**Purchase Order Terms**

**FOR GOODS OR SERVICES**

|  |  |
| --- | --- |
| **Melbourne Water (MW)** | Melbourne Water CorporationABN 81 945 386 953 of 990 La Trobe Street, Docklands VIC 3008 |
| **Supplier** | As per attached Melbourne Water Purchase Order |
| **Initial Term** | From the date of the Melbourne Water Purchase Order until such time as all Goods and/or Services identified in the Melbourne Water Purchase Order have been delivered.  |
| **Further Term** | As agreed between the parties. |

1.
2. **Supply of goods**
	* + 1. The Supplier must supply MW with the Goods described in the Melbourne Water Purchase Order and otherwise in accordance with this Agreement.
			2. The Supplier must deliver all Goods to the delivery point advised by MW at the Time for Delivery. The Goods will only be deemed to be delivered if an authorised representative of MW accepts the delivery in writing.
3. **Acceptance or rejection of goods**
	* + 1. If the Goods and Deliverables conform with the Specification, MW will accept the Goods and Deliverables in writing. If the Goods or Deliverables do not conform with the requirements of this Agreement and the Specification, MW may reject the Goods within 20 business days of delivery by written notice giving reasons and MW may require the Supplier to:
				1. rectify the Goods or Deliverables at its cost and within 10 business days of MW's notice; or
				2. to collect the Goods within 10 business days of MW's notice or remove the Deliverable from MW's premises or systems at its cost (as the case may be).
			2. The Supplier must absorb or reimburse MW as a debt due and payable for all costs incurred to return, rectify and redeliver the Goods and Deliverables not accepted by MW.
4. **Title and risk in goods**

Risk in Goods passes to MW when MW accepts delivery of the Goods in accordance with clause 2. Title in Goods passes to MW on payment for the Goods.

