

# General Conditions for the Supply of Goods and/or Services

**Precedence** – In the event of there being a conflict between the various documents evidencing the contract, the following descending order of precedence shall apply with the document lower in the order being read down to resolve that conflict:

- a) Formal Instrument of Agreement;
- b) Letter of Acceptance;
- c) These General Conditions;
- d) The Specification.

## 1 Supply of Goods/Services

- a) The supplier must:
  - (i) supply the Goods/Services to GMW in accordance with the specification and these Conditions;
  - (ii) provide the Services in a proper, timely and efficient manner using that standard of care, skill and diligence that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
  - (iii) ensure the highest quality of work and the delivery of the services utmost efficiency;
  - (iv) Act in good faith and in the best interests of GMW; provide any and all equipment necessary for the performance of the Services; and
  - (v) provide all documentation and manuals describing the safe operation of the Goods
- b) Delivery of Goods will not be taken to have occurred until delivery is acknowledged in writing by GMW or deemed to have occurred in accordance with clause 2 a).

## 2 Acceptance or rejection of Goods

- a) If the Goods conform to the Specification or sample, GMW will promptly accept the Goods in writing. If the Goods do not conform, GMW may reject the Goods within 30 days by written notice giving reasons. If GMW 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 GMW may return the Goods to the Supplier at the Supplier's expense.

## 3 Price for the Goods and/or the Services

The Rates or Fees applicable to the Goods and/or the Services are set out in the Purchase Order and are fixed.

## 4 Cancellation of Goods and/or Services

GMW may cancel further supply of Goods and/or Services at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Goods and/or Services. GMW must pay all reasonable amounts due in accordance with **clause 3** for all work performed by the Supplier up until cancellation together with the Supplier's reasonable costs of terminating the supply (but does not extend to loss of prospective profits.)

## 5 Invoicing and payment

- a) The unit price for the Goods 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 GMW a tax invoice for the Purchase Price following the supply of the Goods or the provision of the Services which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as GMW may reasonably require. The tax invoice must be sent to the address specified in the Purchase Order.
- c) GMW will pay the invoiced amount within 30 days from the end of the month or receipt of an accurate invoice. However, if GMW 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 and/or Services have been supplied in accordance with the Agreement but must be taken as only as payment on account.

## 6 Title and risk

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

## 7 Warranties

The Supplier warrants to GMW that:

- a) **(Title)** it has the right to sell and transfer title to and Property in the Goods to GMW;
- 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 are or might 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);
  - (iv) Are of merchantable quality and comply with all Laws; and
  - (v) That are Chemicals or other high risk goods have appropriate safety documentation included or supplied prior to delivery.
- e) **(Services)** where GMW has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result.

## 8 Liability

The Supplier must indemnify GMW and each of its employees and agents against any loss, damage, claim, action or expense (including legal expenses) which any of them suffers as a direct result of any failure to deliver the Goods or supply the Services in accordance with the Agreement or any other breach of the Agreement.

## 9 Intellectual Property Rights

### (i) Goods

The Supplier grants GMW 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 GMW the full use and enjoyment of those Goods and the Supplier must upon request by GMW, do all things as may be necessary (including executing any documents) to give full effect to such rights.

### (ii) Services

- (a) The Supplier acknowledges and agrees that the ownership of all Intellectual Property created in relation to the Agreement vests in GMW upon creation and the Supplier assigns ownership of all Intellectual Property to GMW and will ensure that its employees, contractors and agents execute all documents and do all things necessary to assign to GMW all such rights.
- (b) GMW retains all rights (including intellectual property) in its Background Intellectual Property but permits the Supplier to use the Background Intellectual Property for the sole purpose of performing the Agreement.
- (c) The Supplier grants to GMW a royalty free non-exclusive perpetual licence to use all Background Intellectual Property belonging to the Supplier or others which is employed in relation to the Agreement. The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Background Intellectual Property a written assignment of all Intellectual Property of such persons in the Background Intellectual Property as necessary to give effect to this clause and a written consent from all individuals involved in irrevocably consenting to GMW exercising its rights in the

Background Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

#### 10 Insurance

- (a) The Supplier must obtain and maintain a combined Public and Products Liability policy of insurance in connection with the supply of Goods and/or Services. The policy of insurance shall be for an amount in respect of any one occurrence of not less than \$20 million with a maximum excess, for any one event, of \$50,000.
- (b) If the Supplier is providing Services, it must obtain and maintain a Professional Indemnity policy of insurance for an amount of not less than \$2 million.
- (c) On request, the Supplier must provide GMW with the evidence of the currency of any insurance it is required to obtain.

