

Purchase order terms and conditions

When to use these terms and conditions

VMIA Purchase Order terms and conditions are to be used for the purchase of goods and services under \$50,000.

These terms and conditions are not to be used for State Purchase Contract awards.

Who to contact if there are any issues

If you require any assistance with this document - please contact legal@vmia.vic.gov.au

The VMIA Legal Team are the only people at VMIA authorised to amend these conditions.

1. General

- 1.1 These Terms and Conditions ("**Conditions**") apply to the order for goods ("**Goods**") or services ("**Services**") placed by the Victorian Managed Insurance Authority (**VMIA**) as described in the attached purchase order ("**Purchase Order**") with the supplier of the Goods or Services ("**Supplier**").
- 1.2 These Conditions are to be read as in addition to any terms specified by VMIA in the Purchase Order and/or any attachment to it that is expressly incorporated in writing. To the extent of any inconsistencies between these Conditions and the Purchase Order the terms of the Purchase Order terms will prevail.
- 1.3 No other terms or conditions apply to this Purchase Order or to the Goods or Services under any circumstances except where these terms are replaced by a longer form agreement on VMIA's terms and conditions in which case the terms of that agreement will apply between the parties.
- 1.4 No amendments to these Conditions will be binding on the parties unless approved in writing by a VMIA representative and an authorised Supplier representative.

2. Offer and Acceptance

- 2.1 A Purchase Order issued by VMIA to the Supplier constitutes an offer by VMIA to engage the Supplier to supply the Goods and/the Services described in the Purchase Order on the terms set out in the Purchase Order and these Conditions.
- 2.2 The Purchase Order once accepted, combined with these Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties.

3. Cancellation

- 3.1 VMIA may at any time before delivery or commencement of the Services cancel the Purchase Order.
- 3.2 If the Supplier has already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the Purchase Order, VMIA agrees to pay the Supplier's reasonable and demonstrable direct costs or expenses incurred, excluding loss of profit. The Supplier must mitigate any such costs or expenses.

4. Variations

- 4.1 VMIA and the Supplier may agree on changes to the Purchase Order between their authorised representatives. These changes must be made in writing.

5. Delivery, Acceptance and Title

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- 5.1 The Supplier will supply VMIA the Goods and Services by the date specified in the Purchase Order, or as otherwise agreed in writing between the parties.
- 5.2 The Goods supplied by the Supplier must:
- (a) comply with the specification or description in the Purchase Order
 - (b) be new (unless otherwise specified in the Purchase Order) and of recent origin;
 - (c) be free from defects in design, manufacture and assembly
 - (d) be of merchantable quality and fit for the purpose for which they are ordinarily acquired and
 - (e) otherwise be in accordance with all relevant standards, laws and regulations.
- 5.3 Services supplied by the Supplier must:
- (a) comply with the specification or description in the Purchase Order
 - (b) be performed with due skill, care and attention in a safe and diligent manner;
 - (c) be performed by personnel who are qualified, licensed, competent and experienced in providing the Services by the key personnel (if any) specified in the Purchase Order
 - (d) be performed in a timely manner and in accordance with the program or timetable, if any, specified in the Purchase Order (time being of the essence) and
 - (e) be performed in accordance with all applicable laws, codes and standards.
- 5.4 Title and risk in the Goods will pass to VMIA when they are delivered to VMIA.

6. Access

- 6.1 When at VMIA's premises, the Supplier must, and must ensure that its personnel or contractors:
- (a) protect people and property;
 - (b) prevent nuisance;
 - (c) act in a safe and lawful manner;
 - (d) comply with the safety standards and policies of VMIA (as notified to the Supplier); and
 - (e) comply with any lawful directions of VMIA.

7. Sub-contracting

- 7.1 Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations without the prior written consent of VMIA.
- 7.2 Where the Supplier sub-contracts any of its obligations under these Conditions, the Supplier remains liable for the carrying out and completion of those obligations.

