

General Conditions for the Supply of Goods and/or Services

1. Application

- a) These Purchase Order General Conditions (**Conditions**) apply where GMW issues a Purchase Order to a person or entity supplying Goods and/or Services to GMW as described in a Purchase Order (**Supplier**).
- b) Where other specific contractual arrangements have been executed by GMW and the Supplier, these Conditions apply only to the extent not inconsistent with those contractual arrangements.
- c) Subject to clause 1b), if there is any inconsistency between these Conditions and a Purchase Order, the Purchase Order will prevail to the extent of that inconsistency.
- d) Any terms in any quote, offer, or acceptance document or any other document supplied by the Supplier are of no legal effect, even if signed by a representative of GMW.

2. Supply of Goods/Services

- a) The Supplier must:
 - i. supply the Goods and/or Services to GMW in accordance with the Specification, any reasonable directions given by GMW, all Laws and these Conditions;
 - ii. deliver the Goods and/or Services to the Delivery Point at the Time for Delivery.
 - iii. 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;
 - iv. ensure the highest quality of work and the delivery of the services utmost efficiency;
 - v. act in good faith and in the best interests of GMW;
 - vi. provide any and all equipment necessary for the performance of the Services; and
 - vii. 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 3 a).
- c) If the Supplier fails to perform the Services in accordance with these Conditions (**Non-Conforming Services**), the Supplier must correct the Non-Conforming Services at its cost within the period directed by GMW.
- d) If the Non-Conforming Services are not able to be corrected under clause 2c), GMW may arrange for the Non-Conforming Services to be corrected and the Supplier must reimburse all costs incurred by GMW.
- e) GMW is not required to pay for any Non-Conforming Services unless and until those Services are corrected by the Supplier

3. Acceptance or rejection of Goods

- a) If the Goods conform to the Specification or sample, GMW will promptly accept the Goods in writing. If GMW is not satisfied that the Goods do 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.

4. Cancellation of Goods and/or Services

GMW may cancel further supply of the 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 4** 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. 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.

6. 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 10 business days of the receipt of an 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. If a valid purchase order number is not provided on the tax invoice this may result in delays in payment.
- d) Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with this Agreement but must be taken as only as payment on account.
- e) GMW may set off any amount owed to the Supplier by GMW against any amount payable or claimed to be payable by the Supplier to GMW whether under these Conditions or otherwise.
- f) Simple interest, as at the penalty interest rate fixed for the time being under section 2 of the *Penalty Interest Rates Act 1983* (Vic), accrues on a daily basis on any Overdue Amount and is payable by GMW to the Supplier on demand.

7. Title and risk

Title in the Goods will pass to GMW upon acceptance of the Goods by GMW in writing. Risk in the Goods will pass to GMW when the Goods are delivered to the Delivery Point.

8. Warranties

The Supplier warrants to GMW that:

- a) (**Capacity**) it has the right to enter into this Agreement and perform the Services;
- b) (**Title**) it has the right to sell and transfer full and unencumbered title to and property in the Goods to GMW;
- c) (**IP**) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods;
- d) (**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 this Agreement; and
- e) (**Trust**) it has not entered into the Agreement on behalf of a trust; and
- f) (**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 materials, installation, manufacture or design);
 - 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.
- g) (**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 fit for their intended purpose and will be performed in such a way as to achieve that result.
- h) The Supplier must obtain for GMW the benefit of any manufacturer's warranty applicable to the Goods.

9. Indemnity

- a) The Supplier indemnifies and agrees to keep indemnified GMW and each of its Personnel (together 'the **Indemnified**') from and against any loss, damage, claim, action or expense (including legal expenses) which any of the Indemnified suffer or incur arising directly or indirectly or otherwise in connection with this Agreement and:
 - i. the death of, or disease or injury to, any person caused or contributed to by the Supplier or its Personnel;
 - ii. any loss of, or damage to, any property caused or contributed to by the Supplier or its Personnel;
 - iii. any breach of these Conditions or any Law by the Supplier or its Personnel;

- iv. any liability to make payments to any of the Supplier's Personnel;
 - v. any loss or corruption of data;
 - vi. any claim by any person against the Indemnified alleging their use of the Goods and/or Services, Intellectual Property Rights or Background Intellectual Property infringes any person's Intellectual Property Rights; and
 - vii. any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Supplier or its Personnel.
- b) The indemnity given by the Supplier in clause 9(a) will be reduced proportionally to the extent that any negligent or wilful act or omission of GMW or its Personnel contributed to the loss, damage, claim, action or expense.

