **Defect** means a failure of the Hardware to conform with its Specifications.
- 13.1.3 **Documentation** means any documentation supplied with the Hardware.
- 13.1.4 **Firmware** means software, programs or other code provided with or within the Hardware.
- 13.1.5 **Hardware** means computer hardware specified in the Purchase Order (which is a Good for the purposes of the Agreement).
- 13.1.6 **Maintenance Services** means Services to maintain the Hardware.
- 13.1.7 **System** means the City's existing computer systems, software and hardware.
- 13.1.8 **Specification** means any specifications or requirements for the Hardware stated or referenced in the Purchase Order.
- 13.1.9 **Warranty Period** means the period commencing on the date that the Hardware is accepted by the City under clause 13.4.4 and continuing for the period specified in the Purchase Order (or, if no period is specified, for 90 days).

13.2 Installation and configuration

- 13.2.1 The Supplier must install and configure the Hardware and provide training to the City's personnel at the times and to the extent specified in the Purchase Order. Without limiting its obligations under the Agreement, the Supplier must ensure that the Hardware is supplied, delivered, installed, fully integrated, configured and properly interfaced with the System.
- 13.2.2 The City will provide the Supplier with all reasonable assistance required by the Supplier to facilitate the Supplier's delivery and installation of the Hardware.

13.3 Warranties

- 13.3.1 The Supplier warrants to the City that:
 - 13.3.1.1 the Hardware conforms with its Specifications;
 - 13.3.1.2 the function and performance of the System will not be materially and adversely affected following the installation and integration of the Hardware;
 - 13.3.1.3 the use of the Hardware by the City in accordance with the Agreement will not infringe the intellectual property rights of any third party; and
 - 13.3.1.4 no virus will be introduced into the System as a result of the Hardware or any act or omission by the Supplier in providing a Service.
- 13.3.2 The Supplier must promptly rectify any Defect in the Hardware at no charge to the City if the Supplier becomes aware of the Defect during the Warranty Period.

13.4 Acceptance

- 13.4.1 The Supplier must complete its own commissioning tests of all Hardware and, on the successful completion of those tests, must give the City notice that such tests have been successfully completed.
- 13.4.2 The Hardware is subject to acceptance by the City in accordance with clauses 13.4.3 to 13.4.5.
- 13.4.3 The Supplier must notify the City when the Hardware is ready for Acceptance Tests.
- 13.4.4 After receiving notice from the Supplier under clause 13.4.1, the City will conduct Acceptance Tests to assess if the Hardware conforms with its Specifications. Within a reasonable time after completing Acceptance Tests, the City will notify the Supplier that it either:
- 13.4.4.1 accepts the Hardware; or
 - 13.4.4.2 rejects the Hardware (which the City may only do if the Hardware does not conform with its Specifications). If the City rejects the Hardware, the Supplier must resupply the Hardware and related Services at no cost to the City until the Hardware conforms with its Specifications and is accepted by the City. If the City does not accept resupplied Hardware within 30 days of the City's rejection notice, the City may cancel this Agreement by notice to the Supplier (and the Supplier must refund all amounts paid by the City in connection with the Hardware as a debt due and payable to the City).
- 13.4.5 The Supplier must provide reasonable assistance to the City at its own cost (unless otherwise specified in the Purchase Order) in connection with the conduct of Acceptance Tests.

13.5 Maintenance

- 13.5.1 To the extent specified in the Purchase Order, the Supplier must provide the City with the Maintenance Services.
- 13.5.2 The Maintenance Services will commence on expiry of the Warranty Period (unless another date is specified in the Purchase Order) and will be renewable as specified in the Purchase Order.
- 13.5.3 The City will cooperate with the Supplier by providing access and facilities as reasonably necessary to enable the Supplier to supply the Maintenance Services.

13.6 Documentation

The Supplier must ensure that the Documentation is:

- 13.6.1 of a high standard in terms of presentation, accuracy and scope;
- 13.6.2 the most current, accurate and up-to-date versions available at the date of the Agreement; and
- 13.6.3 published in English with all key terms, words and symbols adequately defined or explained.

13.7 Firmware

- 13.7.1 The Supplier grants to the City a perpetual, irrevocable, non-exclusive licence to use the Firmware to enable the Hardware to function in accordance with its Specifications.
- 13.7.2 The Supplier must make available all upgrades to, and new releases of, the Firmware that become available during the period specified in the Purchase Order, or if no period is specified, during the Warranty Period, at no cost to the City. The City is not obliged to accept such upgrades or new releases.

13.8 Indemnity

- 13.8.1 The Supplier indemnifies the City from and against all actions, claims, losses, damages, penalties, demands or costs (excluding indirect or consequential losses) suffered or incurred by the City in connection with a claim made by a third party against the City in which it is alleged that any Hardware or Firmware (including the City's use of that Hardware or Firmware) infringes the intellectual property rights or moral rights of a third party.
- 13.8.2 If a claim of infringement of intellectual property rights or moral rights is made or threatened by a third party, the City will allow the Supplier, at the Supplier's cost, to either:
- 13.8.2.1 obtain for the City the right to continued use of the Hardware or Firmware; or
 - 13.8.2.2 replace or modify the Hardware or Firmware so that the alleged infringement ceases so long as the Hardware or Firmware continues to provide the City with equivalent functionality and performance as specified in the Specifications.

14. GST

- 14.1 Terms used in this clause have meanings given to them in the GST Act.
- 14.2 If GST is payable on any supply made by a supplier under the Agreement (**GST Amount**), the recipient must pay to the supplier an additional amount equal to the GST payable on the taxable supply in the same time and in the same manner as payment for the taxable supply is required to be made.
- 14.3 The supplier must provide a tax invoice to the recipient before the supplier is entitled to payment of the GST Amount.

15. GENERAL

- 15.1 The Agreement may only be varied with the City's written consent.
- 15.2 All notices given under the Agreement must be in writing.
- 15.3 The Supplier must not assign or novate the Agreement without the City's written consent.
- 15.4 The Agreement contains the entire agreement between the parties in connection with its subject matter.
- 15.5 The Agreement is governed by the laws in force in the State of Victoria.
- 15.6 The parties are independent contractors. No relationship of employment, agency, partnership or joint venture is created by the Agreement.
- 15.7 The City may give or withhold any consent or approval, or exercise any discretion, under the Agreement in its absolute discretion unless express provision to the contrary is made.

16. INTERPRETATION

In this Agreement:

- 16.1 **Agreement** means the agreement between the City and the Supplier for the supply of the Goods and/or Services, comprising these Terms and Conditions and the Purchase Order.
- 16.2 **Confidential Information** means any confidential information of the City including any information designated by the City as confidential or which the Supplier ought reasonably know is confidential, but excludes information in the public domain.
- 16.3 **City** means Greater Geelong City Council ABN 18 374 210 672.
- 16.4 **Goods** means the goods (or any of them) specified in the Purchase Order.
- 16.5 **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- 16.6 **Purchase Order** means a purchase order issued by the City to the Supplier which refers to or attaches these Terms and Conditions.
- 16.7 **Services** means the services described in the Purchase Order.
- 16.8 **Supplier** means the person to whom the Purchase Order is issued by the City.