

1. Definitions:

In these terms and conditions, unless the context otherwise requires -

Agreement means the agreement formed between the Parties upon the Supplier's acceptance of the Purchase Order for supply of the Products and/or Services stated in the Purchase Order. To remove any doubt, the Agreement includes any such Purchase Order and acceptance thereof.

Business Day means any day which is not a weekend day or a public holiday in Perth, Western Australia.

Contractor includes Contractor, consultant, subcontractor or sub-consultant at any tier.

GST Act has the same meaning as in sec. 195.1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Law means any rule or requirement of or under a statute, subsidiary legislation, the common law or equity.

Material means any written or recorded material which relates to the Products and/or Services provided, including their enjoyment, use, maintenance and care.

Moral Rights means moral rights as defined in the *Copyright Act 1968* (Cth).

Party means the State Party or the Supplier as the context requires and **Parties** means both of them.

Products means the products component of the Products and/or Services.

Products and/or Services means the products, services or products and services specified in the Purchase Order.

Purchase Order means the document issued by the State Party

to purchase Products and/or Services from the Supplier.

Services means the services component of the Products and/or Services.

State Party means any agent of the State of Western Australia expressly or impliedly stipulated in the Purchase Order and if there is no such stipulation the State Party will be the State of Western Australia.

Supplier means the person or organisation identified in the Purchase Order for the supply of Products and/or Services.

2. Interpretation:

In the Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of the Agreement;
- (b) a reference to a person includes a corporation, trust, partnership, joint venture, association, body corporate or governmental agency;
- (c) a reference to a person includes that person's legal personal representatives, permitted assigns and successors;
- (d) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them but nothing herein shall mean that part performance of an obligation amounts to full performance thereof;
- (e) a reference to a clause, sub-clause or schedule means a clause or a sub-clause of or a schedule to the Agreement;

- (f) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (g) the singular includes the plural and vice versa;
- (h) a reference to a statute or other law includes rules, by-laws or regulations under it and amendments, consolidations, re-enactments and replacements of any of them;
- (i) no rules of construction shall apply to disadvantage a Party on the basis of that Party being responsible for the preparation of the Agreement or any part of it;
- (j) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day;
- (k) no provision limits the operation of any other provision;
- (l) any grammatical form of any term that is defined in the Agreement is to be construed as having a meaning corresponding with that term as defined.

3. Application of these terms and conditions:

These terms and conditions apply to any Purchase Order issued by the State Party to the Supplier for the supply of Products and/or Services by the Supplier, subject to clause 4 below.

4. Other contracts:

If the Purchase Order is issued under an existing contract between the State Party and the Supplier for the Products and/or Services, that contract shall apply, and these terms and conditions will not apply (other than this clause 4).

If the Supplier indicates that it intends to supply the Products and/or Services on contractual terms put forward by it, this shall automatically constitute a counter-offer which the State Party may accept or reject, or issue its own counter-offer in response.

5. Acceptance of terms of supply:

Subject to any contract prevailing over these terms and conditions under clause 4, by issuing a Purchase Order to the Supplier, the State Party offers to purchase the Products and/or Services from the Supplier on these terms and conditions. By accepting the Purchase Order, the Supplier agrees to supply the Products and/or Services on these terms and conditions. Unless stated otherwise in the Purchase Order, a Purchase Order expires if it has not been fully accepted within 10 Business Days of the date of the Purchase Order. An expressed or implied partial acceptance of a Purchase Order, or any counter-offer, by the Supplier constitutes a rejection of the Purchase Order unless the State Party has expressly otherwise agreed in writing (in the Purchase Order or howsoever). This clause is for the benefit of the State Party and may be waived by it, and only it, accordingly.

6. Relationship of the State Party and the Supplier:

Neither Party is the employee, representative, agent or partner of the other Party nor, by virtue of the Purchase Order, is authorised to bind or represent the other Party.

The Supplier must not represent itself, and must ensure that its officers, employees, agents and Contractors do not represent themselves, as being an officer, employee, representative, partner or agent of the State Party.

In all dealings related to supply the Products and/or Services, the Parties agree to:

- (a) communicate openly with each other and co-operate in achieving the contractual objectives; and
- (b) act Lawfully, honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct.

