

PURCHASE ORDER TERMS & CONDITIONS

By accepting a Purchase Order the Supplier agrees to the following terms and conditions:

1. Engagement

- 1.1 Subject to clause 1.2, the Supplier must supply the Goods and/or Services to MAP Co in accordance with the requirements of these terms and conditions.
- 1.2 If the Supplier is party to an agreement with MAP Co at the time of accepting a Purchase Order which is applicable to the Goods and/or Services specified in the Purchase Order (**Master Agreement**), then the Purchase Order for those Goods and/or Services will be subject to the terms of that Master Agreement to the exclusive of the remaining terms and conditions of this document.
- 1.3 If the Supplier (or any person on the Supplier's behalf) purports to impose upon MAP Co or incorporate into this Agreement any additional or varied terms by any means whatsoever, including in the Supplier's delivery documentation or in any other notification purported to be provided or delivered by or on behalf of the Supplier, then such terms will be null and void and of no force or effect.
- 1.4 In supplying the Goods or Services, the Supplier must make all reasonable enquiries of MAP Co to ascertain its requirements.
- 1.5 If no date for the delivery of Goods is specified in a Purchase Order, they are to be delivered on the next Business Day after the date of delivery of the Purchase Order to the Supplier.

2. Supply of Goods or Services

- 2.1 The Supplier must:
 - (a) supply the Goods to MAP Co free from any defects or encumbrances to the Delivery Location by the Delivery Date and Time in accordance with the Purchase Order;
 - (b) ensure the Goods are fit for purpose for which they are supplied, are of merchantable quality and conform to any sample or description provided by the Supplier;
 - (c) ensure the Goods will comply with all applicable laws and standards, including requirements of MAP Co regarding packaging, delivery and unloading.
 - (d) supply the Services at the Services Location, on the Service Date and during the Service Hours in accordance with the Purchase Order and/or as directed by MAP Co from time to time;
 - (e) perform the Services in a professional, competent, diligent and skilful manner;
 - (f) comply with all lawful directions of MAP Co; and
 - (g) at all times in connection with the performance of its obligations under this Agreement and a Purchase Order, comply with all applicable laws and standards and MAP Co Policies.

3. No minimum purchase and non-exclusivity

- 3.1 MAP Co is under no obligation, other than as expressly set out in the Purchase Order to purchase any, or any minimum quantity of, Goods and/or Services.
- 3.2 The Purchase Order is non-exclusive. MAP Co may purchase any goods or services, including goods identical or similar to the Goods and Services, from any third party.

4. Fees

- 4.1 In consideration for the provision of the Goods and/or Services, MAP Co will pay to the Supplier the Fees set out in the Purchase Order.
- 4.2 Subject to clause 18, unless provided otherwise in a Purchase Order, the Fees payable by MAP Co are inclusive of all applicable taxes, charges and duties, and all other costs and charges connected with the provision of the Goods and/or Services, including for packaging, carriage, insurance and delivery.

5. Defects

- 5.1 MAP Co may in its absolute discretion and at no additional cost to MAP Co:
 - (a) elect to receive defective Goods and/or Services at a reduced price as agreed with the Supplier;
 - (b) require the Supplier to provide the Goods and/or Services again within 30 days from the date the Supplier is notified of the defect; or
 - (c) require the Supplier to refund any monies paid by MAP Co in respect of those Goods and/or Services (as applicable).
- 5.2 If the Supplier fails to comply with clauses 5.1(a), 5.1(b) or 5.1(c) when requested to do so by MAP Co, MAP Co may procure a third party to provide substitute Goods and/or Services.

- 5.3 Any costs incurred by MAP Co under clause 5.2 is payable by the Supplier.

6. MAP CO premises and facilities

- 6.1 If the Supplier is present at MAP Co's premises or facilities in connection with this Agreement or a Purchase Order, the Supplier must comply with MAP Co's policies and procedures and any lawful direction of any authorised MAP Co person in relation to such policies and procedures.

7. Payments

- 7.1 Unless otherwise agreed by MAP Co in writing, the Supplier may only render an invoice for Goods and/or Services following completion of the Services or delivery of the Goods (as relevant) in accordance with the applicable Purchase Order.
- 7.2 MAP Co must pay the Supplier the Fees within 10 Business Days of receipt of a valid tax invoice submitted by the Supplier to MAP Co.
- 7.3 MAP Co may deduct, withhold or set off any moneys due from the Supplier under this Agreement from any amount that MAP Co is required to pay to the Supplier under this Agreement.
- 7.4 MAP Co will pay simple interest on a daily basis on any undisputed tax invoice (at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic)) that has been outstanding for more than 30 days from the later of the date of receipt of the tax invoice or the date that the amount ceased to be disputed.

