

## General Conditions for the Provision of Services and Goods

### 1. Provision of services and goods

The Supplier must provide the Services and supply the Goods to NGV in accordance with the Specification and otherwise in accordance with the Agreement.

### 2. Price for the Services and Goods

(a) The Rates or Fees applicable to the Services are set out in the Purchase Order and are fixed. Expenses may only be charged in accordance with the Purchase Order.

(b) The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.

(c) NGV may vary the quantity of Goods and/or Services under a Purchase Order by written notice to the Supplier. The Supplier must not vary the Unit Price if the variation in quantity is 10% or less of the original Purchaser Order.

### 3. Supplier's obligations with respect to Services

The Supplier must:

(a) complete the Services by the Completion Date and any other dates for delivery specified in the Purchase Order

(b) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of Services that are similar to the Services

(c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency

(d) act in good faith and in the best interests of NGV

(e) provide any and all equipment necessary for the performance of the Services.

(f) ensure that in providing the Services there is minimal inconvenience and disruption to the public and the operations of NGV.

(g) comply with any reasonable direction made by the NGV Representative in providing the Services.

### 4. Cancellation

(a) NGV may cancel the Services at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services. NGV must pay all reasonable amounts due in accordance with this Agreement for all work performed by the Supplier up until cancellation (but not any loss of prospective profits).

(b) NGV may cancel the Agreement for the supply of Goods, prior to their supply, if NGV reasonably believes the Supplier has breached condition 17 by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the supply of Goods. NGV will not be required to pay for Goods that are the subject of an order that has been cancelled or any related costs or losses of the Supplier.

### 5. Delivery of Goods

(a) The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by NGV or deemed to have occurred.

(b) The Supplier must ensure that delivery of the Goods causes minimal inconvenience and disruption to the public and the operations of NGV.

(c) The Supplier must comply with any reasonable direction made by the NGV Representative in respect of packaging and delivery of the Goods.

### 6. Acceptance or rejection of Goods

(a) Subject to condition 6(b), if the Goods conform with the Specification or sample and otherwise comply with the terms of the Agreement, NGV will promptly accept the Goods in writing. If the Goods do not conform, NGV may reject the Goods within 30 days by written notice giving reasons. If NGV does not accept or reject the

Goods within 30 days of delivery, delivery will be deemed to have then occurred.

(b) NGV may elect not to accept the Goods if the supply has been cancelled pursuant to condition 4(b). In these circumstances there will not be a supply of the Goods entitling the Supplier to submit a tax invoice in accordance with condition 8.

(c) The Supplier must at its cost collect and remove any Goods that have been rejected as soon as practicable or NGV may return the Goods to the Supplier at the Supplier's expense.

### 7. Title and risk

Title in the Goods will pass to NGV upon payment for the Goods. Risk in the Goods will pass to NGV when the Goods are delivered to the Delivery Point.

### 8. Invoicing and payment

(a) The Supplier must submit to NGV a tax invoice in respect of the Services once they are completed and for the purchase price following the supply of the Goods, or at such other time or times as agreed by the parties.

(b) A tax invoice 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 NGV may reasonably require and be sent to the requisition officer as specified in a Purchase Order or other formal notice from NGV.

(c) Unless otherwise agreed in writing by NGV and the Supplier, NGV will pay the invoiced amount by the end of the calendar month that follows the month in which it receives an accurate invoice. However, if NGV disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount NGV believes is due for payment. The parties will endeavour to resolve any such dispute.

(d) Payment of an invoice is not to be taken as evidence that the Services and Goods have been supplied in accordance with the Agreement but must be taken only as payment on account.

(e) NGV will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount for the days post Due Date, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic).

### 9. Failure to perform Services

(a) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, NGV will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).

(b) If the default referred to in condition 9(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, NGV may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by NGV in doing so.

### 10. Warranties

The Supplier warrants to NGV that:

#### 10.1. General

(a) (Purpose) where NGV 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

(b) (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

(c) (IP) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services or Goods.

## 10.2. Goods

(a) (Title) it has the right to sell and transfer title to and property in the Goods to NGV.

(b) (Goods) the Goods:

- (i) are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used)
- (ii) conform in all respects with the Specification
- (iii) are free from defects (including defects in installation)
- (iv) are of merchantable quality and comply with all Laws.

(c) (Manufactory Warranties) Further, the Supplier must obtain, for NGV the benefit of any manufacturer's warranties for the Goods.

## 11. Liability

The Supplier must indemnify NGV and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to provide the Services and supply the Goods in accordance with these Conditions or any other breach of the Agreement.

## 12. Intellectual Property Rights

(a) The ownership of any Contract Intellectual Property vests in NGV upon its creation.

(b) The Supplier grants to NGV a non-exclusive, perpetual, royalty-free transferable licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow NGV the full use and enjoyment of those Goods and the Supplier must, upon request by NGV, do all things as may be necessary (including executing any documents) to give full effect to such rights.

(c) 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 NGV, 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 NGV is limited to use of the relevant Pre-Existing Intellectual Property by NGV for the purposes of NGV and for no other purpose.

(d) The ownership of Data, including any Intellectual Property Rights, shall vest in NGV upon the time of its creation.

(e) The Supplier warrants that it has or will procure a written consent from all necessary authors to NGV exercising its rights in the Data or Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

## 13. Insurance

(a) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of Services and the supply of Goods.

(b) The insurance coverage for the purpose of condition 13(a) must include:

- (i) professional indemnity insurance and public liability insurance in the amounts cited in the Purchase Order and if none are cited then in appropriate amounts
- (ii) product liability insurance to the value of the Purchase Order or more.

(c) Product liability insurance must match any warranty period or three years after acceptance of the Goods, whichever is the greater.

