

FRV TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

- 1. General**
 - 1.1 These are the standard conditions under which FRV acquires Goods and Services. Please read these conditions carefully before supplying any Goods and Services to FRV. Unless otherwise agreed in writing, it is a condition of supplying Goods and Services to FRV that the Contractor has agreed to and will comply with these conditions.
 - 1.2 The Agreement between FRV and the Contractor comprises:
 - 1.2.1 the Head Agreement (if any);
 - 1.2.2 these FRV Terms and Conditions; and
 - 1.2.3 a Purchase Order.
 - 1.3 In the event of any inconsistency between the documents comprising this Agreement, the documents will be interpreted in the order of priority listed in clause 1.2.
 - 1.4 Any terms or conditions attached to or included in an invoice, delivery docket or other document issued by the Contractor are expressly excluded and do not bind FRV.
 - 1.5 The Contractor warrants and represents to FRV that it complies with the VGPB Supplier Code of Conduct.
- 2. Term**

This Agreement starts on the Effective Date and, unless terminated earlier in accordance with its terms, continues until the later of all Goods being accepted by FRV or the Services being completed to the satisfaction of FRV.
- 3. Goods**
 - 3.1 The Contractor must supply FRV with the Goods in accordance with the Specification and at the applicable Item Price.
 - 3.2 Unless expressly stated in the Purchase Order, the Item Price includes all applicable taxes, packaging, transport, insurance, loading, unloading, storage and all other costs of the Contractor up to the point of delivery of the Goods to the Delivery Point.
 - 3.3 The Contractor must deliver the Goods to the Delivery Point by the date and time specified in the Purchase Order. If the Goods conform with the Specification, FRV will accept the Goods in writing. If the Goods do not conform or are otherwise considered by FRV to be defective, FRV may reject the Goods by giving written notice. If FRV does not accept or reject the Goods within 30 days, the Goods are deemed to be accepted.
 - 3.4 FRV is not required to pay for rejected Goods and the Contractor must, at its own expense, collect and remove those Goods within 7 days of receiving a rejection notice. Unless FRV directs otherwise, the Contractor may replace rejected Goods with Goods that conform with the Specification.
 - 3.5 Risk in the Goods will pass to FRV when FRV accepts delivery of the Goods in accordance with these conditions. Title in the Goods will pass to FRV on payment of the Item Price.
 - 3.6 The Contractor may only invoice FRV once the Goods have been delivered to the Delivery Point.
- 4. Warranty Period for Goods**
 - 4.1 The Contractor warrants that the Goods:
 - 4.1.1 are new when delivered 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);
 - 4.1.2 conform in all respects with the Specification;
 - 4.1.3 are free from defects (including defects in installation); and
- 4.1.4 are of merchantable quality and comply with all laws.
 - 4.2 The Contractor must, at its expense and without delay, remedy or replace Goods determined by FRV not to satisfy the above warranties during the warranty period.
 - 4.3 The Contractor must also use reasonable endeavours to obtain for FRV the benefit of any manufacturer's warranties.
- 5. Services**
 - 5.1 The Contractor must supply FRV with the Services in accordance with the Purchase Order and must:
 - 5.1.1 complete the Services by the dates specified in the Purchase Order and otherwise without delay;
 - 5.1.2 use the due care, skill and diligence in supplying the Services consistent with the highest industry standards;
 - 5.1.3 ensure the highest quality of work and act in good faith; and
 - 5.1.4 supply all equipment and other resources needed to supply the Services.
 - 5.2 The rates or fees payable by FRV for the supply of the Services are specified in the Purchase Order and are fixed. Expenses may only be charged as specified in the Purchase Order or with the prior written consent of FRV.
 - 5.3 The Contractor warrants to FRV that the Services will be supplied to achieve any purpose specified in the Purchase Order.
 - 5.4 If the Contractor supplies Services that do not satisfy the requirements of this Agreement, FRV is not required to pay for those Services and may require the Contractor to re-perform the Services within a time specified by FRV.
 - 5.5 The Contractor may only invoice FRV for Services on completion or as otherwise specified in the Purchase Order. Services are only considered complete when FRV provides notice to the Contractor that it is satisfied that the Services have been completed in compliance with this Agreement.
- 6. Access, safety and equipment**

When supplying the Services, the Contractor and the Contractor's Personnel must comply with:

