

# TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

## 1. INTERPRETATION

### 1.1 Definitions

**"Business Day"** a day that is not a Saturday, Sunday or public holiday in Melbourne.

**"Contract"** means the Purchase Order and these Terms and Conditions.

**"Contract Price"** means the price payable for the supply of the Goods and/or performance of the Services set out in the Purchase Order, as adjusted in accordance with clause 5.

**"Goods"** means the goods which Supplier is to supply to M&OP under the Contract and as specified in the Purchase Order, including any Variations.

**"GST"** means GST imposed by the GST law, applicable from time to time, as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

**"Intellectual Property Rights"** means all present and future rights conferred by law in or in relation to any copyright, trade-marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

**"M&OP"** means the Melbourne & Olympic Parks Trust, ABN 95 023 915 528.

**"Purchase Order"** means a purchase order provided by M&OP in respect of the Goods and/or Services.

**"Services"** means the services which Supplier is to supply to M&OP under the Contract, as specified in the Purchase Order, including any Variations.

**"Site"** means the location or address where the Goods are to be delivered and/or the Services are to be performed, as specified in the Purchase Order.

**"Supplier"** means the party to whom a Purchase Order is addressed and includes (where the context permits) the Supplier's officers, employees or agents.

**"Variation"** means a variation notified to Supplier in accordance with clause 5.

1.2 These Terms and Conditions form part of any Purchase Order to which they are attached.

## 2. ENTIRE AGREEMENT

2.1 This Contract supersedes all other discussions, representations and arrangements relating to the supply of the Goods and/or performance of the Services and constitutes the entire agreement between Supplier and M&OP with respect to the supply of the Goods and/or performance of the Services. For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraudulent misrepresentation or any other representation which cannot be excluded by law.

2.2 Save and except for any Variation in accordance with clause 5, no variation, modification or alteration of any of the terms of this Contract will be of any effect unless in writing and signed by each of the parties.

2.3 If there is any ambiguity, conflict or inconsistency between the provisions of the Terms and Conditions and the Purchase Order, the provisions of these Terms and Conditions prevail to the extent of such ambiguity, conflict or inconsistency.

## 3. PAYMENT

3.1 In consideration of Supplier's supply of the Goods and/or performance of the Services, M&OP must pay Supplier the Contract Price.

3.2 Supplier must submit to M&OP its claim for each payment of the Contract Price and any other charges due under the Contract in the form of a tax invoice 30 days prior to the dates for payment specified in the Purchase Order. If no dates for payment are specified, the Supplier must submit its tax invoice promptly after completing the supply of the Goods and/or performance of the Services.

3.3 M&OP will pay the amount due within 30 days after provision by Supplier of a tax invoice under this Contract, unless M&OP disputes the claim, in which case it will give reasons in writing to Supplier. The parties will then discuss M&OP's reasons for disputing the claim and negotiate in good faith to settle the dispute.

3.4 M&OP may deduct or set-off any money due from Supplier to M&OP from or against any amount payable to the Supplier.

## 4. GOODS AND SERVICES

4.1 Supplier must:

(a) deliver the Goods to the Site at the time and in the manner specified in the Purchase Order; and/or

(b) perform the Services at the Site within the timeframe and in the manner specified in the Purchase Order.

4.2 Risk and title in the Goods passes from Supplier to M&OP upon delivery of the Goods.

4.3 If Supplier fails to deliver the Goods and/or perform the Services on or before the time specified in the Purchase Order, M&OP may vary the Purchase Order to delete any Goods and/or Services not yet supplied and appoint an alternate supplier for such Goods and/or Services and any additional costs incurred by M&OP in having those Goods and/or Services supplied may be recovered from the Supplier as a debt due to M&OP.

4.4 Supplier must ensure all Goods supplied to M&OP:

(a) conform with any specifications stated in the Purchase Order or any samples provided to M&OP and any Australian standards;

(b) are free from defects in materials and workmanship;

(c) are of a high quality; and

(d) are fit for their intended purpose.

4.5 M&OP may inspect the Goods at any time prior to payment and reject any Goods which M&OP deems are not in accordance with the Contract.