10. Intellectual Property Rights

I. Goods

The Supplier grants GMW a non-exclusive, perpetual, irrevocable, world-wide royalty-free licence (including the right to sub-license) 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.

II. Services

- a) The Supplier acknowledges and agrees that the ownership of all Intellectual Property Rights created in relation to this Condition as part of performing the Services vests in GMW upon creation and the Supplier assigns ownership of all such Intellectual Property Rights to GMW.
- b) GMW retains all rights (including Intellectual Property Rights) in its Background Intellectual Property but permits the Supplier to use the Background Intellectual Property for the sole purpose of performing this Agreement.
- c) The Supplier must arrange for any 'raw data' gathered in relation to this Agreement and used in the development of the Background Intellectual Property be transferred to GMW on completion of this Agreement.
- d) 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 this Agreement.
- e) 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 Rights 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.

III. Logo

The Supplier must not use or reproduce GMW's name, logo, branding or other images in any of its material without the prior written consent of GMW.

11. 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.

12. Confidentiality, privacy and data security

- a) The Supplier and its Personnel must only use the Confidential Information in connection with the performance of its obligations under this Agreement and must not disclose or permit the disclosure of 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 any government agency or authority including the Auditor-General, the Ombudsman and the Independent Broad-based Anti-corruption Commission or
 - ii. to comply with any Laws including 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 to the same extent that GMW would have been bound had the relevant act been done or engaged in by GMW.
 - d) The Supplier must not do anything with any Protected Information that will cause the Supplier or GMW to breach any Privacy Law and must notify GMW within 4 days of becoming aware of any actual or suspected breach, and cooperate to resolve any complaint made under any Privacy Law.
 - e) The Supplier must ensure that its Personnel do not do or omit to do anything which, if done by the Supplier, would be a breach of this clause 8.
 - f) Following termination or expiry of this Agreement the Supplier must return or destroy (at GMW's direction) all Confidential Information which is in its or its Personnel's possession or control.
 - g) The Supplier must implement and maintain robust operational and technical controls to ensure the protection of the confidentiality, integrity, and availability of their systems and information. In compliance with these requirements, the Supplier must:
 - i. promptly report any cyber incidents experienced to GMW;
 - ii. configure all devices, software, or hardware installed or connected by the Supplier with full security settings; and
 - iii. identify, report, and correct any vulnerabilities within the supplied software or systems.

13. 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).

14. 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 GMW's absolute discretion.)
- b) The Supplier will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.

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 this 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. Dispute Resolution

- a) If any dispute arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- b) If the Dispute is not resolved in 15 business days GMW may refer the Dispute to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines with each party bearing their own cost.
- c) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

17. Term and Termination

- a) Without limiting clause 4, these Conditions commence when GMW issues a Purchase Order and end when the parties have fulfilled all of their obligations, unless terminated earlier in accordance with this clause.
- b) Either party may immediately terminate these Conditions by written notice if the other party becomes insolvent or bankrupt or the other party breaches these Conditions and does not remedy the breach within 14 days of receiving written notice of the breach.
- c) GMW may in its absolute discretion immediately terminate these Conditions for convenience, without cause, by giving the Supplier a minimum of 14 days' notice.
- d) GMW may immediately terminate these Conditions by notice in writing to the Supplier if the Supplier fails to supply the Goods and/or Services by the Time for Delivery or if the Supplier commits any act or does anything that may be prejudicial otherwise detrimental to GMW or the State of Victoria.
- e) If these Conditions are terminated, GMW must pay the Supplier all amounts due under these Conditions for Goods and/or Services delivered before the effective termination date but is not liable for any other costs in connection with termination (including any loss or consequential, indirect or special losses or damages of any kind and including loss of profits, incurred by the Supplier).
- f) If these Conditions are terminated, the Supplier must repay to GMW all sums paid for any undelivered Goods and/or Services.
- g) Termination or expiry of these Conditions will not affect any provisions which, by their Conditions or nature, survive termination or expiry or any rights and remedies already accrued by either party under, or in respect of any breach of, these Conditions.