(d) On request, the Supplier must provide NGV with evidence of the currency of any insurance it is required to obtain.

## 14. Confidentiality, privacy and data protection

(a) The Supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.

(b) The Supplier hereby consents to NGV publishing or otherwise making available information in relation to the Supplier (and the provision of the Services and supply of Goods) as may be required:

- (i) to comply with the Contracts Publishing System
- (ii) by the Auditor-General  
or
- (iii) to comply with the Freedom of Information Act 1982 (Vic).

(c) The Supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done in connection with the provision of the Services and the supply of Goods in the same way as NGV would have been bound had the relevant act been done by NGV.

(d) The Supplier acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of NGV, under or in connection with the Agreement.

## 15. Access

When entering the premises of NGV, the Supplier must and must ensure that its employees, agents and sub-contractors use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of NGV (as notified to the Supplier).

## 16. Sub-contracting

(a) The Supplier must not sub-contract to any third person any of its obligations in relation to the Services and supply of Goods without the prior written consent of NGV (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.

## 17. Compliance with Law and Policy

(a) The Supplier must, in performing its obligations under this Agreement, comply with the Laws affecting or applicable to the provision of Services and supply of Goods by the Supplier under this Agreement.

(b) Without limiting condition 17(a), where, in the course of providing the Services and supply of Goods, the Supplier, or its employees or sub-contractors:

- (i) supervise Public Sector Employees
- (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace

or

- (iii) use or have access to public sector resources or information that are not normally accessible or available to the public;

the Supplier must (and ensure that its employees or sub-contractors) comply with the Code of Conduct.

(c) Without limiting condition 17(a), the Supplier must:

- (i) comply with all anti-bribery, anti-corruption and anti-money laundering laws ;and
- (ii) not engage in, either directly or indirectly, fraudulent, corrupt or collusive activities; and
- (iii) be ethical in its business activities, including relationships, practices, sourcing and operations; and
- (iv) conduct itself in a manner that is fair, professional and that will not bring NGV into disrepute; and
- (v) provide a fair and ethical workplace.

(d) Without limiting condition (17)(a),(b) or (c), the Supplier will comply with any policies issued by NGV in relation to the practices of the Supplier and any Code of Conduct

(e) The Supplier will:

- (i) immediately notify the NGV Representative in writing if it becomes aware of any breach of condition 17; and
- (ii) respond promptly to NGV's reasonable enquiries and cooperate with the NGV in connection with any investigation into compliance with this condition 17.

#### 18. GST

(a) Terms used in this condition have the same meanings given to them in the GST Act.

(b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Purchase Order or these Conditions are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with these Conditions, NGV must pay to the Supplier an amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the GST amount will be made at the same time as payment for the taxable supply is required to be made.

#### 19. General

(a) The Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

(b) Time is of the essence in relation to the provision of the Services and supply of Goods.

#### 20. Interpretation

In these Conditions, unless the context otherwise requires:

**Agreement** means the agreement for the provision of the Services and supply of Goods of which these Conditions and the Purchase Order form part.

**Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees (No.1) 2007 issued by the Public Sector Standards Commissioner pursuant to s63 of the *Public Administration Act 2004 (Vic)*, as amended from time to time.

**Code of Practice** means a code of practice as defined in, and approved under, *the Information Privacy Act 2000 (Vic)*.

**Conditions** means these General Conditions for the Provision of Services and Goods.

**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.

**Completion Date** means the date set out in the Purchase Order by which provision of the Services must be effected by the Supplier.

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

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

**Contracts Publishing System** means the policy of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments, as amended from time to time.

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

**Delivery Point** means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

**Department** any reference to the department will be read as a reference to the State.

**Due Date** means the date for which an invoice amount is due for payment

**Fees** means a fixed fee payable to the Supplier for the provision of the Services as specified in the Purchase Order.

**Goods** means the Goods (or any of them) specified in the Purchase Order.

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

**Information Privacy Principles** means the information privacy principles set out in the *Privacy and Data Protection Act 2014*

**Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, 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.

**Laws** means:

- (a) the law in the force in Australia and Victoria, including common law, legislation and subordinate legislation
- (b) ordinances regulations, orders and by laws of relevant government, semi government or local authorities.

**NGV** means the Council of Trustees of the National Gallery of Victoria constituted under the *National Gallery of Victoria Act 1966 (Vic)*

**NGV Representative** means the requisition officer and/or any other person or position holder they or NGV nominate as an additional or replacement NGV Representative by written notice to the Supplier.

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

- (a) is not, or is no longer, disputed
- (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions
- (c) which has been outstanding for more than a calendar month following the month from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

**Parties** means the parties to the Agreement being NGV and the Supplier.

**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)*.

**Public Sector Employee** has the same meaning as in the *Public Administration Act 2004 (Vic)*.

**Purchase Order** means any form of order or acknowledgment from NGV for the provision of the Services and supply of Goods and to which these Conditions are attached.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services as specified in the Purchase Order.

**Services** means the Services (or any of them) specified in the Purchase Order.

**Specification** means the specifications to which the Goods and Services must comply, as set out in the Purchase Order or as otherwise incorporated in the Agreement.

**Supplier** means the Supplier specified in the Purchase Order.

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**Supplier Code of Conduct** means any code in relation to the practices of the Supplier issued by the Department from time to time.

**Time for Delivery** means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

**Unit Price** means the price per item of each of the Goods or Services, as specified in the Purchase Order.

In interpreting the documents, which describe the Services or Goods, the following order of precedence will apply to the extent of any inconsistency:

- The Purchase Order and Attachments
- The General Conditions
- NGV's request for quotation
- The Supplier's quotation.

## 21. Order of Precedence