8. Fees and Invoices

- 8.1 In consideration for the provision of Goods and/or Services under the Purchase, VMIA agrees to pay to the Supplier the fees specified in the Purchase Order ("**Fees**").
- 8.2 Unless otherwise specified in the Purchase Order, VMIA agrees to pay the Supplier the Fees within 10 days of receipt of an undisputed invoice by VMIA (such invoice to be accompanied by such reasonable information as VMIA may require). VMIA may withhold any disputed portion of the Fees until the dispute is resolved.
- 8.3 The Supplier may charge VMIA simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) if the Supplier notifies VMIA that it is required to pay interest on an overdue amount.
- 8.4 For the purposes of clause 7.3, "overdue amount" means an amount (or part thereof) that is not, or is no longer, disputed in accordance with this Agreement:
- (a) that is due and owing under a tax invoice (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) properly rendered by the Contractor in accordance with this Purchase Order
 - (b) which has been outstanding for more than ten business days from the date of receipt of the correctly rendered invoice or the date that the amount ceased to be disputed, as the case may be.
- 8.5 If GST is payable in connection with the Goods and/or Services to be supplied pursuant to the Purchase Order, then the Supplier irrevocably warrants and agrees that the Fees payable to it as specified in the Purchase Order is the GST inclusive price of those Goods and/or Services unless otherwise agreed in the Purchase Order. Payment will be made by electronic funds transfer.

9. Indemnity, Insurance and Warranties

- 9.1 The Supplier indemnifies VMIA against all Losses it directly or indirectly sustains or incurs as a result of:
- (a) any negligent, unlawful or willful act or omission of the Supplier, Supplier personnel or Supplier

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- subcontractors;
 - (b) any infringement or claimed infringement of the intellectual property rights or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;
 - (c) death or personal injury of any person to the extent caused by the Supplier;
 - (d) property damage to the extent caused by the Supplier;
 - (e) any breach by the Supplier of clause 9.
- 9.2 Unless otherwise specified in the Purchase Order, the Supplier must hold insurances a prudent supplier of Goods and/or Services would hold including;
- (a) insurances to cover physical loss or damage to the Goods
 - (b) Public liability insurance of not less than \$5 million;
 - (c) workers compensation insurance as required by law; and
 - (d) any other insurance reasonably required by VMIA as listed in the Purchase Order.
- 9.3 The Supplier must provide VMIA with a certificate of currency from its insurance broker certifying that it has the insurance required under this Agreement.
- 9.4 The Supplier represents and warrants that:
- (a) it has the right to enter into the Agreement
 - (b) it has unencumbered title to all Goods
 - (c) use of the Goods by VMIA will not infringe the intellectual property, moral or other rights of any third party
 - (d) it, and any person performing the Services on its behalf, holds and will maintain all requisite licenses, permits and authorities relevant to the supply of Goods and/or Services
 - (e) it holds all relevant licenses, consents or authorities necessary for performance of the Services and
 - (f) all performance data, measurements and Specifications quoted in brochures, quotations or tenders are accurate within tolerances (if any) specified in those documents.

10. Intellectual Property Rights

- 10.1 Subject to clause 9.2, all rights, title and interest in any intellectual property rights created in providing the Goods and/or Services ("Project IPRs") will be owned by VMIA, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to VMIA.
- 10.2 The IPRs owned by a party prior to the date of this Agreement ("Background IPRs") remain with the contributing party.
- 10.3 The Supplier indemnifies VMIA against any claims made by third parties in respect of the use of intellectual property in connection with any Goods and/or Services supplied to VMIA.

11. Confidentiality, privacy and data protection

- 11.1 The Supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any person.
- 11.2 The Supplier acknowledges that it will be bound by the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014 (Vic)*, the Health Privacy Principles set out in the *Health Records Act 2001* and any applicable Code of Practice as if it were VMIA carrying out and discharging those obligations. The Supplier must notify VMIA as soon as possible upon it becoming aware of a breach of these obligations.
- 11.3 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 the Protective Data Security Standards in respect of any data collected, held, used, managed, disclosed or transferred by the Supplier in connection.
- 11.4 The Supplier consents to VMIA making available information in relation to the Supplier (and the provision of the Services):
- (a) to other Victorian Government bodies or Ministers of the State in connection with the Goods or use of the Services;
 - (b) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
 - (c) to the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic);
 - (d) to comply with Law, including the Freedom of Information Act 1982 (Vic); or
 - (e) to the Independent Broad-based Anti-corruption Commission.