8. Title & Risk

- 8.1 Title to all Goods passes to MAP Co free of encumbrances upon payment in full by the Principal for those Goods. Risk of loss of or damage to Goods resides with the Supplier until the Goods are delivered to the Principal at the place of delivery specified in the relevant Purchase Order.

9. Intellectual Property

- 9.1 Unless otherwise specified in the Purchase Order, all Intellectual Property Rights of a party (**IP Owner**) that are made available for use by the other party under or in connection with this agreement or the provision of the Goods and/or Services remains vested in the IP Owner.
- 9.2 The IP Owner grants to the other party a non-exclusive, royalty-free, worldwide and non-sub licensable right to use the intellectual property rights of the IP Owner to the extent necessary to enable the other party to perform its obligations or exercise its rights under this Agreement and the Purchase Order.

10. Representations and warranties

- 10.1 The Supplier represents, warrants, and undertakes to MAP Co that:
 - (a) the supply of the Goods and Services will at all times comply with the requirements set out in 2.1 and will conform with the requirements of the Purchase Order;
 - (b) it and its personnel are appropriately qualified to have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
 - (c) the supply of the Goods and/or Services will not infringe the Intellectual Property Rights of any person; and
 - (d) it holds all permits, licences, authorisations, accreditations and approvals required for it to perform its obligations in accordance with this Agreement, and the performance of its obligations in accordance with this Agreement will comply with such permits, licences, authorisations, accreditations and approvals, and all applicable standards, specification and procedures.
- 10.2 The Supplier acknowledges and agrees that MAP Co has engaged the Supplier in reliance on the Supplier's representations and warranties set out in this Agreement.
- 10.3 Each party warrants that:
 - (a) it has the full power and authority to enter into and perform the terms of this Agreement and the Purchase Order; and
 - (b) it will not breach any agreements between it and any third party by entering into this Agreement and exercising its rights and performing its obligations of the same.

11. Term and Termination

- 11.1 Each Purchase Order commences on the date of, or on such other date as may be specified in, the relevant Purchase Order and continues (subject to earlier termination) until the parties have performed all of their obligations under the Purchase Order.
- 11.2 A party (**Non-Defaulting Party**) may terminate a Purchase Order immediately by notice in writing to the other party (**Defaulting Party**) if the Defaulting Party

breaches any term of this Agreement or the Purchase Order and that breach is incapable of remedy or fails to remedy that breach within 14 days of receiving notice from the Non-Defaulting Party to do so.

11.3 MAP Co may terminate the Purchase Order at any time without cause by giving the Supplier seven (7) days written notice, in which case, the Supplier will be entitled upon termination to payment of:

- (a) any monies outstanding for Services performed or Goods delivered prior to termination; and
- (b) the Supplier's actual and direct out-of-pocket expenses to the date of termination, as approved by the Principal,

but in any event to an amount not exceeding the Fees set out in the terminated Purchase Order. The Supplier must mitigate any such costs claimed from the Principal.

11.4 Termination of a Purchase Order will not prejudice any right of action or remedy which may have accrued to either party before termination.

12. Consequential loss

12.1 Notwithstanding anything else in this Agreement or a Purchase Order, the parties have no liability to each other for any claim, loss, liability, damages, cost or expense of any nature or kind which is consequential, indirect, special, incidental, remote or unforeseeable loss or damage suffered or incurred by the other party in connection with a breach of this Agreement or a Purchase Order, including any loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss to reputation.

13. Release and Indemnity

13.1 A party (**Indemnifying Party**) will at all times indemnify and hold the other party harmless from and against any and all loss, damage, liabilities, costs and expenses, including all reasonable legal fees, incurred by the other party arising out of or in connection with:

- (a) a breach of a warranty or representation under this Agreement;
- (b) a wrongful or negligent act or omission of the Indemnifying Party or its representatives;
- (c) any personal injury, death or loss or damage to property arising from an act or omission of the Indemnifying Party or its representatives; and
- (d) any claim, proceeding, suit, action or demand alleging that any of the benefits or rights conferred by the Indemnifying Party under this Agreement infringe the Intellectual Property Rights of any person,

other than to the extent caused or contributed to by the other party.

