

# AMBULANCE VICTORIA PURCHASE ORDER TERMS AND CONDITIONS

**These Terms and Conditions apply to all Purchase Orders issued by Ambulance Victoria (AV), except where AV and the Seller have executed a separate, written agreement applying to the Goods and/or Services specified in the Purchase Order. In that case, the terms and conditions of that agreement will apply.**

## 1 Agreement

The Seller agrees to supply Goods and/or perform Services to AV in accordance with this Agreement which includes these Terms and Conditions, the Purchase Order and any document attached to the Purchase Order. If there is any inconsistency between these Terms and Conditions and the Purchase Order, these Terms and Conditions will prevail to the extent of the inconsistency.

## 2 Term

This Agreement commences on the date that the Purchase Order is accepted by the Seller and continues until the Goods and/or Services are supplied as required by this Agreement (unless cancelled or terminated earlier in accordance with clauses 6 or 19).

## 3 Supply of Goods and/or Performance of Services

- (a) The Seller must supply the Goods and/or perform the Services as described in the Purchase Order, and in accordance with any document attached to the Purchase Order this Agreement and any reasonable directions given by AV.
- (b) The Seller must deliver the Goods / at the Delivery Point by the Time for Delivery as specified in the Purchase Order. If no time is specified in the Purchase Order, the delivery of the Goods must occur during business hours on a date agreed by the parties. Title in the Goods will pass to AV on Acceptance and, once title passes to AV, AV owns the Goods legally and beneficially. Risk in the Goods passes to AV when AV accepts delivery of the Goods in accordance with clause 4.
- (c) The Seller must perform the Services with due skill, diligence and care and must complete each element of the Services by the relevant due date specified in the Purchase Order.

## 4 Acceptance or rejection of Goods

- (a) If the Goods conform with the Purchase Order, AV will accept the Goods in writing. If the Goods do not meet the standards required under this Agreement (including the Purchase Order), AV may reject the Goods and/or Services by giving written notice to the Seller within 30 business days.
- (b) AV has no obligation to pay for any rejected Goods and the Seller must, at its own cost, collect and remove rejected Goods as directed by AV (or AV may return rejected Goods to the Seller at the Seller's cost).
- (c) If AV does not reject the Goods within 30 business days of delivery the Goods will be deemed Accepted on that date.

## 5 Non-conforming Services

- (a) The Seller must immediately notify AV if it becomes aware of (or suspects) any error or omission in the provision of the Services and must promptly rectify such error or omission at its own cost.
- (b) Without limiting any other remedy available to AV, if the Seller fails to provide the Services in accordance with this Agreement (**Non Conforming Services**), AV may direct the Seller to correct the Non Conforming Services within the period stated in the direction and the Seller must comply with the direction at its own cost.
- (c) If the Non Conforming Services are not able to be corrected under clause 5(b), AV may correct itself, or have corrected by a third party, the Non Conforming Services and the Seller must reimburse AV all costs AV incurs to correct the Non Conforming Services.
- (d) AV is not required to pay for any Non Conforming Services unless and until those services are corrected by the Seller.

## 6 Cancellation

- (a) AV may, at any time, cancel all or any part of the Goods and/or Services for any reason by giving written notice to the Seller. On receipt of such notice, the Seller must do everything possible to mitigate its loss arising in connection with the cancelled Goods and/or Services.
- (b) AV must pay for all Goods or Services provided before the cancellation date but is not liable for any other costs in connection with the cancelled Goods or Services (including any loss of profits suffered by the Seller).

## 7 Purchase Price

The Purchase Price for the Goods and/or Services is specified in the Purchase Order. The Purchase Price is fixed for the Term and is inclusive of all costs incurred by the Seller in the supply of the Goods and/or Services (including labour, material, packaging, transport, delivery, insurance, loading, unloading and storage) and all other taxes

payable in connection with the Goods and/or Services (excluding GST). The Seller may not charge AV for any additional fees or charges, or recover any expenses or other costs from AV.

## 8 Invoicing and payment

Unless otherwise stated in the Purchase Order, on or after Acceptance, the Seller must submit a tax invoice to AV for the amount payable for the Accepted Goods and/or Services. A tax invoice must contain the information necessary to be a tax invoice for the purposes of the GST Act, together with such other information as AV may reasonably require and must be sent to the address specified in the Purchase Order. AV will pay a correctly rendered invoice within 30 days of receipt. If AV disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Seller of the amount. The parties will act reasonably and endeavour to resolve any such dispute in accordance with clause 16. Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

## 9 Warranties

The Seller represents and warrants to AV that:

