

GENERAL CONDITIONS

1. Definitions

In this Purchase Order:

"Authorised Nominating Authority" means either the Resolution Institute (Victorian Chapter), Rialto Adjudications Pty Ltd or RICS Dispute Resolution Service;

"Completion" has the meaning given in clause 2;

"Contractor" means the party listed in the Electronic Purchase Order under the heading "To:";

"Completion Date" means the date stated in the Electronic Purchase Order next to the section titled "Date Required";

"Electronic Purchase Order" means the document titled "Purchase Order" issued by the Principal and is attached to these General Conditions;

"General Conditions" means these conditions;

"GST Act" has the meaning given in clause 15.4;

"Indigenous Australians" means individuals of Australian Aboriginal and/or Torres Strait Islander descent, who identify as an Australian Aboriginal and/or Torres Strait Islander and are accepted as an Australian Aboriginal and/or Torres Strait Islander in the community in which they live or have lived.

"Indigenous Business" means a business that is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned and is registered with Supply Nation and/or Kinaway, and includes incorporated Indigenous Joint Ventures.

"Principal" means Aboriginal Housing Victoria ACN 006 210 546;

"Principal's Address" means Narrandjeri House, 125-127 Scotchmer St, North Fitzroy 3068;

"Privacy Laws" means any law which relates to the privacy of information with which the Contractor must comply, including the *Privacy Act 1988* (Cth) (and the Australian Privacy Principles under that Act), the *Privacy and Data Protection Act 2014* (Vic) (and the Information Privacy Principles under that Act) and any applicable code of practice;

"Purchase Order" means the agreement between the parties constituted by the Purchase Order Documents;

"Purchase Order Documents" means the General Conditions and the Electronic Purchase Order;

"Purchase Price" means the amount to be paid by the Principal to the Contractor as specified in the Electronic Purchase Order;

"SOP Act" means the *Building and Construction Security of Payment Act 2002* (Vic);

"Works, Goods and Services" means the works, goods and services (if any) described in Electronic Purchase Order under the section titled "Description"; and

2. Terms and Conditions

The Contractor acknowledges and is deemed to have accepted the terms and conditions set out in the Purchase Order Documents and agrees to be bound by them at the earlier date of:

- 2.1 commencement of the performance of any part of the obligations as set out in the Purchase Order Documents; or
- 2.2 commencement of any part of the Works, Goods and Services.

The Contractor agrees that the Purchase Order Documents constitute the entire agreement between the parties and that any other terms and conditions do not apply. Any terms that may have been attached or embodied in the Contractor's tender (if any) or other correspondence are deemed to have been withdrawn in favor of the terms stated in the Purchase Order.

3. Completion

The Contractor must bring the Works, Goods and Services to Completion on or before the Completion Date to the satisfaction of the Principal in accordance with this Purchase Order. The Works, Goods and Services are only considered complete when the Principal provides written notice to the Contractor that it is satisfied that the Works, Goods and Services have been delivered and completed in accordance with this Purchase Order (**Completion**).

4. Contractor's Primary Obligations – Works

Where the Contractor is performing Works, the Contractor must carry out and complete its obligations under this Purchase Order:

- 4.1 with the professional skill, care and diligence that would be expected of a competent and experienced consultant;
- 4.2 so as to achieve Completion on or before the Works Completion Date; and
- 4.3 using suitably qualified personnel.

5. Contractor's Primary Obligations - Goods

Where the Contractor is supplying the Goods, the Contractor warrants that:

- 5.1 the Goods will be new, unless agreed otherwise;
- 5.2 the Goods will be fit for the purpose for which items of the same kind are commonly supplied;
- 5.3 the Goods are merchantable quality and free from defects; and
- 5.4 the Contractor is capable of passing title in the Goods free of encumbrances and all other adverse interests at the time they are supplied to the Principal.

