

Form No: PRO-FM-017

Process Area: Procurement & Subcontractor Management

TERMS & CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES

1 ORDERS FOR THE SUPPLY OF GOODS AND SERVICES

You agree to supply Us with the Goods and/or Services set out in the Order.

2 PROVISION OF THE GOODS AND SERVICES

2.1 We engage You as an independent contractor on a non-exclusive basis.

2.2 You must provide the Goods and/or Services in a competent, proper and careful, prompt, professional and businesslike manner, and in accordance with the Order, Good Industry Practice, these Terms and Conditions, all Legal Requirements, the OHS Requirements and Our reasonable directions.

2.3 You must ensure the provision of the Goods and/or Services does not interfere with the day-to-day business activities at the Sites.

2.4 If You fail to comply with Your obligations under these Terms and Conditions and You do not remedy the non-compliance within a reasonable period (as notified by Us) then (without limiting Our rights under clauses 7.9 and 7.10) We may:

- (a) withhold payment of any Fees until the failure has been remedied;
- (b) require the Goods and/or Services to be provided again, at no cost to Us; or
- (c) require You to reimburse any Fees paid by Us.

3 VARIATION OR CANCELLATION OF ORDERS

3.1 We may vary an Order by giving You written notice at any time after placing the Order.

3.2 We may at any time cancel an Order for the provision of Goods and/or Services and, subject to clause 3.3, We will only be required to pay You or any third party the portion of the Fees applicable to the Goods and/or Services provided up to the date upon which We cancel the Order.

3.3 We will not be required to pay You or any third party any Fees if the Order is cancelled under clause 3.2 because:

- (a) You breached these Terms and Conditions or the Order and failed to remedy the breach within 7 days of receiving notice to do so;
- (b) You become Insolvent;
- (c) the Goods are not delivered, or the Services are not completed, by (i) the due date specified in the Order; or (ii) where the due date is extended under clause 4.2 and the Goods are not delivered, that extended date.

4 DELAY

4.1 If You become aware of any actual or likely delay in delivery of the Goods and/or completion of the Services, You must notify Us as soon as practicable of the details of the delay, the Goods and/or Services affected and any additional time reasonably required.

4.2 You must take all reasonable steps to mitigate and minimise the effects of any delay. We may, at Our discretion, extend the affected due date by a reasonable period.

4.3 To the extent You are responsible for the delay, You will reimburse Us on demand for any additional substantiated Costs reasonably incurred by Us, Our Related Bodies Corporate or any City Customer as a result of the delay.

5 MATERIALS AND EQUIPMENT

5.1 You must:

- (a) provide all resources, personnel, materials and equipment necessary to provide the Goods and/or Services, subject to Our rights under clause 5.2;
- (b) ensure that all materials and equipment you provide for the provision of the Goods and/or Services (including spare or replacement parts) are fit for purpose and are consistent with manufacturers' specifications; and
- (c) ensure that all spare or replacement parts you provide are installed in accordance with manufacturers' recommendations or standard operating procedures.

5.2 We reserve the right to supply or recommend certain materials (including spare or replacement parts) for use in the Goods and/or Services.

5.3 Title in the parts supplied by You passes to Us when the parts have been installed. Title in any material or equipment supplied by Us or by a City Customer will remain with Us or the City Customer, as applicable.

5.4 You will be responsible for any loss of, or damage to, any material or equipment used for the provision of the Goods and/or Services.

6 PERSONNEL

6.1 At all times, You must ensure that:

- (a) Your Personnel are suitably qualified and adequately trained to provide the Services in respect of which they are engaged;
- (b) Your Personnel have the right to work in Australia or New Zealand (as applicable) and are working in accordance with any applicable visa restrictions or requirements;
- (c) Your Personnel are paid promptly in full in accordance with any applicable award for the Services provided and all relevant Legal Requirements; and
- (d) there are an adequate number of Your Personnel to provide the Services.

6.2 You must maintain up-to-date personnel and training records of Your Personnel.

- 6.3 If We agree that a member of Your Personnel are to perform activities on a full time basis, You must ensure that such Personnel are made available and perform on a full time basis.
- 6.4 You must use reasonable endeavours to ensure continuity of Personnel in the provision of the Goods and/or Services.
- 6.5 You must provide Your Personnel with the authority to act on Your behalf on the matters for which they are expressed to be responsible.
- 6.6 You must remove any specified individuals from performance of the Services or supply of the Goods if requested by Us or a City Customer.
- 6.7 If requested pursuant to an audit conducted in accordance with clause 18, You must provide Us with access to:
- (a) information relating to any wages or other amounts paid to Your employees and the employees or contractors of Your subcontractors engaged in the performance of Services; and
 - (b) other information verifying that Your employees and contractors, and the employees or contractors of Your subcontractors engaged in the performance of Services, are paid in accordance with the applicable Legal Requirements.
- 6.8 You must immediately report to Us any incidents involving personal injury, property damage, or other occurrence which may have a material adverse effect on Our or a City Customer's brand or reputation.