- (a) it has the right to enter into the Agreement and perform the Services and/or supply the Goods;
- (b) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods and/or Services and will not infringe the Intellectual Property Rights of any person or any Laws;
- (c) the Services will be supplied to meet the requirements stated in the Purchase Order using a standard of care, skill and diligence as would reasonably be expected from an expert and experienced supplier of services similar to the Services;
- (d) the Seller will be available to provide the Services as required by this Agreement and will not owe obligations to a third party that may or are likely to adversely affect its capacity to provide the Services;
- (e) it has the right to sell and transfer full and unencumbered title to, and property in, the Goods to AV;
- (f) on receipt by AV, the Goods are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used), conform in all respects with the description in the Purchase Order, are free from any defects (including defects in installation) and are of merchantable quality;
- (g) it and its Personnel 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 this Agreement; and
- (h) to the extent reasonably possible, it has obtained for AV the benefit of any manufacturer's warranties applicable to the Goods.

## 10 Remedy of defects in Goods

During the Warranty Period, the Seller must, at its cost, remedy any defects in the Goods notified to it by AV within 7 days of receiving notice from AV.

## 11 Liability

- (a) To the fullest extent permitted by Law, the Seller indemnifies and agrees to keep AV and its Personnel (together, the **'Indemnified'**) indemnified from and against all Losses incurred or sustained by the Indemnified (including Losses incurred or sustained in connection with a third party Claim against any of the Indemnified) arising directly or indirectly out of or otherwise in connection with:
  - (i) personal injury to, or the death of any person caused by or contributed to by the Seller or its Personnel;
  - (ii) any Loss of, or damage to, any property caused by or contributed to by the Seller or its Personnel;
  - (iii) any breach of this Agreement or any Law by the Seller or its Personnel;
  - (iv) any liability to make payments to any of the Seller's Personnel engaged in the provision of the Goods or Services;
  - (v) any Claim by any person against the Indemnified alleging that the Contract Materials or their use infringes the Intellectual Property Rights of any person; and
  - (vi) any fraudulent, unlawful, reckless, wilfully wrongful or negligent act or

omission of the Seller or any of its Personnel,

except to the extent that the Loss was directly caused by any negligent act or omission or wilful misconduct of AV.

- (b) Each indemnity in this Agreement is a continuing obligation separate and independent from the other obligations of the Seller and does not limit any other right of AV or require AV to incur a cost or expense or make any payment before enforcing the right of indemnity.

## 12 Delays

Time is of the essence in relation to the supply of the Goods and/or Services. If there is an actual or anticipated delay in supplying the Goods and/or Services, the Seller must immediately notify AV of the delay and may request an extension of time for delivery. If AV agrees to an extension of time it will give written notice to the Seller.

## 13 Intellectual Property Rights

- (a) AV owns all Contract Materials with effect from the date of their creation and the Seller irrevocably and unconditionally assigns to AV, including by way of an assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in the Contract Materials on creation.
- (b) Subject to clause 15, AV grants the Seller a non-exclusive, royalty-free, non-transferable licence to use the Contract Materials solely for the purpose of providing the Goods and Services to AV. This licence automatically expires on expiry, cancellation or termination of this Agreement.
- (c) On request or on expiry, cancellation or termination of this Agreement, the Seller must promptly provide AV with a complete copy of all Contract Material.
- (d) The Seller grants AV a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sub-licence) to use, reproduce, publish, modify, adapt and communicate any Background IP in the Goods and Services to the extent necessary to allow AV the full use and enjoyment of the Goods and Services.
- (e) The Seller warrants and represents to AV that:
- (i) it has the right to assign the Contract Materials and licence the Background IP to AV in accordance with this clause ; and
  - (ii) it is entitled to use any Intellectual Property Rights used by it in connection with providing the Goods and Services.
- (f) The Seller warrants that it has or will procure from all Personnel who have Intellectual Property Rights in the Contract Materials and the Background IP a written assignment of all of those Intellectual Property Rights as necessary to give effect to this clause 13 and an irrevocable written consent to AV doing, or omitting to do, any act or omission in relation to any copyright works in the Contract Materials and the Background IP (including any act or omission which might have otherwise affected the 'Moral Rights' of the authors of the 'Works' as those terms are defined in the *Copyright Act 1968* (Cth)).

