

# LOWER MURRAY WATER TERMS AND CONDITIONS OF PURCHASE ORDER

## 1. Term of Agreement

These conditions together with any specification provided by Lower Murray Water in connection with the supply of the goods or services ("the Specification") and the attached order shall constitute the contract documents and the entire terms of the agreement.

## 2. The General Scope of Purchase Order

This Purchase Order requires the supplier to:

- a) Supply goods or services as nominated as to sizes, quantities and types;
- b) Ensure that the goods or services delivered comply with the quality size and nature specified in any Contract Documents or correspondence agreed by Lower Murray Water's representative officer.
- c) Supply the same for the amount or at the rates of charge referred to in the attached order;
- d) Comply in all respects with the Contract Documents (if applicable) concerning the sale, supply, delivery and payment of goods and services on the purchase order.
- e) No goods will be paid for, received or acknowledged without the issue to the supplier or Supplier of this form of official Lower Murray Water Purchase Order.

## 3. Quality

The quality of the Materials delivered shall not differ from that specified in the Purchase order or Contract Documents (if applicable) unless the change in quality is ordered by Lower Murray Water representative in a written form specifically referring to the amendment of the quality.

## 4. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the supply of the Goods or services without the prior written consent of Lower Murray Water (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 5. Delivery

- a) Delivery shall be made to such locations and at such time as shall be nominated by Lower Murray Water in the attached order.
- b) Upon delivery the Materials shall be accompanied by a delivery document with Lower Murray Water's order number nominated thereon. A separate tax invoice shall be sent to Lower Murray Water as soon as possible which shall state clearly the contents of the delivery, pricing including freight

costs, and Lower Murray Water's order number and the requesting officer's details.

- c) The Price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of the goods or services to Lower Murray Water.
- d) All elements of the goods or services delivered by the Supplier shall be at the risk of the Supplier and no liability to pay for them shall arise until that element of the goods or service are approved by Lower Murray Water and delivery is accepted in writing or by counter-signature.
- e) Should the supplier be at fault in the completion of a service or delivery as specified, upon return of any such element of the goods which are not acceptable to Lower Murray Water the Supplier shall reimburse Lower Murray Water for:  
any amounts paid by Lower Murray Water on account of the price of the returned elements of the goods ; and any costs incurred by Lower Murray Water in connection with the delivery or return of the relevant element of the returned goods.

## 6. Acceptance of Goods

All goods are accepted subject to check and inspection. Lower Murray Water shall only be obliged to accept delivery of such goods or services as comply with the Purchase Order or Contract Documents.

If the delivery of the Materials shall not comply with all of the same in any respect then the Supplier shall, - if so required by Lower Murray Water remove all such rejected elements of the Materials and replace with a delivery of the goods or service acceptable to Lower Murray Water. All freight, insurance and other charges whatsoever in connection with the return of the goods or services and the delivery of a further supply of the Materials shall be paid and borne by the Supplier.

## 7. Access

When at the Lower Murray Water's premises, the Supplier must, and must ensure that its Personnel:

- a) protect people and property;
- b) prevent nuisance;
- c) act in a safe and lawful manner;
- d) comply with the safety standards and policies of the Lower Murray Water (as notified to the Supplier); and
- e) comply with any lawful directions of the Lower Murray Water or its Personnel.

## 8. Invoicing and payment

- a) Upon completion of the Services, or as otherwise specified in the Purchase Order, the Supplier must submit an invoice to the Lower Murray Water at the address specified in the Purchase Order. Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act, together with such other information as the Lower Murray Water may reasonably require.
- b) On or following acceptance of the Services, the Lower Murray Water will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice. If the Lower Murray Water disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute
- c) Payment of an invoice is not to be taken as evidence that the goods or Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- d) 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 the Lower Murray Water to the Supplier on demand.

## 9. Part Acceptance of Order

Where Lower Murray Water has accepted an element of the Goods that constitute part of a "Materials Request" Lower Murray Water shall pay the Supplier or Supplier that part of the purchase price attributable to that element of the Goods accepted.

## 10. Liability

- a) The Supplier indemnifies, and will at all times keep the Lower Murray Water and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
  - personal injury, including sickness and death;
  - property damage;
  - breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
  - fraudulent acts or omissions;
  - wilful misconduct or unlawful act or omission;
  - breaches of logical or physical security;
  - loss or corruption of Data;
  - third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
  - infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third

party, which was caused, or contributed to by, any act or omission of the Supplier or any of its Personnel.