12. Termination rights of VMIA

- 12.1 VMIA may terminate this Agreement for convenience by giving 30 days' notice to the Supplier.

- 12.2 VMIA may terminate this Agreement by written notice to the Supplier:
- (a) if the Supplier breaches a term of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so (or the Supplier breaches a term of this Agreement which is not capable of remedy); or,
 - (b) if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.
- 12.3 If VMIA terminates this Agreement and the Supplier has already incurred expenses in arranging for the order or delivery of the Goods and/or Services specified in the Purchase Order, VMIA agrees to pay the Supplier's reasonable and demonstrable direct costs or expenses incurred, excluding loss of profit. The Supplier must mitigate any such costs or expenses.

13. Termination rights of Supplier

- 13.1 Supplier may terminate this Agreement by written notice to VMIA:
- (a) if VMIA breaches a term of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so (or if VMIA breaches a term of this Agreement which is not capable of remedy);
 - (b) if VMIA is or becomes subject to proceedings or legislative change which may result in VMIA becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and management.

14. Audit

- 14.1 VMIA (or its nominee) may conduct an audit at any time to
- (a) assess the Supplier's compliance with these Conditions and/or
 - (b) enable VMIA to meet its applicable contractual, regulatory or internal management requirements.

15. Modern Slavery

- 15.1 Where the Modern Slavery Act 2018 (Cth) (MSA) applies to the Supplier, the Supplier:
- (a) warrants that it complies with the MSA;
 - (b) must notify VMIA within five days of receiving a request under the MSA to do either or both of the following:
 - i. provide an explanation for its failure or potential failure to comply with the MSA;
 - ii. undertake specified remedial action with respect to its obligations under the MSA.
 - (c) Must, if requested by VMIA, promptly:
 - i. provide to VMIA, its modern slavery statement (including any original versions where a revised modern slavery statement has been submitted) as required under the MSA for the current or previous reporting period(s);
 - ii. do all things reasonably necessary to respond to any enquiries VMIA may have about the Supplier's compliance with the MSA, and/or in relation to the Supplier's supply chain.

16. General

- 16.1 The Supplier acknowledges that it has read and aspires to comply with the Victorian Government Supplier Code of Conduct.
- 16.2 This Agreement is governed by the laws of Victoria.
- 16.3 Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement. The Supplier agrees to cooperate and work with third party suppliers of VMIA to the extent necessary to give effect to this Agreement.
- 16.4 VMIA reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.
- 16.5 The Parties may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other Party.
- 16.6 The Supplier acknowledges the role of VMIA as the state insurance body of Victoria and agrees that VMIA may assign its rights and obligations under this Agreement to any successor body to the Victorian Managed Insurance Authority, as created by Victorian statute.
- 16.7 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.
- 16.8 The Supplier must comply with any applicable VMIA or Victorian Government policies and procedures as notified by VMIA to the Supplier from time to time. If this causes a material change to the operation of the Purchase Order agreement, then the parties may negotiate a rate change, delivery change, or termination.

17. Definitions

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Unless the contrary intention appears, in this Agreement:

Confidential Information means all data and/or information exchanged between the parties for the purposes of this Agreement before, on or after the date of this Agreement (including the terms of this Agreement) relating to the operations, business, research and technology of the disclosing party, but not including any information which:

- (a) is publicly available at the date of this Agreement;
- (b) becomes publicly available subsequent to the date of this Agreement without breach of this Agreement;
- (c) a party obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
- (d) was already in the party's possession (as evidenced by written records) when provided by or on behalf of the other party.

Losses means actions, claims, liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

Document information

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For more information contact the Policy Owner – legal@vmia.vic.gov.au