



**These Terms and Conditions apply to all Purchase Orders issued by the Great Ocean Road Coast and Parks Authority (the Authority), except where the Authority and the Supplier have executed a separate, written agreement applying to the Goods and/or Services specified in the Purchase Order. In that case, the terms and conditions of that agreement will apply.**

## **PURCHASE ORDER AGREEMENT**

### **PART A – GENERAL CONDITIONS**

These General Conditions apply to the supply of Goods and/or the provision of the Services.

- 1) The Supplier must supply the Goods and/or provide the Services specified in the Purchase Order, in accordance with the Agreement for the Term.
- 2) **Order of Precedence**
  - a) If a formal Agreement is entered into by the parties in relation to the Goods and/or Services specified in a Purchase Order, this Agreement will apply to the provision of those Goods and/or Services.
  - b) In the event and to the extent of any inconsistency between
    - i) these Terms and Conditions;
    - ii) the Purchase Order; and
    - iii) any attachments to the Purchase Order or other documents incorporated by reference,these Terms and Conditions will prevail to the extent of the inconsistency and, if the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order or attachments without otherwise diminishing the enforceability of the remaining provisions of the Agreement.
  - c) This Agreement constitutes the entire understanding between the parties. Any Supplier terms and conditions are expressly excluded from this Agreement.

### **3) Price**

The Price set out in the Purchase Order is fixed. The Price includes all expenses and any other costs incurred by the Supplier and unless otherwise expressly stated, all prices are inclusive of GST.

### **4) Invoicing and payment**

- a) The Supplier must invoice the Authority within three (3) Business Days from the date of Delivery for Goods or Completion for Services.
- b) The Supplier must email an Invoice to the Authority's Accounts Payable Officer at:

[Accounts@greatoceanroadauthority.vic.gov.au](mailto:Accounts@greatoceanroadauthority.vic.gov.au)

The Invoice must be a valid tax invoice for the purposes of the GST Act and contain such

other information as the Authority may reasonably require.

- c) Where there is an adjustment under the GST Act, a party must deliver an adjustment notice to the other party, without further request, within 21 days of becoming aware of the adjustment.
- d) Subject to clause 4(a) or the Authority disputing the amount of the invoice, the Authority will pay the invoiced amount, less any amount required by Law, within 20 Business Days of Invoice Date.
- e) Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Agreement.

### **5) Intellectual Property Rights**

- a) The ownership of any Contract Intellectual Property shall vest in the Supplier upon the time of its creation. The Supplier hereby irrevocably and unconditionally grants to the Authority, free of additional charge, a non-exclusive, worldwide, perpetual, transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, publish, distribute and communicate any Contract Intellectual Property for any purpose except commercial exploitation.
- b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Goods and/or the performance of the Services or the creation of Agreement Materials remains the property of the relevant party or its licensors.
- c) The ownership of Data, including any Intellectual Property Rights, shall vest in the Authority upon the time of its creation.
- d) The Supplier must, upon request by the Authority, do all things necessary (including executing any documents) to give full effect to this clause 5).

### **6) Liability and Indemnity**

- a) The Supplier indemnifies and will at all times keep the Authority and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with:
  - i) any breach of the Agreement;
  - ii) personal injury, death or property damage;

- iii) breach of confidentiality, data security, privacy or intellectual property; or
  - iv) the Supplier's negligence.
- b) The Supplier's liability to indemnify the Authority under clause 6)6(a) is reduced to the extent the Authority caused or contributed to the loss.

## 7) Warranties

The Supplier represents and warrants to the Authority that:

- a) (**Capacity**) it has the right to enter into the Agreement and provide the Goods and/or perform the Services.
- 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 and/or Services (including without identifying any person as the individual responsible for creating any material) and its performance of the Agreement will not infringe the Intellectual Property Rights of any person or any Laws;
- c) (**Conflict**) it and its Personnel 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 this Agreement; and
- d) (**Purpose**) where the Authority has, either expressly or by implication, made known to the Supplier any particular purpose for which the Goods and/or Services are required, the Goods and/or Services will be performed in such a way as to achieve that result.

## 8) Insurance

- a) The Supplier must obtain and maintain insurance cover during the Term and, if requested by the Authority, for a period of up to 7 years after the Goods and/or Services have been supplied, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including WorkCover, public and product liability insurance, and if applicable professional indemnity insurance.
- b) On request, the Supplier must, within 10 Business Days, provide the Authority with evidence of the currency of any insurance it is required to obtain under this Agreement, including any replacement insurance.

