

PURCHASE ORDER WORKS CONDITIONS

1. AGREEMENT

- 1.1 On the Supplier accepting the Purchase Order or commencing performance of the Works in accordance with the Purchase Order, an Agreement is formed between the Principal and the Supplier comprising the Purchase Order (including any documents incorporated into it by reference) and these Purchase Order Works 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). If there is any inconsistency between these Purchase Order Works Conditions and the Purchase Order, these Purchase Order Works Conditions will prevail to the extent of that inconsistency.

2. DEFINITIONS

In these Purchase Order Works Conditions, the following terms shall, if not inconsistent with the context, have the meanings indicated:

Word	Definition
Agreement	means the agreement between the Principal and the Supplier for the performance of the Works, comprising these Purchase Order Works Conditions and the Purchase Order;
Claim	includes any action, claim, demand or proceeding, including for the payment of money or any other relief or remedy, and whether arising in contract, tort (including negligence), restitution, under statute or otherwise at law or in equity;
Completion Date	means the date specified in the Purchase Order;
Date of Practical Completion	means the date on which Practical Completion was reached as determined by the Principal (acting reasonably);
GST	means the goods and services tax within the meaning of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
OH&S	means occupational health and safety;
PPS Act	means the <i>Personal Property Securities Act 2009</i> (Cth);
Practical Completion	means that stage in the carrying out of the Works when: (a) the Works are complete in accordance with the Agreement except for minor omissions and minor defects; (b) those tests which are required by the Agreement to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and (c) documents and other information required under the Agreement or which, in the opinion of the Principal, are required for the use, operation and maintenance of the Works have been supplied;
Principal	means the Greater Geelong City Council ABN 18 374 210 672;
Purchase Order	means a purchase order issued by the Principal to the Supplier which refers to these Purchase Order Works Conditions;
Purchase Price	means the amount to be paid by the Principal to the Supplier as specified in the Purchase Order;
Site	means the location where the Works are to be performed as specified in the Purchase Order;
Supplier	means the person to whom the Purchase Order is issued by the Principal; and

Word	Definition
Works	<p>means:</p> <ul style="list-style-type: none"> (a) the performance of work; (b) the supply of materials; and (c) all other things required to be done; <p>under the Agreement by the Supplier as specified in the Purchase Order and includes any matters reasonably to be inferred from the Agreement or trade usage.</p>

3. INTERPRETATION

- 3.1 In these Purchase Order Works Conditions, 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:
 - 3.1.9.1 employees; and
 - 3.1.9.2 sub-contractors and the employees of such sub-contractors.
- 3.2 The Agreement 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 Agreement.
- 3.3 The law of the State of Victoria governs the Agreement and any legal proceedings under the Agreement.
- 3.4 If the Supplier consists of two or more parties, the Agreement shall bind each of them severally and jointly.
- 3.5 If a provision, or part of a provision, in this Agreement 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 Agreement.

4. THE WORKS

- 4.1 The Supplier must perform the Works:
 - 4.1.1 by the Completion Date or, if no date is stated, within a reasonable time;
 - 4.1.2 in a diligent manner;
 - 4.1.3 in accordance with the highest principles of quality assurance;
 - 4.1.4 in a proper and workmanlike manner;
 - 4.1.5 with a level of care, skill, knowledge and judgement that would be expected of a competent and experienced contractor and in accordance with best industry practice;
 - 4.1.6 using suitably qualified personnel;
 - 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 Agreement; and
 - 4.1.9 in accordance with the Agreement.
- 4.2 The Principal must give the Supplier such access to the Site as the Supplier reasonably requires to perform the Works. The Supplier 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 employees, sub-contractors and agents 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 or otherwise minimise any noise, dust, disturbance or nuisance at the Site or adjacent to the Site.
- 4.4 The Supplier is responsible for the care of the Works from the date of execution of the Agreement until 4:00pm on the Date of Practical Completion.
- 4.5 The Supplier must promptly rectify any defect in the Works or other breach of the Agreement 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 any Key Personnel who are to perform the Works, the Supplier must ensure that the Works are performed by and only by the Key Personnel.
- 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 Agreement.
- 4.9 The Supplier warrants to the Principal that it has the right to sell and transfer title to the Works (including materials incorporated in the Works) to the Principal free of any encumbrances.

5. VARIATIONS

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

- 5.2 Prior to the direction of any variation, the parties must agree on any adjustment to the Purchase Price with respect to the variation or the mechanism by which such adjustment must be calculated. If the parties are unable to agree on these matters, then variations shall be valued by the Principal using reasonable rates and prices.

