



GOLDEN PLAINS SHIRE

PURCHASE ORDER CONDITIONS

1. PURPOSE & APPLICATION

- 1.1. The Supplier shall supply to Golden Plains Shire Council ABN 86 998 570 296 (**Council**) Goods and/or Services in accordance with these Conditions and the Purchase Order, which is expressly incorporated into these Conditions.
- 1.2. The Supplier's terms and conditions (whether or not supplied) will be of no legal effect and will not constitute part of these Conditions or an agreement with Council.
- 1.3. These Conditions may only be amended or varied by agreement in writing.
- 1.4. If there is any inconsistency between the Purchase Order and these Conditions, these Conditions prevail to the extent of the inconsistency.
- 1.5. If more than one person is the Supplier those persons contract jointly and severally for themselves and each other.

2. LAW & JURISDICTION

- 2.1. These Conditions are governed by and construed in accordance with the Laws of Victoria, Australia and the parties submit to the jurisdiction of the Victorian Courts.
- 2.2. If any provision of these Conditions is invalid under any Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

3. COMPLIANCE

The Supplier agrees that, in supplying Goods and/or Services, it and the Supplier Personnel will comply with:

- 3.1. all Laws;
- 3.2. all Laws in connection with occupational health and safety and any related codes of practice, guidelines and advisory standards applicable to the Goods and/or Services; and
- 3.3. Council Policies and all directions and procedures of Council as notified by Council from time to time, including when on Council's premises or when using Council's systems.

4. SUPPLY & DELIVERY

- 4.1. Upon request, the Supplier will provide Council with a written report giving details of the status of Goods and/or Services, including tasks completed, tasks yet to be completed and estimated completion dates.
- 4.2. Time is of the essence. Supply of Goods and/or Services must be made at the Delivery Address by the Delivery Date, in the manner stated in the Purchase Order.

5. ACCEPTANCE OF GOODS

- 5.1. Acceptance of Goods by Council will not be taken to have occurred until either:
 - 5.1.1. acceptance is acknowledged in writing by Council; or
 - 5.1.2. acceptance is deemed to have occurred in accordance with this clause 5.
- 5.2. If the Goods conform with these Conditions, Council will promptly issue written notification of the acceptance of the Goods. If Council does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the Delivery Date.

6. RISK & TITLE TO GOODS

- 6.1. Ownership of, and title to, Goods passes to Council upon acceptance of the Goods in accordance with clause 5.
- 6.2. Risk of loss or damage to Goods passes to Council on delivery of Goods.

7. PROVISION OF SERVICES

- 7.1. After performance of the Services or delivery of any deliverable provided as part of the Services, Council will undertake such reviews as it considers necessary to determine whether the Services or deliverable(s) are fit for purpose and comply with

these Conditions. After reviewing the Services or deliverable(s), Council may notify the Supplier in writing:

- 7.1.1. of its acceptance of the Services or deliverable(s) if it is satisfied that the Services or deliverable(s) are fit for purpose and comply with the Conditions; or
- 7.1.2. if the Services or deliverable(s) are not fit for purpose or do not comply with these Conditions, in which case clause 12.5 will apply.

- 7.2. Unless otherwise stated in the Purchase Order, the Supplier must supply all equipment, facilities and other items and Materials necessary to provide the Services.

8. DELAYS

The Supplier must notify Council as soon as it becomes aware of any delay or possible delay in the supply of the Goods and/or Services.

9. INSURANCE

- 9.1. The Supplier must maintain the insurance stated in the Purchase Order to cover the Supplier and Council against any liability that may arise in the performance of the Supplier's obligations under these Conditions.
- 9.2. If no insurance is stated in the Purchase Order, the Supplier must obtain and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with these Conditions, including professional indemnity and, if applicable, public and product liability insurance to a value sufficient to cover any loss or costs that may be incurred.
- 9.3. On request, the Supplier must, within 10 Business Days, provide Council with evidence of the currency of any insurance it is required to obtain.

10. PRICE & PAYMENT

- 10.1. Upon receipt of a valid Tax Invoice, Council shall pay the Supplier the Price in the manner specified in the Purchase Order.
- 10.2. The Price is inclusive of all costs, taxes and duties (except GST) incurred by the Supplier in the supply of Goods and/or Services.
- 10.3. Council may reduce any payment due to the Supplier under these Conditions by any amount which the Supplier must pay Council, including costs, charges, damages and expenses and any debts owed by the Supplier to Council. This does not limit Council's right to recover those amounts in other ways.
- 10.4. The Supplier must not charge Council for any additional fees or charges, or recover any expenses or other costs from Council, unless agreed by both parties in writing.
- 10.5. Upon notice from the Supplier to Council, simple interest, as at the penalty interest rate fixed for the time being under the *Penalty Interest Rates Act 1983* (Vic), accrues on a daily basis on any Overdue Amount and is payable by Council to the Supplier on demand.
- 10.6. Council may set off any amount owed to the Supplier by Council against any amount payable or claimed to be payable by the Supplier to Council under these Conditions. Council will notify the Supplier if making a set off under this clause 10.6.