18. General

- a) Time is of the essence in relation to the supply of the Goods.
- b) These Conditions may only be varied or replaced by a document executed by the parties.
- c) The Supplier must maintain records of all Goods and/or Services supplied under these Conditions in accordance with the *Public Records Act 1973* (Vic) for seven years after expiry or termination of these Conditions.
- d) For the duration of this Agreement and for 12 months after termination or expiry, the Supplier must on request allow GMW and its representatives to access the Supplier's premises to take copies of the Supplier's records and other documents for the purpose of verifying the Supplier's compliance with these Conditions.
- e) No party to these Conditions has the power to obligate or bind any other party. No joint venture, partnership, or employment, agency, or representative relationship is created by these Conditions.
- f) Any failure to exercise a right under these Conditions is not a waiver of that right and any consent to a breach of these Conditions is not a consent to any subsequent breach.
- g) All notices to GMW must be in writing and sent to the contact person specified in the Purchase Order. All notices to the Supplier must be in writing and sent to the address specified in the Purchase Order. Either party may by written notice change its address for receiving notices.
- h) The rights and remedies conferred on a party by these Conditions are in addition to all other rights and remedies of that party.

19. Occupation Health & Safety

- a) The Supplier must comply with all C occupational health and safety (OHS) Laws, including 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 must comply with all OHS policies and procedures of GMW and all site and job specific requirements for OHS.
- b) The Supplier must 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 must comply with such directions as GMW may give from time to time;
- c) All Suppliers who perform on-site non-construction and construction Services for GMW must;
 - i. undertake an OHS prequalification process.
 - ii. undertake GMW's online contractor induction

- iii. participate in a GMW onsite safety briefing prior to commencement of works and has had all inherent site hazards identified and explained
 - iv. where signposted or otherwise instructed, comply with all site specific safety rules
 - v. comply with GMW's Personal Protective Equipment requirements as documented in GMW's Personal Protective Equipment Procedure
 - vi. ensure that any sub-contractor engaged under their contract will also comply with all GMW requirements applicable to that contractor
- d) The Supplier must provide and maintain all equipment required to perform the Services.

20. Supplier Code of Conduct

- a) The Supplier must:
 - 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.

21. Modern Slavery and Child Safe Standards

- a) The Supplier must provide (and ensure its Personnel provide) the Goods and/or Services in a manner that does not breach the Modern Slavery Laws or the Child Safe Standards, or cause GMW to breach the Modern Slavery Laws or the Child Safe Standards.
- b) The Supplier confirms it is not subject to any investigation, enforcement or conviction involving Modern Slavery or child safety.
- c) The Supplier must promptly notify GMW of any actual or suspected breaches by the Supplier, or its subcontractors, of the Modern Slavery Laws or Child Safe Standards, and agrees to provide GMW immediately upon request any information and assistance that GMW may require for compliance with the Modern Slavery Laws or Child Safe Standards.

22. Definitions and Interpretation

I. Definitions

In these Conditions, unless the context otherwise requires:

Agreement means this 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.

Child Safe Standards means the Child Safe Standards made under the *Child Wellbeing and Safety Act 2005* (Vic) (as amended, updated or replaced from time to time).

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 (including this Agreement), 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 this 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 Specification.

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 including applications and rights to apply for any of the same

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.

Modern Slavery has the meaning given to that term in the Modern Slavery Laws.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth) and any analogous laws in any other relevant jurisdictions.

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)

Personnel includes all employees, offices, agents, consultants, contractors, subcontractors and other personnel.

Protected Information means any Health Information, Personal Information or Public Sector Data as defined under the Privacy Laws.

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.

Raw Data means the primary quantitative and empirical data collected under the scope of this Agreement.

Services means the services specified in the Purchase Order or Specification.

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 this 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.

II. Interpretation

- a) These Conditions are governed by and are to be construed under the laws of Victoria.
- b) These Conditions must not be construed to the disadvantage of the party who drafted them.
- c) If a provision is unlawful and unenforceable, it will be severed from these Conditions and the rest of these Conditions remain in force.