4.6 M&OP may, following receipt of the Goods and irrespective of any warranty periods, reject the Goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before receipt.

4.7 If M&OP rejects any Goods, Supplier must comply as soon as practicable with a direction from M&OP to:

(a) replace the rejected Goods with Goods that meet the requirements of the Contract;

(b) refund any payment for the rejected Goods; or

(c) repair the Goods to the satisfaction of M&OP.

4.8 Supplier must ensure all Services performed for M&OP:

(a) are fit for their intended purpose and complete;

(b) are performed using high quality new materials which comply with the requirements of the Contract or, if not fully described in the Contract, are suitable for their intended purpose;

(c) comply with the requirements of the Contract and relevant standards (including applicable professional, safety and quality standards) and any policies of M&OP notified to the Supplier, provided that any changes to the standards and policies after the date of this agreement do not apply to the extent they deprive the Supplier of a right under this Contract unless otherwise agreed; and

(d) are performed at a high standard, with all due skill, care and diligence, and in accordance with relevant best practice.

## 5. VARIATIONS

5.1 Supplier acknowledges and agrees that, not less than 10 Business Days before delivery of the Goods and/or commencement of the Services, M&OP may add to, omit, reduce or vary the Goods and/or Services by issuing a notice in writing to Supplier specifying the required alterations to the Goods and/or Services.

5.2 If M&OP provides a notice in accordance with clause 5.1, the Contract Price will be adjusted to reflect the alteration to the Goods and/or Services.

## 6. WARRANTY

6.1 Unless a longer period is specified in the Purchase Order, the Goods are subject to a warranty period of 12 months commencing on the date of delivery of the Goods. During this warranty period, Supplier must rectify any defect in the Goods, or replace and reinstall any defective part of the Goods, as notified by M&OP to the Supplier and within the period specified in the notice.

6.2 Unless a longer period is specified in the Purchase Order, the Services are subject to a warranty period of 120 days commencing on the completion of the Services. During this warranty period, Supplier must re-perform any part of a defective Service notified by M&OP to the Supplier, within the period specified in the notice.

6.3 Following rectification of a defect in the Goods and/or the Services, a further warranty period equal to the original warranty period will apply to the rectified Goods and/or Services, commencing on the date upon which the rectified Goods are returned to M&OP and/or the rectified Services are completed.

6.4 If Supplier fails to rectify a defect within the timeframe specified by M&OP, M&OP may engage a third party to rectify the defect and recover the cost from Supplier as a debt due to M&OP.

6.5 Supplier must use its best endeavours to ensure that M&OP receives the benefit of any third party warranty in relation to the Goods and/or Services. Supplier must not, during the course of performing the Services, do any act or omit from doing any act that voids any third party warranty, in whole or in part.

## 7. COMPLIANCE WITH LEGISLATIVE REQUIREMENTS

Supplier must comply with the requirements of all applicable Commonwealth and State legislation (including without limitation all relevant environmental and occupational health and safety legislation) and will comply with the requirements of any authority having jurisdiction over or in respect of the Goods and/or Services.

## 8. DEFAULT AND TERMINATION

8.1 If Supplier:

(a) is in breach of this Contract; or

(b) has become insolvent or bankrupt or has had an administrator, receiver or liquidator appointed, then M&OP may immediately terminate this Contract by giving written notice to Supplier.

8.2 M&OP may, at any time and for any reason, terminate this Contract by at least 30 days' written notice to Supplier.

8.3 Where this Contract is terminated in accordance with this clause 8, M&OP will only be liable to pay Supplier the Contract Price in respect of Goods supplied and/or Services performed in accordance with this Contract prior to the date of termination.

8.4 Further to clause 8.3, where this Contract is terminated by M&OP under clause 8.2, the Supplier shall also be entitled to recover costs reasonably and necessarily incurred by the Supplier as a result of the termination (if any).

8.5 M&OP will not be liable to pay any compensation for loss of profits for a termination under this clause 8, or loss of any benefits or opportunity that would have been conferred on Supplier had the termination not occurred.