7. Compliance with Western Australian Policies:

The Supplier must comply with, and ensure its officers, employees, agents and Contractors comply with all Western Australian policies relevant to the Products and/or Services, as notified by the State Party to the Supplier from time to time. Without limitation this includes:

- (a) **access and safety:** when entering the premises of the State Party, the Supplier must use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner;
- (b) **hazards and safety incidents:** advising the State Party of any hazard or safety incidents arising out of the supply of the Products and/or Services;
- (c) **privacy:** complying, and ensuring that its officers, employees, agents and Contractors comply with the *Privacy Act 1988 (Cth)* and not doing anything would breach an Australian Privacy Principle as defined in that Act;
- (d) **record keeping:** maintaining proper business and accounting records relating to the supply of the Products and/or Services and allowing the State Party or its authorised representatives to inspect those

records when requested for verification of compliance with these terms and conditions.

- (e) **conflict of interest:** notifying the State Party immediately if the Supplier or its officers, employees, agents or Contractors identifies a real or perceived conflict of interest and complying with any reasonable direction given to the Supplier by the State Party in relation to the conflict;
- (f) **special checks:** conducting any special checks that must be obtained for Supplier personnel and Contractors (such as police clearances and working with children checks); and
- (g) **confidential information:** keeping confidential, and not disclosing, any confidential information relating to the supply of the Products and/or Services without prior written approval from the State Party.

8. Delivery and Acceptance:

The Supplier must provide the Products and/or Services as specified in the Purchase Order, these terms and conditions and the reasonable directions of the State Party.

The Supplier warrants that:

- (a) the Products and/or Services provided will be of good quality, defect-free, error-free and fit for purpose;
- (b) (additionally), unless otherwise agreed or stated in writing, the Products shall be new and unused; and
- (c) (additionally), the Services shall be provided to the higher of the:

- (A) standard that would be reasonably expected of an experienced, ethical and professional supplier of the same or similar services; and
- (B) relevant industry standard.

The Supplier must promptly notify the State Party if the Supplier becomes aware that it will be unable to provide all or part of the Products and/or Services and advise the State Party when it will be able to so.

Any Products must be delivered free from any security interest.

The State Party may reject the Products and/or Services within 10 Business Days after delivery if, upon testing or inspection, the State Party finds the Products and/or Services do not comply with the Purchase Order or these terms and conditions.

If the State Party does not notify the Supplier of rejection within the 10 Business Days period, the State Party will be taken to have accepted the Products and/or Services, though the State Party may accept the Products and/or Services sooner. That notwithstanding, acceptance, or deemed acceptance, of the Products and/or Services does not relieve the Supplier of its obligations under the Agreement or any Law.

Title to Products transfers to the State Party only on acceptance.

If the State Party, for cause, rejects the Products and/or Services, the State Party must notify the Supplier accordingly and the State Party may:

- (a) in whole or in part terminate the Agreement; or
- (b) require the Supplier promptly to re-supply the affected Products and/or Services, in which case the Supplier must do so, at no extra cost to the State Party.

If the State Party terminates the Agreement under paragraph (a) immediately above, the State Party may, at the Supplier's cost, engage a third party to supply or re-supply the affected Products and/or Services.

Remedied Products and/or Services are subject to the acceptance or rejection regime under this clause.

The Supplier will refund all payments related to the rejected Products and/or Services unless the relevant Products and/or Services are remedied and accepted by the State Party. No payment will be due for rejected Products and/or Services until their acceptance by the State Party.

The Supplier bears the risk of loss of or damage to the Products and/or Services until they are provided to the State Party in accordance with the Agreement.

9. Liability of the Supplier and Insurance:

The Supplier will indemnify the State Party and its officers and employees against any claim, cost, liability, damage, expense or loss arising out of or in connection with any wrongful act or omission or any breach of the Supplier's obligations or representations under the Agreement or any Law.

The Supplier's obligation to indemnify the State Party and its officers and employees will reduce proportionally to the extent that any wrongful act or omission, on the part of the State Party or its officers and employees caused or contributed to the claim, cost, damage, expense or loss.

The State Party agrees to use its reasonable commercial endeavours to cooperate with the Supplier, at the Supplier's expense, in respect of the conduct of any defence or the agreement of any settlement of any claim, demand or

proceeding the subject of the indemnity under this clause.

The Supplier will maintain, with a reputable and solvent insurance company, authorised to operate as an insurer in Australia, product and public liability insurance, workers' compensation insurance (including common law liability) and any other insurance consistent with good industry practice a prudent supplier would reasonably require in connection with the Products and/or Services under the Agreement and provide the State Party with proof of insurance upon request.

10. Licences Approvals and Warranties:

The Supplier must obtain and maintain all licenses or other approvals required for the Lawful provision of the Products and/or Services and arrange any necessary customs entry for any Products.

To the extent permitted by any Law and for the benefit of the State Party, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the State Party of the Material, even if the use may otherwise be an infringement of their Moral Rights.