1. **Warranty period**
	* + 1. The Warranty Period for Goods starts on the date the Goods are accepted and, subject to clause 4(c), continues for a period of 12 months.
			2. Within 10 business days of receiving a notice from MW the Supplier must remedy all Defects in any Goods during the Warranty Period and the Additional Warranty Period (if applicable) at its own cost.
			3. The Additional Warranty Period will apply to all Goods with respect to which Defect rectification works are completed by the Supplier under clause 4(b).
2. **Provision of Services**
	* + 1. The Supplier must provide MW with the Services and Deliverables described in the Melbourne Water Purchase Order and otherwise in accordance with this Agreement, and must:
				1. complete the Services within the timeframes and in accordance with a Melbourne Water Purchase Order;
				2. provide the Services in a proper, timely and efficient manner with due skill, diligence, care and in a manner consistent with the highest professional industry standards;
				3. provide any equipment, facilities and other incidental items and Materials necessary for the performance of the Services;
				4. ensure compliance with MW's policies and procedures; and
				5. act in good faith and in the best interests of MW and in accordance with all applicable Laws and any reasonable directions given by MW from time to time.
3. **Failure to perform services**
	* + 1. Without limiting any other remedy available to MW, if the Supplier fails to provide the Services in accordance with this Agreement (**Non-Conforming Services**), MW may direct the Supplier to correct the Non-Conforming Services within the period stated in the direction and the Supplier must comply with the direction at its own cost.
			2. If Non-Conforming Services are not able to be corrected under clause 6(a), MW may correct itself, or have corrected by a third party, the Non-Conforming Services and the Supplier must reimburse MW for all costs incurred by MW in correcting the Non-Conforming Services. MW is not required to pay for any Non-Conforming Services unless and until those Services are corrected by the Supplier.
4. **MW’S property**
	* + 1. From time to time MW may provide the Supplier with MW's personal property in order for the Supplier to carry out its obligations under this Agreement.
			2. The Supplier:
				1. must do everything MW considers reasonably necessary to ensure that any security interest arising under this Agreement in favour of MW is able to be registered, is enforceable, perfected or otherwise effective and has the highest priority possible under the *Personal Property Securities Act* *2009* (Cth) (**PPS Act**);
				2. must not register a financing change statement without the prior written consent of MW and agrees not to disclose information of the kind referred to in section 275(1) of the PPS Act;
				3. waives any rights it may have had but for this clause under sections 157(1) and 275(7)(c) of the PPS Act; and
				4. sections 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.
5. **Prices, invoicing and payment**
	* + 1. The Item Prices and Service Fee are fixed and include any changes to the costs incurred by the Supplier in acquiring the inputs required to supply the Goods and Services.
			2. The Supplier may invoice MW for the Goods following MW’s acceptance of Goods and may invoice MW for the Services, at the times specified in the Melbourne Water Purchase Order.
			3. Invoices submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as MW may reasonably require and be sent to eCloud Business Services, PO Box 3173 Brighton VIC 3186 or apinvoices@melbournewater.com.au.
			4. Subject to the Supplier's compliance with this Agreement, MW will pay the Supplier in line with the Victorian State Government’s Fair Payment Policy, i.e. 10 Business Days for qualifying businesses and 30 days for all others, from the date MW receives a valid invoice.  Such payment does not constitute approval or acceptance of the Goods or Services.
			5. If MW disputes the invoiced amount (whether in whole or in part), MW will pay the undisputed amount (if any) and notify the Supplier of that amount. If MW and the Supplier cannot agree on the balance of the invoiced amount, the dispute will be managed under clause 18.
			6. Any payment or debt owed by the Supplier to MW under this Agreement or otherwise, or any loss, damage, claim, action or expense (including legal expense) suffered or incurred by MW which, in the reasonable opinion of MW, is owed by the Supplier to MW under or in connection with this Agreement, may be deducted or set off against amounts payable by MW to the Supplier under this Agreement.
			7. MW will notify the Supplier if making a deduction or set off under clause 8(f) when paying the affected invoice.
			8. Any deduction or set off will not prevent MW from recovering the balance of the payment or debt owed by the Supplier.
			9. MW will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, to be calculated on a daily basis at a rate of 2 percentage points over the cash rate published by the Reserve Bank of Australia from time to time.
6. **GST**
	* + 1. Terms used in this clause have the same meaning as in the GST Act.
			2. Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
			3. If GST is payable in respect of any supply made by the Supplier under this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement, subject to the MW receiving a tax invoice in respect of the supply.
7. **Safety & wellbeing**
	* + 1. In performing its obligations under this Agreement, the Supplier must strictly comply with all Health and Safety Laws, including Chain of Responsibility Laws and MW's Safety Management System.
			2. MW, or its designated representatives, may at any time conduct an audit to determine whether the Supplier is complying with its obligations under this clause 10 and the Supplier must cooperate with the audit at its cost.
			3. The Supplier and the Supplier’s Personnel must not infringe any Chain of Responsibility Law or any Melbourne Water Chain of Responsibility requirements under this Agreement in order to meet a scheduled delivery time or otherwise to improve the Supplier’s performance.
8. **Sub-contracting**
	* + 1. The Supplier must not sub‑contract any of its obligations without the prior written consent of MW (which may be given or withheld in its absolute discretion). The Supplier will not, as a result of any sub‑contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub‑contractor as though they were the actions of the Supplier.
9. **Confidentiality & data protection**
	* + 1. The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
			2. The Supplier consents to MW publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required to comply with the Contract Publishing System, to other Victorian Public Entities or Ministers of the State of Victoria in connection with the receipt of the Goods and use of the Services, to comply with the *Freedom of Information Act 1982* (Vic), or to the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).
			3. The Supplier must not make any public statements in connection with this Agreement, or use MW's name in any of its advertising material without the prior written consent of MW.
			4. The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to MW in respect of that act or practice had it been directly done or engaged in by MW.
			5. The Supplier acknowledges that MW is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of MW, under or in connection with the Agreement.
10. **Records & audit**
	* + 1. The Supplier must maintain complete and accurate Records and securely store and ensure the integrity of those records in accordance with all applicable standards issued under the *Public Records Act 1973* (Vic).
			2. During the Term and for 12 months after termination or expiry of this Agreement, the Supplier must, within 5 business days of receiving notice from MW, allow MW and its representatives to access the Supplier's premises, facilities, systems and any information or documentation in the Supplier's possession or control which is connected to the Goods, Services or this Agreement (including the Records) for the purpose of MW or its nominee performing an audit to verify the Supplier's compliance with this Agreement. Access must be provided at no cost to MW, and the Supplier must permit MW to take copies of documentation (including Records).
11. **Intellectual property**
	* + 1. The ownership of any Contract Intellectual Property shall vest in the Supplier upon the time of its creation.
			2. Supplier grants MW a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to use, copy, modify and develop the Contract Intellectual Property (including the right to sub-licence) so that MW can receive the full benefit of the Contract Intellectual Property.
			3. All Pre-Existing Intellectual Property used and identified by the Parties in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the parties or its licensors. The Supplier hereby irrevocably and unconditionally grants to MW, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property. The licence granted to MW is limited to use of the relevant Pre-Existing Intellectual Property by MW for MW's business purposes.
			4. The ownership of Data, including any Intellectual Property Rights, shall vest in MW upon the time of its creation.
			5. The Supplier warrants that it has or will procure a written consent from all necessary authors to the organisation exercising its rights in the Data or Intellectual Property Rights in the Goods, the Deliverables, the Supplier’s Existing Material and Third Party Material in a manner that, but for the consent, would otherwise infringe the Moral Rights of those individuals.
12. **General warranties**