- b) The Supplier's liability to indemnify the Lower Murray Water under clause 8(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of the Lower Murray Water or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
- c) To the extent that the indemnity in clause 8(a) refers to persons other than the Lower Murray Water, the Lower Murray Water holds this clause on trust for those other persons.

## 11. Insurance

- a) The Supplier must obtain and maintain insurance cover during the Term and, if requested by the Lower Murray Water, for a period of up to 7 years after the Services have been completed, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including professional indemnity and, if applicable, public and product liability insurance to the value specified in the Purchase Order or, if no value is specified, to a value sufficient to cover any loss or costs that may be incurred.
- b) On request, the Supplier must, within 10 Business Days, provide the Lower Murray Water with evidence of the currency of any insurance it is required to obtain under this Agreement.
- c) Where the required insurance is due to expire, on request by the Lower Murray Water, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.
- d) All goods are accepted subject to check and inspection, and Lower Murray Water reserves the right to return any faulty or unsuitable item(s) and withhold payment.

## 12. Property in the Materials

Where any part or progress payment for the goods or service is made by Lower Murray Water the entire title of the property shall pass without exclusion or limitation. But, subject to Lower Murray Water's right to subsequent rejection in the event that the relevant goods or services is discovered to not comply with the terms of this Contract, the Specification or the relevant order.

## 13. Intellectual Property Rights

Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to the Organisation a perpetual, nonexclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow the Organisation the full use and enjoyment of the Services.

All Pre Existing Intellectual Property used by the parties in connection with the provision of the Services or the creation of Contract Materials remains the property of the relevant party or its licensors.

The Supplier hereby irrevocably and unconditionally grants to the Organisation 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 the Contract Materials or the Services. The licence granted to the Organisation under this clause is limited to use of the relevant Pre Existing Intellectual Property by the Organisation for the purposes of the Organisation and for no other purpose.

The Organisation grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Organisation's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Services and comply with its obligations under the Agreement during the Term. The Supplier undertakes that the Services may be used in any way by the Organisation, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.

The Supplier must, upon request by the Organisation, do all things necessary (including executing any documents) to give full effect to this clause 12.

#### 14. Statutory Requirements

The Supplier or Supplier shall ensure that its supply and delivery of the goods or services satisfies all of the requirements of all relevant Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made that are relevant to the purchase.

#### 15. Victorian Supplier Code of Conduct

The Supplier acknowledges that:

- a) the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
- b) it has read and is committed to expectations of the Victorian Supplier Code of Conduct; and
- c) the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.

#### 16. Warranty

The Supplier warrants that all of the Materials delivered to Lower Murray Water:

- a) will conform to the relevant description of the

same contained in the Contract Documents or Purchase Order;

- b) shall be of good merchantable quality and for the known purpose for which it is sold;
- c) are new (unless otherwise specified);
- d) are free from all liens and encumbrances and the Supplier has a good marketable title thereto; shall be delivered by the due delivery date specified on the attached order.

These warranties are in addition to any warranty or guarantee provided by the Supplier in respect of the relevant element of the Materials or implied by law.

#### 17. General Matters and Definitions

- a) Unless otherwise provided all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of Commonwealth legal units.
- b) The laws in force in the State of Victoria shall apply to this Purchase Order and the parties shall submit to the jurisdiction.
- c) **Organisation** means Lower Murray Water.
- d) **Purchase Order** means any form of order or acceptance from the Corporation for the supply of the Goods or Services which incorporates these Conditions.
- e) **Supplier** means the person supplying the Goods under these Conditions
- f) **Specification** means the specifications to which the Goods or Services must comply, as set out in the Purchase Order or as otherwise incorporated in the Agreement.
- g) **Purchase Order** means any form of order or acceptance from the Corporation for the supply of the Goods or Services which incorporates these Conditions.

#### 18. Assignment

The Supplier shall not, without the prior written approval of Lower Murray Water, assign the Contract or assign, mortgage, charge, encumber any of the moneys payable under this Purchase Order.

#### 19. No Waiver

No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or exercise of any right or remedy.

#### 20. Special Conditions

Any special conditions that Lower Murray Water shall incorporate on the attached order shall be incorporated in the event that the Supplier shall make delivery of the goods referred and in the event of any inconsistency with these terms and conditions such special conditions shall prevail.