11. GST

To the extent that the Supplier makes a Taxable Supply in connection with these Conditions then, except where express provision is made to the contrary, the amount payable by Council of that supply is a GST exclusive amount and Council will pay to the supplier of it the GST payable in respect of that supply in addition to the other consideration payable. The Supplier's right to payment of GST is subject to a valid Tax Invoice being delivered to Council.

12. QUALITY

- 12.1. Goods and/or Services must match the description referred to in the Purchase Order and, if the Supplier gave the Organisation a sample of Goods or a demonstration of Services, Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

- 12.2. Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied and for any other purpose Council specifies.
- 12.3. Goods and/or Services must be supplied by appropriately skilled, experienced and qualified Personnel with all due skill and care.
- 12.4. Unless otherwise specified in writing or in the Purchase Order, Goods must be new.
- 12.5. If the Supplier is in breach of clause 7.1.2 or this clause 12, Council may reject the Goods and/or Services and:

- 12.5.1. obtain a refund of any amounts paid to the Supplier in respect of those Goods and/or Services;
- 12.5.2. require the Supplier to resupply the Goods and/or Services at no cost to the Organisation or pay the Organisation the cost of the resupply of the Goods and/or Services by a third party.

13. INTELLECTUAL PROPERTY

- 13.1. Unless otherwise stated in the Purchase Order, all Intellectual Property Rights created in the course of the supply of any Services is, from the time of creation, owned by Council.
- 13.2. The Supplier must not use, disclose, copy or reproduce that intellectual property except for the purposes of complying with these Conditions.
- 13.3. All Pre-Existing Intellectual Property used by the parties in connection with any Services remains the property of the relevant party or its licensors.
- 13.4. The Supplier hereby irrevocably and unconditionally grants to Council a perpetual, non exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre Existing Intellectual Property incorporated in or otherwise required to use any Services.
- 13.5. Council grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use Council's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform any Services and comply with its obligations under these Conditions.
- 13.6. The Supplier represents and warrants to Council that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with any Services and to grant to Council the licences contemplated by these Conditions.
- 13.7. The Supplier must at all times indemnify Council, its officers, employees and agents, from and against all loss, damage, costs (including legal costs and expenses on a solicitor/own client basis), compensation and expenses arising out of the infringement or alleged infringement of any Intellectual Property Rights, by reason of the purchase, possession or use of any Services.
- 13.8. The Supplier must not incorporate third party intellectual property into any Services without Council's prior written consent.

14. CONFIDENTIALITY AND PRIVACY

- 14.1. All confidential information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge (otherwise than through a breach of confidentiality) and must not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by Law.
- 14.2. The Supplier acknowledges that it will be bound by the Privacy Obligations with respect to any act done or practice engaged in by the Supplier for the purposes of these Conditions, in the same way and to the same extent as the Privacy Obligations would have applied to Council in respect of that act or practice had it been directly done or engaged in by Council.
- 14.3. The Supplier acknowledges that when Council acts or performs the functions of a public entity, it is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that contravenes or breaches any of the Protective Data Security Standards or would give rise to any contravention of a Protective Data Security Standard by the Organisation Council in respect of any data collected, held, used, managed, disclosed or transferred by the Supplier under or in connection with these Conditions.

15. CANCELLATION

- 15.1. Either party may cancel the Purchase Order by giving written notice to the other party (**Defaulting Party**) if the Defaulting Party:
 - 15.1.1. breaches any obligation under these Conditions that is not capable of remedy; or
 - 15.1.2. breaches any obligation under these Conditions which is capable of remedy and the Defaulting Party fails to remedy the breach within 7 Business Days following the written notice to do so.
- 15.2. Upon cancellation under this clause 15:
 - 15.2.1. Council will pay the Supplier for any Goods and/or Services performed or delivered up to the date of cancellation; and

- 15.2.2. the Supplier must immediately stop carrying out any Services.