6. Contractor's Primary Obligations –Services

Where the Contractor is supplying the Services, the Contractor warrants that:

- 6.1 the Services will be performed by suitably qualified personnel who also holds the requisite licence or registration as required;

6.2 the Services will be fit for the purpose for which the services are being acquired; and

6.3 the Services will achieve the desired result in which the Principal wishes the Services to achieve.

7. Rejection of Works, Goods and Services

The Principal may reject any of the Works, Goods and Services which do not comply in all respects with this Purchase Order. The Principal is not required to make payment of any rejected Works, Goods and Services.

8. Statutory Requirements and Direction

The Contractor must comply and must ensure that its employees, sub-contractors and agents comply with any Acts, regulations and local laws in any way applicable to the performance of this Purchase Order, including, without limitation, any occupational health and safety legislation, the Principal's policies and procedures and all directions given by the Principal.

9. Social Procurement

The Contractor must make reasonable endeavours to create opportunities for Indigenous Businesses and Indigenous Australians in completing its obligations under the Purchase Order by:

- 9.1 purchasing (either directly or through subcontractors) Works, Goods and Services to be provided under the Purchase Order from Indigenous Businesses or Indigenous Australians; and
- 9.2 employing (either directly or through its subcontractors) Indigenous Australians to deliver the Works, Goods and Services to be provided under the Purchase Order.

10. Variation

The Principal may, at any time, give written notice to the Contractor proposing a variation to the Works, Goods and Services. The Contractor must, as soon as possible, or in any event within 7 days, provide a written proposal for any variation to the Purchase Price that will apply to the varied Works, Goods and Services. The Principal may (but it is not obliged to) accept the varied Purchase Price proposal within 7 days of receipt by giving a written acceptance to the Contractor. In the absence of such acceptance this Purchase Order will continue as if no proposal under this clause 10 had been made.

11. Confidentiality

The Contractor will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to the Principal or its affairs which may come to its or their knowledge during the term of this Purchase Order.

12. Privacy

The Contractor must:

- 12.1 comply, and procure that its sub-contractors comply with, the Privacy Laws; and
- 12.2 must not, and must procure its sub-contractors do not, cause the Principal to breach of its obligations under the Privacy Laws.

13. Payment of Purchase Price

If the Contractor complies with its obligations under this Purchase Order, the Contractor may make a claim for payment of the Purchase Price on the date of Completion (being the 'reference date' for the purpose of the SOP Act and the Principal must pay the Purchase Price to the Contractor within the 30 days after the claim for payment is received.

14. Insurances

The Contractor will effect, unless stated otherwise in the Electronic Purchase Order:

- 14.1 public liability insurance which cover in respect of any one occurrence must be not less than \$10 million;
- 14.2 product liability insurance which cover in respect of any one occurrence must be not less than \$5 million;
- 14.3 workers' compensation and employee indemnity insurance; and
- 14.4 where any Services are performed by the Contractor professional indemnity insurance which cover in respect of any one occurrence must be not less than \$5 million,

with an insurer and on terms approved by the Principal.

15. Goods and Services Tax ("GST")

- 15.1 Except as otherwise provided by this clause 15 and the Electronic Purchase Order, all consideration payable under this Purchase Order in relation to any supply is exclusive of GST.
- 15.2 If GST is payable in respect of any supply made by a supplier under this Purchase Order, subject to clause 15.3, 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 Purchase Order.
- 15.3 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 15.2
- 15.4 In this clauses 15, terms defined in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax (**GST Act**) have the meaning given to them in the GST Act.