The Supplier must provide the State Party with and transfer to the State Party the benefit of all relevant third Party warranties in respect of Products.

11. Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Agreement, will not relieve the Supplier from any of its obligations under the Agreement. Part 1F of the *Civil Liability Act 2002* (WA) is excluded.

The Supplier must make available to the State Party the details

of all Contractors engaged to provide the Products and/or Services under the Agreement. The Supplier acknowledges that the State Party may be required to publicly disclose such details.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Agreement, imposes on the Contractor the same obligations that the Supplier has under the Agreement (including this requirement in relation to subcontracts).

12. Intellectual Property:

All Intellectual Property Rights of the parties existing before the date of the Agreement will be retained by the relevant party. The Supplier grants, and must procure the grant to the State Party, a perpetual, royalty-free, non-exclusive, irrevocable licence:

- (a) to use any Intellectual Property Rights to the extent necessary to receive the full use and benefit of the Products and/or Services; and
- (b) to sub-licence this to any person.

The term "Intellectual Property Rights" means all registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other proprietary rights anywhere in the world whether created before or after the commencement of the Agreement.

13. Invoice and Payment:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The term "Correctly Rendered Invoice" means an invoice that:

- (a) is correctly addressed and calculated in accordance with the Purchase Order;
- (b) relates only to Products and/or Services that are specified in the Purchase Order;
- (c) includes the Purchase Order number;
- (d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the price stated in the Purchase Order; and
- (e) is a valid tax invoice in accordance with the GST Act.

The Supplier must promptly provide to the State Party such supporting documentation and other evidence reasonably required by the State Party to substantiate performance of the Agreement by the Supplier.

Payment of any invoice is not evidence that the obligations under the Agreement are accepted by the State Party to have been performed, evidence of the value of the obligations performed by the Supplier, or an admission of liability, but is payment on account only.

The State Party must pay the amount of a Correctly Rendered Invoice to the Supplier within 20 Business Days after receiving it.

The State Party may pay the amount specified in a Correctly Rendered Invoice by electronic funds transfer to the account with a financial institution nominated by the Supplier.

The Supplier must not impose a surcharge on the State Party for payment by credit card, or by any other method of

payment.

The State Party may withhold or deduct from monies owed by it to the Supplier monies owed by the Supplier to the State Party on any account whatsoever.

14. Termination for Cause:

The State Party may terminate the Agreement in whole or in part if:

- (a) the Supplier does not deliver the Products and/or Services in accordance with the Agreement, or notifies the State Party that the Supplier will be unable to deliver the Products and/or Services in accordance with the Agreement;
- (b) the State Party rejects the Products and/or Services in accordance with clause 8 [*Delivery and Acceptance*] and the Products and/or Services are not remedied as required by the notice of rejection;
- (c) the Supplier breaches the Agreement and the breach is not capable of remedy;
- (d) the Supplier does not remedy a breach of the Agreement which is capable of remedy within the period specified by the State Party;
- (e) the Supplier:
 - (i) is unable to or is deemed under any Law to be unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* ; or
 - (iii) if an individual – becomes bankrupt or enters into

an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966*; or

- (f) the State has reasonable grounds for believing that any of the events or circumstances referred to in clause 14(a) will or are likely to occur.

15. Survival:

Clauses 9 [*Liability of the Supplier and Insurance*], 16 [*Compliance with Laws*], 7 [*Compliance with Western Australian Policies*], clause 12 [*Intellectual Property*] and clause 19 [*Information*] survive termination or expiry of the Agreement, along with all other provisions of the Agreement which under any Law would also so survive.

16. Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and Contractors comply with, all Laws from time to time in force in Western Australia.

17. Governing Law:

The Laws of Western Australia apply to the Agreement and the Parties submit to the exclusive jurisdiction of the courts of that State.

18. Assignment:

The Supplier may not assign or transfer any rights or obligations under the Agreement, or novate the Agreement without the State Party's prior written consent. To seek consent, the Supplier must first provide the State Party with the full details of the proposed assignment, transfer or novation (together with the identity of the proposed assignee, transferee or novatee) and the rights or obligations the

Supplier proposes to assign, transfer or novate.

19. Information:

If the State Party requests the Supplier to provide the State Party with information (including access to documentation) in the Supplier's knowledge, control or possession, and which information sought is relevant to any aspect of the Agreement, the Products and/or Services, or the price/s therefor, the Supplier must promptly comply, ensuring that the information or documentation provided (or to which access is provided) is true, correct, up-to-date, complete, sufficiently detailed and in no way misleading or deceptive.