6. DELAYS

- 6.1 If the Supplier is delayed in performing the Works by:
- 6.1.1 any act or omission of the Principal or the Principal's employees, sub-contractors or agents;
or
 - 6.1.2 any other cause beyond the reasonable control of the Supplier;
- the Supplier must give immediate written notice to the Principal and the Completion Date 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.
- 6.2 In assessing the period of delay under this clause 6, the Principal may take into account the extent to which the Supplier has failed to take the reasonable steps that would have been taken by an experienced and competent contractor to mitigate the consequences of the delay.
- 6.3 The Principal may, for any reason and in its absolute discretion, at any time extend the Completion Date.
- 6.4 The Supplier will not be entitled to make, and releases the Principal from, any Claim against the Principal arising out of or in connection with any delay or prolongation other than as expressly provided for in this clause 6.

7. LIQUIDATED DAMAGES

- 7.1 If the Supplier fails to reach Practical Completion by the Completion Date, the Supplier will be immediately indebted to the Principal for liquidated damages at the rate stated in the Purchase Order for every day after the Completion Date to and including the Date of Practical Completion or the date that the Agreement is terminated, whichever first occurs.
- 7.2 The Supplier agrees that the rate of liquidated damages constitutes a genuine pre-estimate of the loss the Principal will suffer if the Supplier fails to achieve Practical Completion by the Completion Date.
- 7.3 If this clause 7 (or any part) is found for any reason to be void, voidable, unenforceable or otherwise inoperative, then the Principal will be entitled to recover damages from the Supplier under general law for any failure of the Supplier to achieve Practical Completion by the Completion Date.

8. PAYMENT AND GST

- 8.1 If the Supplier complies with its obligations under the Agreement, the Principal must make the payment or payments specified in the Agreement within 30 days after the end of the month following the later of Completion of the Works and provision of a valid tax invoice for the amount payable (or earlier, if agreed with the Principal). The Principal will not make payment on any tax invoice, unless it specifies the Purchase Order number issued by the Principal.
- 8.2 If a payment under clause 8.1 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.
- 8.3 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.

9. DEFAULTS AND TERMINATION

- 9.1 If the Supplier defaults in the performance or observance of any obligation it has under the Agreement:
- 9.1.1 if in the Principal's reasonable opinion, the default cannot be remedied, the Principal may terminate the Agreement immediately by notice to the Supplier; or
 - 9.1.2 if in the Principal'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 Principal may terminate the Agreement immediately by notice to the Supplier.
- 9.2 The Principal may terminate the Agreement at any time by giving 28 days' notice in writing to the Supplier. If the Principal terminates the Contract under clause 9.2:
- 9.2.1 the Principal must make reasonable payment to the Supplier for the performance of the Works until the date of the termination of the Agreement; and
 - 9.2.2 the Supplier must refund to the Principal (as a debt due and payable) any amounts paid by the Principal for Works that have not been performed as required by the Agreement before the notice is given.
- 9.3 If the Supplier is insolvent, has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed to it, enters into a scheme of arrangement with its creditors, is wound up or is bankrupt, the Principal may terminate the Agreement by giving written notice to the Supplier.

10. SUB-CONTRACTING AND ASSIGNMENT

- 10.1 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 Agreement, except with the prior written consent of the Principal. Except in so far as any consent given by the Principal under clause 10 expressly provides otherwise, no sub-contractor or assignee will have any rights under the Agreement against the Principal or be entitled to receive any payments under the Agreement from the Principal.
- 10.2 Where the Principal gives consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under the Agreement and will be liable to the Principal for the acts or omission of any sub-contractor as if those acts or omissions were those of the Supplier.

11. INSURANCES

The Supplier must effect and maintain (and ensure that any sub-contractor to the Supplier effects and maintains) 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 Principal on request:

- 11.1 \$20 million public liability insurance for each claim;
- 11.2 workers compensation insurance required by law; and
- 11.3 works insurance for 120% of the value of the Works.

12. LIABILITY

- 12.1 The Supplier indemnifies the Principal from and against all actions, claims, losses, damages, penalties, demands or costs suffered or incurred by the Principal 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 performing the Works).
- 12.2 The Supplier's obligation to indemnify the Principal will not apply to the extent that any liability is directly caused by any negligent act or omission of the Principal.

- 12.3 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.
- 12.4 The aggregate liability of the Principal to the Supplier in connection with the Agreement is limited to the Purchase Price.

13. OCCUPATIONAL HEALTH AND SAFETY

- 13.1 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.
- 13.2 The Supplier must immediately comply with any and all directions by the Principal relating to OH&S.
- 13.3 The Supplier must -
 - 13.3.1 comply with; and
 - 13.3.2 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.
- 13.4 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 Supplier must not commence the performance of the Works until the OH&S management plan is approved, in writing, by the Principal.

14. PPS ACT

The Supplier:

- 14.1 must do everything the Principal considers reasonably necessary to ensure that any 'security interest' as defined in s 12 of the PPS Act arising under the Agreement in favour of the Principal is able to be registered, is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;
- 14.2 agrees that ss 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of any such security interest;
- 14.3 agrees to not register a financing change statement without the prior written consent of the Principal and agrees not to disclose information of the kind referred to in s 275(1) of the PPS Act; and
- 14.4 waives any rights it may have had but for this clause 14.14 under ss 157(1) and 275(7)(c) of the PPS Act.