## 14 Insurance

The Seller must obtain and maintain, at all relevant times, insurance and, if requested by AV, for a period of up to 7 years after the supply of Goods and/or performance of Services, with a reputable insurance company sufficient to cover any loss or costs that may be incurred and for which the Seller is liable in connection with the supply of the Goods and/or Services. This includes product liability insurance to the value of the Purchase Order and, if applicable, public liability insurance and/or professional indemnity insurance. Product liability insurance must match any warranty period or 3 years after acceptance of the Goods, whichever is the greater. On request, the Seller must provide AV with evidence of the currency of any insurance it is required to obtain under this Agreement within 2 weeks. Where the required insurance is due to expire, on request by AV, the Seller must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

## 15 Confidentiality and privacy

- (a) The Seller and its Personnel must keep confidential and secure any Confidential Information and must not disclose or otherwise make available any Confidential Information to any other person except for disclosures permitted under this clause 15.
- (b) The Seller hereby consents to AV publishing, disclosing or otherwise making available information in relation to the Seller (and the supply of the Goods) as may be required to comply with:
- (i) the Contract Publishing System;
  - (ii) to its legal advisors, auditors or other advisors who require the Confidential Information to provide advice to AV in relation to this Agreement;

- (iii) to its Personnel on a 'need to know' basis provided that, before disclosure, those persons are directed to retain the confidentiality of the Confidential Information;
- (iv) to other Victorian public entities or Ministers of the State in connection with the use of the Services;
- (v) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided it will not identify the Seller; and
- (vi) to the office of the Auditor-General, the ombudsman, the IBAC, or to comply with the FOI Act and any other statutory reporting obligations.

- (c) The Seller agrees to be bound by the IPPs, the HPPs, the Protective Data Security Standards and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by or on behalf of the Seller in connection with this Agreement in the same way and to the same extent that AV would have been bound by the Privacy Obligations in respect of the act or practice had it been done or engaged in by AV.
- (d) If the Seller becomes aware of a suspected or actual breach of this clause 15 by the Seller or its Personnel, the Seller must immediately notify AV in writing and take all reasonable steps required to prevent or stop the actual or suspected breach.

## 16 Access

When on the premises of AV, the Seller must and must ensure that its Personnel 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 AV (including the occupational health and safety Laws) and all directions of AV.

## 17 Sub-contracting

The Seller must not sub-contract to any third person any of its obligations in relation to the supply of the Goods and/or performance of the Services without the prior written consent of AV. The Seller will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and is liable to AV for all acts, omissions, defaults and negligence of any sub-contractor as though they were the actions of the Seller itself.

## 18 Dispute Resolution

- (a) A party claiming that a Dispute has arisen must promptly give the other party a Dispute Notice.
- (b) Subject to clause 18(e), the parties must attempt to resolve all Disputes under this clause before starting any court proceedings, other than court proceedings for interlocutory relief.
- (c) The parties must attempt to resolve all Disputes within one month of the Dispute Notice date by negotiation between the parties' senior managers and, if required, the parties' Chief Executive Officers.
- (d) If a Dispute cannot be resolved under clause 18(c), AV may elect within 1 month of the Dispute Notice date, to refer the Dispute for attempted resolution by mediation administered by the Australian Disputes Centre (ADC) according to its mediation guidelines. Each party will pay its own costs of the mediation and the cost of ADC and the appointed mediator will be shared equally between the parties.
- (e) If a Dispute remains unresolved 3 months after the Dispute Notice date, either party may commence court proceedings in relation to the Dispute.

## 19 Termination

- (a) AV may terminate this Agreement immediately by notice in writing to the Seller if:
- (i) any insolvency event occurs in relation to the Seller, if the Seller is wound up, dissolved, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed;
  - (ii) the Seller breaches any term of this Agreement and fails to remedy that breach (if the breach is capable of remedy) within 14 days of receiving written notice from AV; or
  - (iii) AV considers (in its absolute discretion) that the Seller or any of its Personnel have engaged in conduct which is dishonest, fraudulent, deceitful or abusive.
- (b) If this Agreement is terminated under clause 19(a) AV must pay for all Goods provided before the effective termination date but is not liable for any other costs in connection with termination of this Agreement (including any Loss or consequential, indirect or special losses or damages of any kind including loss of profits incurred or suffered by the Seller).
- (c) If this Agreement is terminated under this clause 19, the Seller must do everything

possible to mitigate its Losses arising in connection with termination of this Agreement.

## 20 Compliance with Laws

- (a) The Seller must, in the supply of the Goods and/or performance of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency applicable to the provision of the Goods and/or Services by the Seller including the Victorian Government Supplier Code of Conduct.
- (b) When providing the Goods and/or Services, the Seller must not act in a way that is incompatible with a human right protected by the Charter, or, when making a decision in relation to the provision of the Goods and/or Services, fail to give proper consideration to such a human right.
- (c) The Seller, its Personnel and any person engaged in the supply of Goods and/or performance of the Services must not engage in unethical work practices or engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (d) Where a federal industrial award may apply to the capacity in which an employee is engaged by the Seller or a sub-contractor in the provision of the Goods and/or Services, the conditions on which that employee is engaged must be no less beneficial to the employee than the rates and conditions under that award.
- (e) The Seller must promptly notify AV in writing, if at any time, it or one of its sub-contractors fails to comply with this clause 20.