14. Insurance

14.1 The Supplier must, with respect to the Goods and/or Services provided pursuant to a Purchase Order, arrange and maintain public liability insurance covering bodily injury, death and property damage in an amount of not less than \$10 million for each and every occurrence and unlimited in the aggregate for any one period of insurance. Upon MAP Co's request, the Supplier must provide a certificate of currency for the insurance required under clause 14.1.

15. Confidentiality

15.1 The Supplier and MAP Co will not disclose any Confidential Information of the other party except:

- (a) to representatives of either party that require the information for the purposes of this Agreement;
- (b) with the written consent of the other party;
- (c) as required or authorised by law; or
- (d) as required to do so in connection with legal proceedings relating to this Agreement.

15.2 Except as otherwise agreed or duly required by Law, by any regulatory authority, or by any government agency, no party will disclose the terms of a Purchase Order to any person other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis.

16. Privacy & Data Security

16.1 In relation to any personal information disclosed by a party to the other or otherwise accessed, collected or held by a party or the other in connection with this Agreement or a Purchase Order, both parties must:

- (a) collect, use, disclose, store, transfer or handle the personal information only for a purpose connected with this agreement and strictly in accordance with privacy laws;
- (b) comply with any obligations they may have under the information privacy principles under the *Privacy and Data Protection Act 2014* (Vic); and
- (c) cooperate with any request or direction of the other party which relates to the protection of the personal information or any complaint concerning the use, disclosure, storage, transfer or handling of the

Personal Information.

16.2 Neither party may transfer or disclose any personal information to recipients (including their representatives) located outside of Australia, or allow any person located outside Australia (including their representatives) to access, view or receive any personal information, without the prior written approval of the other party.

16.3 The Supplier acknowledges that MAP Co is bound by the protective data security standards under the *Privacy and Data Protection Act 2014* (Vic). Accordingly, the Supplier agrees that it will not do any act or engage in any practice that contravenes a protective data security standard or would give rise to contravention of them by MAP Co.

17. Special Conditions

17.1 In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the Special Conditions set out in the Purchase Order, the Special Conditions will prevail to the extent of any such conflict or inconsistency.

18. GST

18.1 Unless otherwise stated in a Purchase Order, any consideration specified in this Agreement or a Purchase Order does not include any amount for Goods and Services Tax ("GST").

18.2 If a supply under this Agreement or a Purchase Order is subject to GST, the recipient must pay to the supplier an additional amount equal to the applicable GST in respect of the taxable supply (except to the extent that the consideration is expressed to be inclusive of GST), subject to receipt of a valid tax invoice.

19. General

19.1 Subject to clause 1.2, the Purchase Order and this Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

19.2 The Purchase Order may only be amended or varied by agreement in writing signed by the parties.

19.3 The parties acknowledge and agree that their relationship under the Purchase Order is that of independent contractors and nothing in this agreement should be construed as creating a relationship of employer/employee, principal/agent, partnership or joint venture.

19.4 Neither party may assign or otherwise deal with its rights under this Agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

19.5 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement continues with full force and effect.

19.6 The Purchase Order and this Agreement are governed by the law in force in Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts located in Victoria, Australia and courts of appeal from them.

19.7 A party notifying or giving notice under this Agreement must do so by notice in writing delivered to the other party personally or by prepaid post or email at the other party's address set out in the Purchase Order. A party may change its notice details by giving written notice to the other party.

20. Definitions

In this Agreement:

Business Day means a day that is not a Saturday or Sunday or a day that is wholly or partly observed as a public holiday in Melbourne, Victoria.

Confidential Information means all confidential, non-public or proprietary information exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of each party or which comes into a party's possession pursuant to, or as a result of, any negotiations or discussions in connection with this Agreement or the Purchase Order including the existence, nature and terms of this Agreement and the Purchase Order, whether disclosed verbally, in writing, in electronic form or by any other means.

Goods means the goods to be provided by the Supplier to MAP Co under and in accordance with a Purchase Order.

Intellectual Property Rights means all industrial and intellectual property rights, whether protectable by statute, at common law or in equity, including, without limitation, all copyright, inventions, patents, designs (whether or not registrable), registered and unregistered trade marks, circuit layout designs and rights in relation to circuit layout designs, and rights to apply for or register any of the foregoing.

MAP Co means Melbourne Arts Precinct Corporation ABN 50 458 780 199.

MAP Co Policies means the policies and procedures of MAP Co listed in a Purchase Order.

Purchase Order means the applicable Purchase Order for Goods and/or Services issued by MAP Co to the Supplier.

Services means the services to be provided by the Supplier to MAP Co under and in accordance with a Purchase Order.

Supplier means the supplier specified in the Purchase Order.