 - 6.1 all Health and Safety Laws; and
 - 6.2 all notified FRV policies, procedures and directions.
- 7. Payment**
 - 7.1 FRV will pay amounts due to the Contractor under this Agreement within 30 days of receipt of a correctly rendered invoice.
 - 7.2 An invoice is correctly rendered invoice if it:
 - 7.2.1 references the Purchase Order number;
 - 7.2.2 sets out the relevant Goods and Services supplied;
 - 7.2.3 complies with the requirements of the GST Law; and
 - 7.2.4 is sent to the FRV contact that is notified to the Contractor from time to time at a time permitted under this Agreement.
 - 7.3 FRV may set-off any amount owed to the Contractor by FRV against any amount payable or claimed to be payable by the Contractor to FRV whether under this Agreement or otherwise.
- 8. Confidentiality and privacy**
 - 8.1 The Contractor must not, during or after this Agreement, disclose or cause or permit the disclosure to any person of, any Confidential Information except:
 - 8.1.1 with FRV's prior written consent; or
- 8.1.2 to its Personnel on a need to know basis solely for the purposes of this Agreement.
 - 8.2 FRV may require the return or destruction of its Confidential Information at any time by giving notice to the Contractor.
 - 8.3 The Contractor agrees to be bound by the Information Privacy Principles and the VPDSS (**Principles**) with respect to any act done or practice engaged in by the Contractor for the purposes of this Agreement in the same way and to the same extent as FRV would have been bound by those Principles in respect of that act or practice had it been directly done or engaged in by FRV.
- 9. Intellectual Property Rights**
 - 9.1 FRV owns all Contract IP with effect from the date of its creation and the Contractor irrevocably and unconditionally assigns to FRV, including by way of assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in the Contract IP on creation.
 - 9.2 Subject to clause 8, FRV grants the Contractor a non-exclusive, royalty-free, non-transferable licence to use the Contract IP solely for the purpose of supplying the Goods and Services. This licence automatically expires on expiry or termination of this Agreement.
 - 9.3 On request or on expiry of this Agreement, the Contractor must promptly provide FRV with a complete copy of all Contract IP.
 - 9.4 The Contractor grants FRV a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the right to sub-license) to use, copy, reproduce, publish, modify, adapt, distribute, communicate and create derivative works from the Background IP to the extent necessary to fully exercise its rights in the Contract IP.
 - 9.5 This clause does not affect the ownership of the Intellectual Property Rights in the FRV Material which remains the property of FRV at all times.
 - 9.6 The Contractor warrants that it has, or will procure from all Personnel who have Intellectual Property Rights in the Contract IP a written assignment of all of those Intellectual Property Rights as necessary to give effect to clause 9.1 and an irrevocable written consent to FRV doing or omitting to do, any act or omission, in relation to any copyright works in the Contract 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)).
 - 9.7 The Contractor warrants and represents to FRV that it has the right to assign the Contract IP and license the Background IP in accordance with this clause 9 and that it will not infringe any Intellectual Property Rights of any third party.
- 10. Liability**
 - 10.1 The Contractor indemnifies FRV and its Personnel from and against all damages, losses or expenses suffered or incurred by FRV arising directly or indirectly out of or otherwise in connection with;
 - 10.1.1 any third party claim against FRV caused or contributed to by an act or omission of the Contractor or Personnel (including any claim for infringement of Intellectual Property Rights);

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- 10.1.2 the death of, disease or injury to any person or any loss of, or damage to, property caused by or contributed to by the Contractor or its Personnel;
- 10.1.3 any breach of this Agreement or any Law by the Contractor or its Personnel; and
- 10.1.4 any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Contractor 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 FRV.
- 10.2 The indemnity in clause 10.1 is a continuing obligation separate and independent from the other obligations of the Contractor and does not limit any other right of FRV or require FRV to incur a cost or expense or make any payment before enforcing a right of indemnity.
- 10.3 At all relevant times, the Contractor must maintain insurance coverage sufficient to cover any loss or damage the Contractor may be liable for in connection with this Agreement.
- 11. Termination**
- 11.1 FRV may terminate this Agreement by notice in writing to the Contractor if:
- 11.1.1 any insolvency event occurs in relation to the Contractor, including if the Contractor is wound up, dissolved, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed; or
- 11.1.2 if the Contractor commits a breach of this Agreement and does not remedy the breach within 14 days of receiving written notice of the breach from FRV.
- 11.2 FRV may in its absolute discretion terminate this Agreement for convenience, without cause and without the need to provide reasons, by giving the Contractor 30 days written notice.
- 11.3 On termination of this Agreement under clause 11.2, FRV must pay for all the Goods and Services supplied to FRV as at the effective date of termination but is not liable for any other costs in connection with the termination of this Agreement (including any losses or damages of any kind incurred by the Contractor).
- 11.4 Termination or expiry of this Agreement will not affect the operation of clauses 3.5, 4, 7.3, 8, 9, 10, 11.3, 12.2, 13, 14 or 15, or any accrued rights or remedies of either party.
- 12. Subcontracting and assignment**
- 12.1 The Contractor must not, without FRV's prior written approval, subcontract any part of the supply of the Goods and Services.
- 12.2 The Contractor acknowledges and agrees that it will be liable to FRV for the acts, omissions or defaults of any subcontractor as if those acts, omissions or defaults were those of the Contractor.
- 12.3 The Contractor must not, without FRV's prior written approval, assign, novate or otherwise transfer any of its rights or obligations under this Agreement.
- 13. GST**
- 13.1 Words and expressions used in this clause that are not defined in this Agreement have the defined meaning given in GST Law.
- 13.2 Unless expressly stated otherwise, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 13.3 If GST is payable in respect of any supply made under this Agreement, the recipient must pay to the supplier an amount