## 21 GST

- (a) Terms used in this clause 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 Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these Conditions, the recipient of the taxable supply must pay to the Seller an additional 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 additional amount will be made at the same time as payment for the taxable supply is required to be made.

## 22 General

- (a) The following clauses survive cancellation or expiry of this Agreement: 8, 9, 11, 12, 13, 19, and 20.
- (b) This Agreement contains the entire understanding between the parties in connection with its subject matter, is governed by and is to be construed in accordance with the laws in force in the State of Victoria, may be executed in counterparts each of which taken together will constitute one document and may only be varied with the written consent of each party.
- (c) AV may give or withhold any consent or approval, or exercise any discretion, under this Agreement in its absolute discretion unless express provision to the contrary is made.
- (d) Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (e) The Seller must not assign, novate or otherwise transfer or encumber any of its rights or obligations under this Agreement without the consent of AV.
- (f) No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement is to be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between AV and the Seller. Nothing in this Agreement is to be deemed to authorise or empower the Seller to act as an agent of AV.

## 23 Interpretation

In this Agreement, unless the context otherwise requires:

**Acceptance** means acceptance of the Goods by AV in accordance with clause 4.

**Agreement** means the agreement between AV and the Seller for the supply of the Goods and/or Services, comprising these Terms and Conditions and the attached Purchase Order.

**AV** means Ambulance Victoria as specified in the Purchase Order.

**Backyard IP** means all Materials or Intellectual Property Rights used by the Seller (whether or not owned by the Seller) to perform the Services that existed at the Start Date or arose or arise independently of this Agreement.

**Charter** means the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

**Claim** includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law (including negligence) or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Code of Practice** means a code of practice as defined in, and approved under, PDP Act.

**Confidential Information** means any confidential information of AV including any information designated by AV as confidential or which the Seller ought reasonably know is confidential, but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement.

- (a) which the Seller can demonstrate was in its possession prior to the date of the Agreement;
- (b) which the Seller can demonstrate was independently developed by the Seller; or
- (c) which is lawfully obtained by the Seller from another person entitled to disclose such information.

**Contract Materials** means all Materials and Intellectual Property Rights created by or on behalf of the Seller or any Personnel in connection with this Agreement.

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

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

**Dispute** means a dispute in relation to this Agreement.

**Dispute Notice** means a written notice setting out details about a Dispute.

**FOI Act** means the *Freedom of Information Act 1982* (Vic).

**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).

**HPPs** means the Health Privacy Principles set out in the *Health Records Act 2001* (Vic).

**IBAC** means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

**Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, domain names, registered designs, unregistered design rights, copyrights, know how, trade secrets and rights in confidential information, URLs and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**IPPs** means the Information Privacy Principles set out in the PDP Act.

**Laws** means any law in force applying to the provision of the Goods, Services or this Agreement, including common law and equity.

**Loss** means loss or damage however caused whether based in tort, contract or otherwise.

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Personnel** includes all employees, officers, agents, consultants, sub-contractors and other personnel of the Seller.

**Protective Data Security Standards** means any standard issued under Part 4 of the PDP Act and any policies or protocols issued by AV to ensure compliance with those standards.

**Purchase Order** means the purchase order to which these terms and conditions attach and includes attachments to the Purchase Order.

**Purchase Price** means the sum payable for the applicable Goods or Services as specified in the Purchase Order.

**Seller** means the party to whom the Purchase Order is issued by AV.

**Services** means the services described in the Purchase Order that the Seller is to perform.

**State** means the Crown in the right of the State of Victoria.

**Terms and Conditions** means these terms and conditions for the provision of Goods and/or Services.

**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 Seller.

**Warranty Period** means a period of 90 days (or such longer period as specified in the Purchase Order) commencing on the date that Goods are Accepted.

In this Agreement:

- (i) a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body and any government agency;
- (ii) a reference to a person includes the legal personal representatives, successors and permitted assigns of that person;
- (iii) a reference to 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;
- (iv) a reference to '\$' or 'dollars' is a reference to Australian dollars;
- (v) a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (vi) 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;
- (vii) a reference to a clause or party is a reference to a clause or party to this Agreement;
- (viii) a reference to the singular includes the plural and vice versa;
- (ix) a reference to a gender includes the other genders;
- (x) headings and sub-headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (xi) where a word is defined, its other grammatical forms have a corresponding meaning; and
- (xii) the words including or includes mean 'including but not limited to' or 'including without limitation'.

