

TERMS AND CONDITIONS FOR PURCHASE ORDERS FOR CONSULTANCY SERVICES

1. Definitions

The following terms will, if not inconsistent with the context, have the meanings indicated:
“**Background Intellectual Property**” means Intellectual Property owned or controlled by a Party, including Intellectual Property developed prior to or independently of this Contract, which the Party determines, in its sole discretion, to make available for the carrying out of the Services

“**Confidential Information**” includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and any and all other unregistered or unpatented intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it or which is evident by its nature to be confidential and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure.

“**Council**” means Manningham City Council;

“**Deliverables**” means the reports and other materials embodying data, results and other information produced in and for the Services as described in this Purchase Order.

“**Intellectual Property**” means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests.

“**Parties**” means the parties to this Contract and their respective successors and permitted assigns, and Party means any one of them.

“**Purchase Order**” means the Purchase Order preceding and including these Terms.

“**Services**” means the services described in this Purchase Order.

“**Supplier**” means the party described as such in this Purchase Order.

2. Governing Law

The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.

3. Completion

The Supplier must complete the Services and provide the Deliverables on or before the Delivery Date in accordance with this Purchase Order.

4. Warranties

In addition to other warranties in this Purchase Order and implied by law, it is a condition of the Council's purchase of the Services that:

4.1 the Services will be supplied with all due care;

4.2 the Supplier has the qualifications, experience and expertise represented to the Council;

4.3 the Supplier has no conflict of interest in supplying the Services; and

4.4 the Services will conform to the reasonable requirements of the Council.

5. Particular Obligations

The Supplier agrees that, in supplying the Services, it will comply with:

5.1 the Information Privacy Principles described in the *Information Privacy Act 2000*, as if that Act applied to it; and

5.2 section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*, as if that sub-section applied to it.

6. Variation or Termination

6.1 The Council may, at any time, by giving written notice to the Supplier, terminate this Purchase Order and the Supplier must on receipt of such notice immediately cease all work and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Supplier in accordance with this Purchase Order but not any loss of

prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.

- 6.2 The Council may at any time give written notice to the Supplier proposing a variation to the scope of the Services. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Services. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Purchase Order will continue as if no proposal under this sub-clause had been made.

7. Status of Services

Upon request by the Council, the Supplier will promptly provide the Council with a written report giving details of the status of the Services, including tasks completed, tasks yet to be completed and estimated completion dates.

8. Confidentiality

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

9. Intellectual Property

9.1 Each Party:

9.1.1 agrees that it will not have any claim, ownership or interest in the other Party's Background Intellectual Property or Improvements in such Background Intellectual Property;

9.1.2 grants the other Party a non-exclusive, royalty-free licence for the use of any Background Intellectual Property made available by the granting Party for the purpose of carrying out the Services; and

9.1.3 agrees that if Background Intellectual Property which has been made available pursuant to sub-clause 9.1.2 is required for the Commercialisation of the Services it must be made available on commercial terms to be negotiated in good faith by the Parties.

9.2 Subject to clause **Error! Reference source not found.**, the rights to all Deliverables, including the Intellectual Property created, discovered or coming into existence as a result of or arising out of the Deliverables will be the property of and vested in the Council.

9.3 The Council agrees that, subject to clause 8 of this Contract, the Supplier may use the Deliverables and all Intellectual Property created pursuant to this Contract for non-commercial purposes.

10. Rejection of Services

The Council may reject any of the Services which do not comply in all respects with this Purchase Order. The Council is not required to make payment for any rejected Services.

11. Payment

If the Supplier complies with its obligations under this Purchase Order, the Council must pay the Purchase Price to the Supplier by the method specified in this Purchase Order.

12. Goods and Services Tax ("GST")

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under this Purchase Order on account of GST, the amount representing GST will only be payable by the Council to the Supplier where the Supplier supplies to the Council a tax invoice for GST purposes, in a form approved by the Council.

13. Default by Supplier

13.1 If the Supplier defaults in the performance or observance of any obligation it has under this Purchase Order, the Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.

13.2 If, within 14 days after receipt of the notice, the Supplier fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under this Purchase Order or at common law against the Supplier) may:

13.2.1 suspend payment under this Purchase Order; or

13.2.2 terminate this Purchase Order and any other purchase order between the parties.

14. Insolvency of Supplier

If the Supplier -

14.1 being a person, commits any act of bankruptcy; or

14.2 being a company, commits any act of insolvency -

the Council may terminate this Purchase Order immediately.

15. Sub-Contracting and Assignment

The Supplier must not, except with the written consent of the Council, sub-contract or assign the whole or any portion of its rights and obligations under this Purchase Order, and no sub-contractors or assignees will have any rights under this Purchase Order against the Council or be entitled to receive any payments under this Purchase Order from the Council. Where the Council gives its consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under this Purchase Order.

16. Statutory Requirements

The Supplier must obey and must ensure that its employees, sub-contractors and agents obey 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.

17. Amendment

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

18. 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.

19. 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.

20. Number and Gender

In this Purchase Order, a reference to:

20.1 the singular includes the plural and vice versa; and

20.2 a gender includes the other genders.

21. Whole Understanding

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Services are to be supplied by the Supplier. If the Supplier's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, this Purchase Order will have precedence unless otherwise agreed by the Council in writing.

22. Joint and Several Obligations

If the Supplier consists of two or more parties, this Purchase Order binds each of them severally and jointly.

23. 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:

23.1 delivered to that party's address; or

23.2 transmitted by facsimile to that party's facsimile number.

24. Risk, Liability and Insurance

24.1 The Consultant indemnifies the Council and its staff, and will keep the Council and its staff indemnified, against all loss, damage, cost or expense suffered or incurred by the Council or its staff by reason of any breach of this Contract by the Consultant or in any way connected with the performance of the Services.

24.2 Before performing the Services, the Consultant must effect policies of insurance covering:

24.2.1 public liability for an amount not less than \$10,000,000 for any single occurrence; and

24.2.2 professional indemnity for an amount not less than \$5,000,000 for any single occurrence.

24.3 The policies of insurance required by clause 24.2 must contain a principal's indemnity extension in relation to the Services, and must be maintained until all of the Services have been performed. The Consultant must, on request from the Council, promptly produce evidence of currency on all the policies required by clause 24.2.