## 9) Termination

- a) the Authority may terminate the Agreement with immediate effect by giving notice in writing to the Supplier, if the Supplier:
  - i) fails to provide the Goods and/or Services in accordance with this Agreement;
  - ii) breaches any provision of the Agreement and fails to rectify that breach upon being given notice of the breach;
  - iii) any of its Personnel commits fraud, dishonesty, or any other serious misconduct;

- iv) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
  - v) is insolvent, bankrupt, has creditors or administrators appointed or similar.
- b) the Authority may terminate the Agreement without cause by giving notice in writing to the Supplier and the Supplier must take all possible steps to mitigate its loss. Upon such termination the Authority will pay the Supplier:
- i) for the Goods and/or Services provided in accordance with the Agreement up to the date of the termination; and
  - ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit;

and the Authority has no other liability to the Supplier in relation to that termination.

- c) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to the Authority if the Authority fails to pay amounts due under this Agreement.

## 10) Confidentiality, privacy, and data protection

- 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 provision of the Services or supply of Goods) as may be required:
  - (i) to comply with the Contracts Publishing System
  - (ii) by the Independent Broad-based Anti-corruption Commission;
  - (iii) by the Auditor-General; and
  - (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 provision of the Services and the supply of Goods in the same way as the Authority would have been bound had the relevant act been performed by the Authority.
  - (d) The supplier acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in request of any data collected, held, used, managed, disclosed or transferred by the supplier, on behalf of the Authority, under or in connection with the Agreement.
- d) The Supplier will follow all reasonable directions from the Authority in respect of the protection of data.

## 11) Access

When at the Authority's premises, the Supplier must, and must ensure that its Personnel:

- a) protect people and property;
- b) prevent nuisance;
- c) act in a safe and lawful manner;
- d) comply with the safety standards and policies of the Authority (as notified to the Supplier); and
- e) comply with any lawful directions of the Authority or its Personnel.

## 12) Sub-Contracting

- a) The Supplier must not sub-Agreement to any third person its obligations under this Agreement without the prior written consent of the Authority (which may be given conditionally or withheld in its absolute discretion).
- b) The Supplier will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 13) Compliance with Law and Policy

- a) The Supplier must, in performing its obligations under this Agreement, comply with the Laws affecting or applicable to the provision of Services or supply of Goods.

- b) The Supplier Code of Conduct:

[www.buyingfor.vic.gov.au/supplier-code-conduct](http://www.buyingfor.vic.gov.au/supplier-code-conduct)

describes the State's minimum expectations regarding the conduct of its suppliers;

The Supplier acknowledges that

- ii) it has read and aspires to comply with the Supplier Code of Conduct; and
  - i) the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.
- c) Without limiting clause 13(a), where the Supplier (or its employees or sub-contractors) in the course of providing the Services:
    - (i) supervise Public Sector Employees;
    - (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
    - (iii) use or have access to public sector resources or information that are not normally accessible or available to the public.

The Supplier must (and ensure that its employees or sub-contractors) comply with the Code of Conduct for Victorian Public Sector Employees.

## 14) Supplier as Trustee

The Supplier warrants that, unless expressly stated otherwise, it has not entered this Agreement as trustee of a trust.

Where the Supplier has entered this Agreement in the capacity as trustee of a trust:

- a) the Supplier warrants that it is a validly appointed trustee of the trust and is authorised to enter into this Agreement;
- b) the Supplier must provide evidence to the Authority in respect of the trust to the Authority's satisfaction on request; and
- c) this Agreement binds the Supplier personally and in their capacity as trustee.

## 15) General

- a) This Agreement is governed by the Laws of Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from those courts which may hear proceedings in connection with this Agreement.
- b) Time is of the essence in relation to the provision of the Goods and/or Services.
- c) The Agreement may only be varied as agreed in writing by the parties.
- d) The Authority may set off any amount owing to the Supplier against an amount owing to the Authority.
- e) The Authority may assign its rights or obligations (including by novation) under this Agreement to another Victorian public entity in the event of a restructure or change in policy.
- f) Clauses 5), 6), 7), 8), 9), 10), and 15) survive termination or expiry of the Agreement.

## PART B – CONDITIONS FOR SUPPLY OF SERVICES

These conditions apply to the supply of the Services (in addition to the General Conditions in Part A):

### 16) Standards of Services

The Supplier must:

- a) provide fit for purpose Services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- b) comply with any reasonable directions of the Authority given in respect of the Services;
- c) deliver the Services by the agreed date of Completion or as otherwise specified in the Purchase Order;
- d) promptly notify the Authority as soon as it becomes aware of any delay or possible delay in the supply of the Services;
- e) use appropriately skilled and qualified Personnel to provide the Services;
- f) act in good faith and in the best interests of the Authority; and
- g) provide any and all equipment necessary for the performance of the Services.