The Supplier warrants to MW that:

* + - 1. (Title) it has the right to sell and transfer full and unencumbered title to and property in the Goods to MW;
			2. (Purpose) where MW 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;
			3. (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 or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and
			4. (IP) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of Services or in connection with the Goods; and
			5. (Goods) the Goods:
				1. (except as otherwise provided in the Melbourne Water Purchase Order) are new when delivered to MW;
				2. are fit for the purpose stated in the Melbourne Water Purchase Order (or, if no purpose is stated, the purpose for which the Item would ordinarily be used);
				3. conform to the description, model number and the sample (if any) provided by the Supplier and in all other respects with the requirements of this Agreement (including the Melbourne Water Purchase Order); and
				4. are free from Defects and of merchantable quality and comply with all applicable Laws.
1. **Insurance, liability & indemnity**
	* + 1. The Supplier must have and maintain the following insurances for the duration specified:

**Public liability**

* + - * 1. Insured amount: $10m any one occurrence
				2. For the Term of this Agreement.

**Product liability**

* + - * 1. Insured amount $10m any one occurrence and in the aggregate
				2. For the Term of this Agreement.

**Professional indemnity**

* + - * 1. Insured amount: $5m any one occurrence
				2. For the Term of this Agreement and a further 7 years.

**Workers compensation**

* + - * 1. The amount required by applicable State or Territory Laws.
			1. The Supplier must indemnify MW and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers arising from any failure to deliver the Goods or to provide the Services in accordance with this Agreement or any other breach of the Agreement.
			2. Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which cannot by Law be excluded, restricted or modified.
			3. On request, the Supplier must provide MW with certificates of currency evidencing its compliance with clause 16(a).
1. **Cancellation**
	* + 1. MW may cancel the Services or the supply of Goods at any time by giving 20 business days’ written notice to the Supplier who must, on receipt, immediately cease all work and/or supply and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Goods or Services.
			2. MW must pay all reasonable amounts due in accordance with this clause for all work performed or Goods provided by the Supplier up until the date of cancellation (but not any loss of prospective profits) and MW has no other liability to the Supplier in relation to that cancellation.
2. **Dispute resolution**
	* + 1. A party claiming that a Dispute has arisen must promptly give the other party a Dispute Notice.
			2. Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.
			3. This clause does not affect the rights of the parties to cancel this Agreement under clause 17.
			4. The parties must attempt to resolve all Disputes as follows:
				1. within 5 business days of the Dispute Notice date, each party's contract managers must meet to discuss the Dispute;
				2. if the Dispute remains unresolved 10 business days after the Dispute Notice date, appropriately senior representatives of each party must meet to discuss the Dispute; and
				3. if the Dispute remains unresolved 15 business days after referral to the party representatives under clause 18(d)(ii), the Chief Executive Officer or Managing Director (or equivalent) of each party must meet to discuss the Dispute.
3. **General**
	* + 1. This Agreement and any Melbourne Water Purchase Order contains the entire understanding between the parties as to the subject matter contained in it.
			2. This Agreement may only be varied in writing.
			3. This Agreement is governed by and is to be construed in accordance with the Laws applicable in Victoria.
			4. The terms of this Agreement shall take precedence and prevail over any terms in a Melbourne Water Purchase Order.
4. **Interpretation**

In this Agreement, unless the context otherwise requires:

**Additional Warranty Period** means, for each Item, the period commencing on expiry of the Warranty Period for that Item and continuing for an additional 3 months.

**Agreement** means this agreement between MW and the Supplier, and includes its Schedules and any documents incorporated by reference.

**Chain of Responsibility Law means;**

(a) any State, Territory or Commonwealth legislation or regulations based on or adapted from the Heavy Vehicle National Law Act 2012 (Qld) as approved by each State and Territory Government; and

(b) any State, Territory or Commonwealth legislation or regulations in respect of stability, mass, dimension, load restrain, driver fatigue, speed management and maintenance.

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

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, MW, including any information designated by MW as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:

## is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;

## the Supplier can demonstrate was in its possession prior to the date of the Agreement;

## the Supplier can demonstrate was developed by it independently of any disclosures previously made by MW;

## is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with MW or otherwise prohibited from disclosing the information to the Supplier; or

## is required to be disclosed pursuant to Law, court order or other legal process.

**Conflict of Interest** includes any perceived or actual conflict between:

## the duties of the Supplier or any of its Personnel under this Agreement; and

## any personal, business, financial or other interest that the Supplier or any of its Personnel may have in relation to any of the Goods or Services.