#### 11 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 GMW publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods and/or the Services) as may be required:
  - (i) By the Auditor-General; or
  - (ii) to comply with the *Freedom of Information Act 1982*.
- (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 and/or the Services in the same way as GMW would have been bound had the relevant act been done or engaged in by the GMW.

#### 12 Access

When entering the premises of GMW, 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 GMW (as notified to the Supplier).

#### 13 Subcontracting

- (a) The supplier must not subcontract to any third person any of its obligations in relation to the supply of the Goods and/or the Services without the prior written consent of GMW (which may be given or withheld in its absolute discretion)
- (b) The Supplier will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.

#### 14 Compliance with Law

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

#### 15 GST

Terms used in this clause have the same meanings given to them in the GST Act.

- (a) 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.
- (b) 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.

#### 16 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 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.

#### 17 Occupation Health & Safety

- (a) The Supplier shall comply with all Commonwealth and Victorian Acts, Ordinances, regulations, by-laws, orders, awards and proclamations and, in particular, with the requirements of the Occupational Health and Safety Act 2004 and the Dangerous Goods Act 1985 and all Regulations and Codes of Practice in relation to matters over which the Supplier has control. Further, over or above the standards required by legislation, the Supplier will comply with all OHS Policies and Procedures of GMW and all site and job specific requirements for occupational health, safety and welfare.
- (b) The Supplier shall at all times exercise all necessary precautions for the safety of the Supplier's employees, appropriate to the nature of the Services and the conditions under which the Service is to be performed, and shall comply with such directions as GMW may give from time to time;
- (c) All Suppliers who perform on-site Services for G-MW shall undertake an online general Health, Safety & Environmental induction. This will provide an overview of G-MW's Environmental and OHS Management Systems and the unique Health, Safety and Environmental issues likely to be encountered whilst undertaking the Services. The online induction can be accessed via the internet link: <https://www.easyinduct.com.au/Default.aspx?ReturnUrl=%2f>. Once the internet page has been accessed the course code gmw101 is entered to begin the induction. On successful completion of the induction, the Supplier will be emailed an induction card within approximately 5 minutes. This card will need to be cut out, signed and laminated. The general induction card must be displayed as a condition of entry to all G-MW worksites along with photo identification. Please note; this process will not replace the requirement to undertake a site specific induction and sign onto a SWMS and Safe Start before commencing on-site Services.

#### 18 Supplier Code of Conduct

- (a) The Supplier is required to:
  - (i) Comply with all laws and regulations on bribery, corruption and prohibited business practices of the jurisdictions in which it does business;
  - (ii) Conduct business in an ethical, fair and courteous manner;
  - (iii) Ensure all its workers receive their wages and entitlements in accordance with the laws of the jurisdiction in which the work is occurring;
  - (iv) If requested by GMW, report on its social, ethical and environmental performance;
  - (v) Promote timely and balanced disclosure of material matters concerning the goods or services provided by it to GMW; and
  - (vi) Adhere to acceptable business practises with its own suppliers, including providing for timely payment and reasonable contractual conditions.

#### 19 Interpretation

In these Conditions, unless the context otherwise requires:

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

**Background Intellectual Property** means Intellectual Property owned or controlled by a party and which was developed prior to and independently of this Agreement and which is used in carrying out the Agreement.

**Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014*.

**Conditions** mean these General Conditions for the Supply of Goods and/or Services.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, GMW, including any information designated by GMW 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.

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

**GMW** means the Goulburn-Murray Rural Water Corporation

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

**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 *Privacy and Data Protection Act 2014*.

**Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registers 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** mean the law in force in the State of Victoria and the Commonwealth of Australia, including Acts and Regulations and Orders and Codes made under any of them.

**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 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 purchase order or acceptance from GMW for the supply of the Goods and/or Services which incorporates these Conditions.

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

**Services** means the services specified in the Purchase Order or Contract

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

**Supplier** means the person supplying the Goods and/or the Services 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 or provision of the Services must be effected by the Supplier.

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