16. PUBLICITY

- 16.1. The Supplier must not make any public statements, including issuing any media release, about Council or in connection with these Conditions or the supply of Goods and/or Services without the prior written consent of Council.
- 16.2. The Supplier must not use or reproduce Council's name, logo or other trademarks without the prior written consent of Council.

17. CONFLICT OF INTEREST

The Supplier must promptly notify Council if any actual or potential Conflict of Interest arises relating to the provision of any part of the Goods and/or Services by the Supplier or its Personnel and must comply with Council's reasonable directions in relation to the management of that Conflict of Interest.

18. INSOLVENCY OF THE SUPPLIER

If the Supplier, being a person, commits an act of bankruptcy; or, being a company, commits an act of insolvency, Council may cancel the Purchase Order and shall be relieved from paying the Price for Goods and/or Services not supplied.

19. SUBCONTRACTING

- 19.1. The Supplier must not, without the written consent of Council, sub-contract or allow a subcontractor to subcontract the whole or any portion of its rights and obligations under these Conditions. If Council gives consent in accordance with this clause 19, the Supplier remains fully responsible for performance under these Conditions.
- 19.2. Neither party may assign, novate or otherwise transfer or encumber any of its rights or obligations under these Conditions without the consent of the other party. Each party agrees to execute such documents and do such things as reasonably require to give effect to any such assignment, novation or transfer.

20. INDEMNITY

- 20.1. The Supplier must at all times indemnify Council, its officers, employees and agents from and against any loss (including legal costs and expenses), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any breach of these Conditions or unlawful or negligent act or omission of the Supplier or its Personnel.
- 20.2. The Supplier's liability to indemnify Council under clause 20.2 is reduced to the extent that any act or omission of Council or its Personnel contributed to the loss or liability.
- 20.3. In relation to all loss arising in relation to these Conditions (including in relation to negligence under any indemnity):
 - 20.3.1. each party must use all reasonable endeavours to mitigate any losses they incur;
 - 20.3.2. each party will only liable for that proportion of loss which they have caused or contributed to and neither party will be liable for any indirect or consequential loss or damage.

21. PRIVACY

Council's commitment to privacy is set out in Council's Privacy Policy.

22. NO FETTERING OF COUNCIL POWERS

The parties acknowledge and agree that these Conditions do not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with any Law.

23. WAIVER

No waiver by any party of any default in the strict and literal performance of or compliance with any provision of these Conditions will be deemed to be a waiver of strict and literal performance of and compliance with any other provision nor to be a waiver of, or in any way release, any party from compliance with any provision in the future.

24. NO RELATIONSHIP

These Conditions do not constitute an agency, partnership, joint venture or employee, employer or representative relationship between the parties.

25. NOTICES

- 25.1. A notice required or permitted to be given by one party to another under these Conditions must be in writing, addressed to the other party and:
 - 25.1.1. delivered to that party's address; or
 - 25.1.2. transmitted by email to that party's email address.
- 25.2. A notice given to a party in accordance with clause 25.1 must be treated as having been duly given and received:
 - 25.2.1. if delivered to a party's address, on the day of delivery; or

25.2.2. if transmitted by email to a party's email address, when a delivery confirmation is received, by the sender recording the time the email was delivered.

26. DISPUTE RESOLUTION

- 26.1. If a Dispute arises under these Conditions, the parties will attempt to negotiate a resolution by good faith negotiations.
- 26.2. If a Dispute persists for more than 14 days, either party can refer the Dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.
- 26.3. Subject to clause 26.4, neither party may commence legal proceedings in relation to a Dispute unless the dispute resolution process outlined in this clause 26 has first been complied with.
- 26.4. Nothing in these Conditions will prejudice the right of a party to institute court proceedings to enforce payment due under this Contract or to seek urgent injunctive or declaratory relief in respect of a Dispute or any matter arising under these Conditions.
- 26.5. Pending resolution of any Dispute, the parties will continue to perform their obligations under these Conditions without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

27. SURVIVAL

Clauses 1.3, 9, 10.6, 13, 14, 15, 16, 20, 25, 27 and 29 of these Conditions survive the termination or expiry of these Conditions or the completion of the provision of Goods and/or Services and may be enforced at any time.

28. GENERAL

- 28.1. The Purchase Order may be executed electronically in any number of counterparts all of which, taken together, constitute one instrument.
- 28.2. These Conditions contain the entire understanding between the parties about the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by these Conditions and have no effect.
- 28.3. A right relating to these Conditions may only be waived by a written notice signed by the party waiving the right. A single or partial exercise or waiver of a right relating to these Conditions does not prevent any other exercise of that right or the exercise of any other right.
- 28.4. The rights and remedies conferred on a party by these Conditions are in addition to all other rights and remedies of that party.