**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.

**Contract Material** means any Material created by the Supplier or its Personnel on or following the Start Date in the course of, or as a consequence of, performing its obligations under this agreement or a Melbourne Water Purchase Order.

**Contract Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments, bodies and agencies, including any replacement or amended system.

**Data** means any data, datasets or databases created by or on behalf of the Supplier in the course of providing the Services.

**Defect** includes:

## any failure of an Item to comply with its Specification; and

## any defect in Materials, manufacture, workmanship or design.

**Deliverable** means any Contract Material or other item to be supplied by the Supplier in performing the Services under this Agreement, including as described in an Melbourne Water Purchase Order.

**Delivery Point** means the location to which the Goods are to be delivered, as specified in an Melbourne Water Purchase Order.

**Dispute** means a dispute arising under or in connection with this Agreement.

**Dispute Notice** means a notice setting out details about a Dispute that is given under clause 18.

**Existing Material** means all Material, other than Contract Material, which is made available by a party under this Agreement, including Third Party Material.

**Further Term** means the extended term on the same terms and conditions, including price, as extended by MW by giving written notice to the Supplier prior to the expiry of the Initial Term or the then current Further Term, as the case may be.

**Goods** means the goods specified in a Melbourne Water Purchase Order.

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

**Health and Safety Laws** means all workplace, health and safety related Laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant authority and standards applying where the Goods or Services are being supplied and includes Chain of Responsibility Law, the OH&S Act and OH&S Regulations.

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic) in so far as they relate to public sector organisations.

**Indemnified Parties** means MW and each of its directors, officers, employees, contractors and agents individually or collectively, as the case may be.

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

**Intellectual Property Rights** means all and any patents, patent applications, trademarks, service marks, trade names, domain names, registered designs, unregistered design rights, copyright (including future copyright), know how, trade secrets and rights in Confidential Information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Item** means each of the individual Goods.

**Item Price** means the price for each Item of Goods, as specified in a Melbourne Water Purchase Order.

**Law** includes, as amended from time to time and whether or not existing at the Start Date, all applicable principles of law or equity, standards, codes and guidelines, water industry standards and other industry standards to the extent that such standards, codes and guidelines are relevant to the Goods or Services, directions or notices issued by any authority and fees, rates, taxes, levies and charges payable in respect of the things referred to in this definition.

**Materials** means anything in a material form including equipment, hardware, computer software, data, documentation, designs, drawings, reports, notes, calculations, specifications, photographs, audio-visual materials, recordings, manuals and tools (and includes information stored in an electronic form).

**Melbourne Water Purchase Order** means the document titled Purchase Order with a valid purchase order number that is sent to the Supplier by Melbourne Water for the purpose of engaging the Supplier to provide Goods and/or Services.

**Moral Rights** has the same meaning and effect as given to that expression in the *Copyright Act 1968* (Cth).

**OH&S Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OH&S Regulations** means the *Occupational Health and Safety Regulations 2007* (Vic).

**Overdue Amount** means an amount (or part thereof) that:

* 1. is not, or is no longer, disputed;
	2. is due and owing under an invoice properly rendered by the Supplier in accordance with this Agreement; and
	3. has been outstanding for more than 10 business days from the date MW receives a valid invoice for suppliers that qualify under the Victorian State Government’s Fair Payment Policy or 30 days from the end of the month for all other suppliers in which the invoice is received (or the date the amount ceased to be disputed, as the case may be).

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

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems which are the property of either party and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

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

**Records** means written records produced or created by the Supplier (or its Personnel) under or in the course of performing the Supplier's obligations under this Agreement.

**Safety Management System** means Melbourne Water's Safety Management System as notified from time to time.

**Services** means the services specified in a Melbourne Water Purchase Order.

**Service Fee** means the fee payable by MW to the Supplier for performance of the Services in accordance with this Agreement, as specified in a Melbourne Water Purchase Order.

**Specification** means the specification to which the Goods or Deliverables must comply, as set out in a Melbourne Water Purchase Order or as otherwise incorporated in the Agreement.

**Start Date** means, in respect of each Melbourne Water Purchase Order, the date of the Melbourne Water Purchase Order.

**Taxes** means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loadings and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, paid by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above but does not include GST or stamp duty.

**Term** means the Initial Term and any Further Terms.

**Third Party Material** means Existing Material in which a third party has Intellectual Property Rights.

**Time for Delivery** means the date and time for delivery of Items as specified in a Melbourne Water Purchase Order or as agreed between the parties.

**Warranty Period** means, for each Item, the period described in clause 4.