8.6 Clauses 1, 4, 8, 9, 10, 11, 12, 14, 15, 16 and 17 and any other obligations which are expressed to, or by their nature, survive expiry or termination of this Contract, survive expiry or termination of this Contract.

## 9. NOTICES

9.1 A notice, in connection with this Contract:

(a) must be in writing;

(b) must be marked for the attention of the person described in the Purchase Order; and

(c) must be addressed to the receiving party using the details set out in the Purchase Order (or any alternative details specified by the receiving party by notice to the sending party).

9.2 A notice is regarded as given and received:

(a) if delivered by hand – upon delivery to the relevant address;

(b) if sent by post – upon delivery to the relevant address; or

(c) if transmitted electronically – upon the message entering the addressee's information system.

## 10. GST

10.1 Words and terms defined in the GST law have the same meaning in this clause unless the context otherwise requires.

10.2 The consideration for any supply by Supplier under or in connection with this Contract includes any GST payable on that supply, and Supplier (and not M&OP) is responsible for payment of that GST. Supplier must issue to M&OP a tax invoice for any taxable supply at the time of making a claim for payment under clause 3.2.

## 11. CONFIDENTIALITY

11.1 Supplier acknowledges that the information contained in this Contract and all data and information provided by M&OP during or in connection with the negotiation or performance of this Contract is confidential and must not be disclosed to any third party without the prior written consent of M&OP.

11.2 Clause 11.1 does not apply to confidential information required to be disclosed by law or pursuant to stock exchange listing rules or disclosed to legal advisers, auditors, agents or employees of each party or its related bodies corporate in connection with this Contract.

## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 Supplier must not use, or allow any third party to use, any material protected by the Intellectual Property Rights of M&OP for any purpose other than the provision of the Goods and/or Services, unless it has obtained the prior written consent of M&OP.

12.2 Supplier acknowledges that, apart from any licence or permission that may be granted under clause 12.1, it has no right, title or interest in the material protected by the Intellectual Property Rights of M&OP.

12.3 Supplier grants to M&OP a royalty free, non-exclusive, transferable, perpetual license to use all Intellectual Property Rights associated with the Goods and/or Services.

12.4 This license includes allowing M&OP or a third party engaged by M&OP to use the Goods and/or Services and any documentation provided with the Goods and/or Services to effect the installation, use, support, repair, maintenance or alteration of the Goods and/or Services or to otherwise enjoy the benefit of this Contract.

## 13. INSURANCE

13.1 Except as otherwise specified in the Purchase Order, Supplier must effect and maintain:

(a) professional indemnity insurance for an amount of not less than the amount set out in the Purchase Order for each claim and in the aggregate for all claims with one right of reinstatement;

(b) public & products liability insurance for an amount of not less than \$10 million dollars each and every occurrence; and

(c) workers' compensation as required by law.

13.2 Supplier must promptly notify M&OP if, in relation to the insurance policy referred to in clause 13.1(b):

(a) any material claims are made under the insurance policy; or

(b) any claims are made under the insurance policy which could involve M&OP.

## 14. INDEMNITY

Supplier indemnifies M&OP from and against any:

(a) loss or liability;

(b) loss of or damage to property; or

(c) loss or expense incurred in dealing with any claim, including legal costs and expenses, arising from:

(d) any negligent, reckless or wilful act or omission by Supplier in connection with this Contract; or

(e) any breach by Supplier of obligations or warranties under this Contract.

## 15. WAIVER

15.1 The failure or delay of any party to enforce any provision of this Contract or exercise any rights expressed in this Contract or at law, is not a waiver of such provisions or rights and does not affect the enforcement of this Contract, unless the waiver is in writing and signed by the party granting the waiver.

15.2 A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent that it has not fully exercised the right.

## 16. NO ASSIGNMENT OR SUBCONTRACTING

Supplier must not assign its rights or obligations under this Contract or subcontract performance of any obligations under the Contract without the prior written consent of M&OP (such consent not to be unreasonably withheld or delayed).

## 17. GOVERNING LAW

This Contract is governed by and construed in accordance with the laws of Victoria. Each party to this Contract submits to the non-exclusive jurisdiction of the courts of Victoria.