29. INTERPRETATION

- 29.1. In these Conditions, a reference to:
 - 29.1.1. a person includes a firm, partnership, joint venture, association, corporation or other corporate body and any government agency, and that person's legal personal representatives, successors and permitted assigns; and
 - 29.1.2. any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.
- 29.2. In these Conditions:
 - 29.2.1. a reference to '\$' or 'dollars' is a reference to Australian dollars;
 - 29.2.2. a reference to this or another document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 29.2.3. a reference to a statute, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 29.2.4. a reference to a clause or party is a reference to a clause or party to these Conditions;
 - 29.2.5. a reference to the singular includes the plural and vice versa;
 - 29.2.6. a reference to a gender includes the other genders;
 - 29.2.7. headings and sub-headings are inserted for convenience only and do not affect the interpretation of this Agreement;
 - 29.2.8. where a word is defined, its other grammatical forms have a corresponding meaning; and
 - 29.2.9. the words *including* or *includes* mean 'including but not limited to' or 'including without limitation'.
- 29.3. If a provision in these Conditions is held to be illegal, invalid, void, voidable or unenforceable, that 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 as required in this clause, that provision is severable

without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Conditions.

30. DEFINITIONS

- Business Day** means a day that is not a Saturday, Sunday, or public holiday or a day that is wholly or partly observed as a public holiday throughout Victoria.
- Conditions** means these General Conditions and the Purchase Order, including any Special Conditions specified in the Purchase Order.
- Conflict of Interest** includes any perceived or actual conflict between the duties of the Supplier or any of its Personnel under these Conditions and any duties of the Supplier or any of its Personnel to any third party or any personal, business, financial or other interest that the Supplier or any of its Personnel may have in relation to the Goods and/or Services or any part of them.
- Council** means Golden Plains Shire Council ABN 86 998 570 296 of PO Box 111 Bannockburn VIC 3331.
- Council Policies** means all policies of Council as supplemented, varied, and replaced from time to time.
- Delivery Address** means the place of supply of Goods and/or Services, if any, specified in the Purchase Order.
- Delivery Date** means the date for supply of Goods and/or Services, if any, specified in the Purchase Order.
- Dispute** means a dispute or disagreement that arises between the parties in relation to these Conditions.
- Goods** means the Goods, if any, described on the Purchase Order and as provided under these Conditions.
- GST, Tax Invoice and Taxable Supply** each have the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Health Privacy Principles** means the Health Privacy Principles set out in the *Health Records Act 2001* (Vic).
- Information Privacy Principles** means the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014* (Vic).
- Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, 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.
- Law** means Commonwealth, State and local government legislation, regulations, by-laws, orders, permits and approvals; and Australian Standards applicable to the Goods and/or Services.
- Materials** includes documents, papers, models, drawings, materials, transcripts, computer software and programs and consumables.
- Overdue Amount** means an amount (or part thereof) that:
- 30.1. is not, or is no longer, disputed;
 - 30.2. is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with these Conditions; and
 - 30.3. which has been outstanding for more than 30 days
 - 30.4. from the date of receipt of the correctly rendered Tax Invoice (or the date that the amount ceased to be disputed, as the case may be).
- Payment Terms** means the payment terms set out in the Purchase Order.
- Personnel** means a party's employees, secondees, directors, officers, contractors, professional advisers and agents.
- Pre-Existing Intellectual Property** means all materials owned by or licensed to a party as at the date of the Purchase Order or developed by or on behalf of a party independently of these Conditions.
- Price** means the price set out in the Purchase Order for Goods and/or Services.
- Privacy Obligations** means the Information Privacy Principles, the *Privacy and Data Protection Act 2014* (Vic), the Health Privacy Principles and any applicable Code of Practice described in, and approved under the *Privacy and Data Protection Act 2014* (Vic).
- Privacy Policy** means Council's privacy policy as amended from time to time available at:
<https://www.goldenplains.vic.gov.au/council/organisation-and-governance/privacy-and-your-personal-information>.
- Protective Data Security Standards** means any standards issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).
- Purchase Order** means the request for quotation, completed by the Supplier and accepted in writing by Council for the Supply of Goods and/or Services.
- Services** means the services, including any deliverables provided as part of the services, if any, specified in the Purchase Order and as provided under these Conditions.
- Special Conditions** means any special conditions set out in the Purchase Order.
- Supplier** means the person or entity supplying Goods and/or Services under these Conditions.