### 17) Failure to Perform

- a) Without limiting any other available remedy, if the Supplier fails to provide any of the

Services in accordance with the Agreement, the Authority will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within a reasonable time.

- b) If the default referred to in clause 17(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the Authority may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the Authority in doing so.

## **PART C – CONDITIONS FOR SUPPLY OF GOODS**

These conditions apply to the supply of Goods (in addition to the General Conditions in Part A):

### **18) Delivery of Goods**

- a) Delivery will have occurred when the Goods have been received at the nominated Delivery Point in accordance with the instructions provided in the Purchase Order or as otherwise agreed by the Authority.
- b) Acceptance of the Goods by the Authority will not be taken to have occurred until the Authority acknowledges acceptance in writing to the Supplier. If the Authority does not accept (or reject) the Goods within 20 Business Days of delivery, delivery will be deemed to have then occurred.

### **19) Rejection of Goods**

- a) If the Goods do not conform to this Agreement, the Authority may reject the Goods by providing written notice within 20 Business Days of delivery,
- 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.
- c) The Authority is not obliged to pay for any rejected Goods.

### **20) Warranties in relation to Goods**

The Supplier warrants that:

- a) it has the right to sell, and transfer title to and property in the Goods to the Authority;
- b) the Goods:
  - i) are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - ii) conform in all respects with this Agreement;
  - iii) will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract.
  - iv) are free from defects (including defects in installation); and

- v) are of merchantable quality and comply with all Laws and standards.

- c) if provided for in the Purchase Order, the Supplier has obtained the benefit of any manufacturer's warranties for the Authority.

## **21) 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 received at the Delivery Point.

## **PART D – DEFINITIONS**

**22)** In this Agreement, unless the context otherwise requires:

**Agreement** means the agreement for the supply of the Goods and/or provision of the Services consisting of these Terms and Conditions, the Purchase Order and any other documents incorporated by reference.

**Authority** means the Great Ocean Road Coast and Parks Authority.

**Business Days** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the Public Holidays Act 1993 (Vic)) in Victoria.

### **Code of Conduct for Victorian Public Sector**

**Employees** means the Code of Conduct for Victorian Public Sector Employees 2015 issued by the Victorian Public Sector Commissioner pursuant to section 61 of the Public Administration Act 2004 (Vic), as amended from time to time.

**Code of Practice** means a code of practice as defined in, and approved under, the Information Privacy Act 2000 (Vic).

**Commencement Date** means start date for the supply of the Goods and/or provision of the Services, as specified in the Purchase Order, or if no date stated, the date of the Purchase Order.

**Completion** means the date by which the Services are to be finalised.

**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) that is publicly available;
- b) the Supplier developed independently of any disclosures previously made by the Authority or was in possession of prior to the Agreement;
- c) is lawfully obtained by the Supplier; or
- d) is required to be disclosed pursuant to Law, court order or other legal process.

**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 Services, except any Intellectual Property Rights in Data.

**Contracts Publishing System** means the policy of the Victorian Government requiring publication of details of contracts entered into by the Victorian Government Departments/Agencies, as amended from time to time.

**Data** means all data, information, text, drawings, statistics, analysis and other materials supplied by or on behalf of the Authority or otherwise generated, stored or accessed under this Agreement.

**Delivery** means the date the Goods were received at the Delivery Point on Business Days between 9:00am and 5:00pm.

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

**Goods** means the goods as specified in the Purchase Order.

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

**Information Privacy Principles** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).

**Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, 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.

**Invoice Date** means the date on which the invoice for the Goods or Services is issued by the Supplier.

**Laws** means:

- a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of Victoria; and
- b) lawful requirements of any government or government department or other public body.

**Personnel** of a party includes the officers, employees, agents, contractors and sub-subcontractors of that party.

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights which are the property of either party and which existed prior to the Commencement Date.

**Protective Data Security Standards** means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by the Authority to ensure compliance with those standards.

**Public Sector Employee** has the same meaning as in section 4(1) of the *Public Administration Act 2004* (Vic).

**Purchase Order** means an official Great Ocean Road Coast and Parks Authority Purchase Order that includes these Terms and Conditions or which otherwise incorporates these Terms and Conditions by reference.

**Services** means the services as specified in the Purchase Order.

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

**Supplier Code of Conduct** means the Code of Conduct issued by the Victorian Government for suppliers providing goods and/or services to the Victorian Government, as amended from time to time.

**Supplier** means the entity supplying the Goods and/or providing the Services under the Agreement.

**Term** means the duration of this Agreement from the Commencement Date until Completion.

**Terms and Conditions** means these Terms and Conditions.