- equal to the GST payable on the supply, subject to the recipient receiving a tax invoice in respect of the supply. Payment will be made at the same time and in the same manner as the consideration for the supply is provided.
- 14. Records**
- The Contractor must maintain complete and accurate records and comply with the *Public Records Act 1973 (Vic)*.
- 15. General**
- 15.1 This Agreement may only be amended or replaced by a document duly executed by the parties.
- 15.2 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 15.3 All notices and communications given under this Agreement must be given in writing and directed to the recipient's contact at the address specified in a Purchase Order (or varied by any notice).
- 15.4 Neither party has the power to obligate or bind the other party and nothing in this Agreement is to be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between the parties.
- 15.5 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect or complete the transactions contemplated by this Agreement.
- 16. Definitions**
- Agreement** means this agreement between FRV and the Contractor for the supply of the Goods and/or Services comprising these conditions, the Purchase Order and, if applicable, the Head Agreement. **Background IP** means all materials or Intellectual Property Rights used by the Contractor (whether or not owned by the Contractor) to supply the Goods and Services that existed at the Effective Date or arose independently of this Agreement. **Confidential Information** means all information that FRV designates as confidential or which the Contractor ought to reasonably know is confidential to FRV which is disclosed under this Agreement. **Contract IP** means any materials or Intellectual Property Rights created by the Contractor or its personnel on or following the Effective Date in the course of, or as a consequence of, performing its obligations under this Agreement. **Contractor** means the person supplying the Goods and Services under this Agreement. **Delivery Point** means the address for delivery set out in the Purchase Order or as agreed by the parties. **Effective Date** means the date of the Purchase Order (unless another effective date is specified in the Purchase Order, in which case that date). **FRV** means the Fire Rescue Victoria (ABN 28 598 558 561). **FRV Material** means any materials or Intellectual Property Rights made available by FRV to the Contractor for the purposes of this Agreement. **GST Law** has the meaning given in the *A New System (Goods and Services Tax) Act 1999 (Cth)*. **Goods** means the goods described in the Purchase Order and Specification. **Head Agreement** means the detailed written

agreement between the FRV and the Contractor for the supply of the Goods and/or Services, prepared by FRV and executed by the parties' duly authorised representatives. **Health and Safety Laws** means all workplace, health and safety related laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant authority and standards applying where the Services are being performed and includes the *Occupational Health and Safety Act 2004 (Vic)* and *Occupational Health and Safety Regulations 2017 (Vic)*. **Information Privacy Principles** means the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014 (Vic)*. **Intellectual Property Rights** includes 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 any other intellectual property rights, whether registered or unregistered. **Item Price** means the price for each unit of Goods, as set out in the Purchase Order. **Personnel** means employees, agents, contractors or subcontractors including representatives. **Purchase Order** means the purchase order incorporating these conditions. **Services** means the services described in the Purchase Order. **Specification** means the specifications to which the Goods must conform, as attached to or described in the Purchase Order or otherwise applying to the Goods. **VGPB Supplier Code of Conduct** means the current version of the Victorian State Government's Supplier Code of Conduct issued under section 54L of the *Financial Management Act 1994 (Vic)*, as amended or updated by the Victorian State Government from time to time. **VPDSS** means the Victorian Protective Data Security Standards published by the Office of the Victorian Information Commissioner, as amended from time to time.