16. Default by Contractor

- 16.1 If the Contractor defaults in the performance of any obligation under this Purchase Order, the Principal may give written notice

- to the Contractor specifying the failure and requiring it to be remedied within 10 days.
- 16.2 If, within 10 days after receipt of the notice, the Contractor fails to remedy the default to the satisfaction of the Principal, the Principal (without prejudice to any other rights that it may have under this Purchase Order or at common law against the Contractor) may:
- 15.2.1 suspend payment under this Purchase Order; or
15.2.2 terminate this Purchase Order by giving written notice.
- 17. Insolvency of Contractor**
If the Contractor is insolvent, has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed to it, enters into a scheme of arrangement with its creditors, is wound or is bankrupt, the Principal may terminate this Purchase Order by giving written notice to the Contractor.
- 18. Sub-Contracting and Assignment**
18.1 The Contractor must not, except with the written consent of the Principal, sub-contract or assign the whole or any portion of its rights or obligations under this Purchase Order.
18.2 Where the Principal gives consent to the Contractor in accordance with this sub-clause, the Contractor remains fully responsible for performance under this Purchase Order and will be liable to the Principal for the acts or omission of any sub-contractor as if those acts or omissions were those of the Contractor.
- 19. Security of Payment**
19.1 If the Contractor is entitled to make an adjudication application under the SOP Act, the Contractor must make such adjudication application to one of the Authorised Nominating Authorities.
19.2 The Contractor must indemnify and keep indemnified the Principal on demand from and against all loss, damages and expenses suffered or incurred by the Principal arising out of or in connection with a suspension by a sub-contractor under the SOP Act for Works, Goods and Services which form part of the Works, Goods and Services.
- 20. Indemnity and Advance Release**
The Contractor indemnifies and holds harmless the Principal from and against all actions, claims, losses, damages, penalties or demands arising out of or in connection with the performance or purported performance of its obligations under this Purchase Order. This indemnity survives termination or expiration and Completion of this Purchase Order. The Contractor's obligation to indemnify and hold harmless will not apply to the extent that the liability, action, claim, loss damage, penalty or demand is caused by any negligence or act of default of the Principal, its employees or agents.
- 21. Termination**
21.1 The Principal may, at any time, terminate this Purchase Order by giving written notice to the Contractor. The Contractor must, on receipt of such notice, immediately cease all work in connection with the performance or supply of the Works, Goods and Services and take all appropriate action to mitigate any loss or prevent further costs being incurred.
21.2 In the event of termination pursuant to this clause 21.1, the Principal will pay to the Contractor any part of the Purchase Price owing for those parts of Works, Goods and Services that have been completed or delivered by the Contractor prior to the date of terminating. The Contractor releases the Principal from any further claim arising out of or in connection with the termination.
- 22. Amendment**
This Purchase Order may only be varied or replaced by a document duly executed by the parties.
- 23. Further Assurance**
Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Purchase Order.
- 24. Time of the Essence**
Time is of the essence under this Purchase Order.
- 25. No Relationship**
Nothing in this Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.
- 26. Whole Understanding**
This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Works, Goods and Services are to be performed by the Contractor. If the Contractor's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, the Purchase Order will have precedence. The Purchase Order will be deemed to be accepted by the Contractor upon commencing any part of the Works, Goods and Services.
- 27. Governing Law**
The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.
- 28. Joint and Several Obligations**
If the Contractor consists of two or more parties, this Purchase Order binds each of them severally and jointly.
- 29. Method of Giving Notices**
A notice required or permitted to be given by one party to another under this Purchase Order must be in writing, addressed to the other party and delivered by post or in person to:
29.1 for the Principal, the Principal's Address; and
29.2 for the Contractor, the address stated in the Electronic Purchase Order.
- 30. Receipt of Notices**
A notice given to a party in accordance with clause 29 must be treated as having been duly given and received:
30.1 if delivered to a party's address or left at the party's address, on the day of delivery;
30.2 if posted within Australia to an Australian address, using express post, 2 business days after the date of posting and using any other prepaid post, 6 business days after date of posting;
30.3 if posted to an address in a different country, 10 business days after date of posting (by airmail);
30.4 subject to clause 30.5, if served by email, on the day of transmission unless the sender receives notification that the email containing the notice was not received; and
30.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.