7 GOODS

- 7.1 You must ensure all Goods are labelled, packed and loaded in accordance with the Order, Our instructions and all requirements of the carrier to ensure that no damage occurs to the Goods whilst in transit.
- 7.2 You must provide Us with sufficient written information to enable Us to make full and safe use of the Goods, and We may make as many copies of that information as We consider necessary.
- 7.3 Unless otherwise agreed, We may keep any packaging or packing materials for the Goods whether or not the Goods are accepted by Us.
- 7.4 The Goods will either be delivered FIS or FOB, as specified in the Order.
- 7.5 If the Goods are to be delivered FIS:
- (a) title in the Goods passes to Us on delivery to the address specified in the Order, unless payment (including a part payment) for the Goods is made prior to delivery in which case title in the whole of the Goods passes to Us once payment has been made;
 - (b) you must deliver the Goods to the address, and on the date, specified in the Order during Our usual business hours or within the period and in the manner set out in the Order; and
- 7.6 If the Goods are delivered FIS, then the risk of damage to or loss of the Goods passes to Us when the Goods are delivered to the address specified in the Order.
- 7.7 If the Goods are to be delivered FOB:
- (a) title in the Goods passes to Us when We obtain, or a carrier engaged by Us obtains, physical possession of the Goods, unless payment (including a part payment) for the Goods is made prior to delivery in which case title in the whole of the Goods passes to Us once payment has been made;
 - (b) We will take delivery of the Goods at Your premises, or You must engage a carrier to take delivery of the Goods at Your premises and at Our cost; and
 - (c) the risk of damage to or loss of the Goods passes to Us when We, or Our carrier, obtains physical possession of the Goods.
- 7.8 You must immediately advise Us of any problems with the Goods when You become aware of them.
- 7.9 On delivery, We may check the Goods for compliance with the Order and these Terms and Conditions. If any Goods do not comply with the Order or these Terms and Conditions in any respect, We may:
- (a) pay only for those Goods delivered and cancel the remainder of the Order, if the quantity delivered is less than the quantity ordered; or
 - (b) reject those Goods and require You to reimburse any Fees paid by Us in respect of those Goods and the Costs of returning those Goods.
- 7.10 If We discover after delivery that the Goods do not comply with the Order or these Terms and Conditions in any respect, We may still reject the Goods and require You to reimburse any Fees paid by Us in respect of those Goods and the Costs of returning those Goods.
- 7.11 The rejection of any Goods in accordance with clauses 7.9(b) or 7.10 will not affect the validity of the remainder of the Order.

8 FEES, INVOICING AND PAYMENT

- 8.1 You may Invoice Us for payment of the Goods and/or Services on or after completion of the Services and/or delivery of the Goods (as applicable).
- 8.2 Invoices must be accompanied by proof of the completion of the Services and/or delivery of the Goods (as applicable) and must comply with Our invoicing instructions, as may be modified and provided to You from time to time.
- 8.3 Unless otherwise agreed by Us in writing, payment terms are 30 days from end of month in which We receive a valid and correctly rendered Invoice.
- 8.4 Our payment of an Invoice does not constitute Our acceptance of, or acknowledgment that, the Goods and/or Services have been provided satisfactorily.

9 GOODS AND SERVICES TAX

- 9.1 All Invoices should show the Fees for the Goods and/or Services and separately itemise the applicable GST.
- 9.2 We will pay the full amount of each correctly issued Invoice, being the amount for the Taxable Supply plus the GST.
- 9.3 Where an Adjustment Event occurs in respect of any amount paid or payable by Us for Taxable Supplies, We will issue, on Your behalf, an Adjustment Note as required under the GST Law. Any Adjustment Note that You purport to issue will not have legal status.

10 COMPLIANCE WITH LAWS AND POLICIES

10.1 You must:

- (a) comply with all Legal Requirements and any other requirements of government authorities applicable to the provision of the Services and/or manufacture, packaging, packing and delivery of the Goods;
- (b) obtain, maintain and comply with all permissions, licenses, consents, approvals, certificates and permits (whether statutory or regulatory) necessary for the provision of the Services and/or manufacture, packaging, packing and delivery of the Goods;
- (c) not do any act, engage in any practice, or omit to do any act or engage in any practice that would breach (or cause Us, Our Related Bodies Corporate or a City Customer to breach), any Legal Requirements;
- (d) comply with the OHS Requirements and Our security, administrative and other policies, and any policies or requirements of City Customers that We notify to You, whilst You, Your employees or subcontractors (and their employees) are on the Sites or using any of Our equipment or property;
- (e) [ensure that all Your employees and subcontractors (and their employees) are appropriately qualified and licensed as required by relevant State or Commonwealth legislation or industry codes of practice;
- (f) comply with all industrial awards, instruments and legislation relating to employment;
- (g) ensure that Your operating procedures are sufficient to ensure that the Goods and/or Services are provided in accordance with the Order and these Terms and Conditions; and
- (h) must provide reasonable assistance and support to Us or a City Customer in relation to its reporting obligations including for the preparation of any Modern Slavery reporting required by applicable laws.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 The IPR in the Developed Material will be owned by Us. You:

- (a) assign to Us all existing rights and future title and interest to all IPR subsisting in the Developed Material, effective immediately on the creation of any such rights; and
- (b) will do all things necessary to effect the assignment to Us of all IPR in the Developed Material, including executing and delivering documents.

11.2 You grant Us, Our Related Bodies Corporate and each City Customer an irrevocable, perpetual, sublicensable, royalty free licence to use, reproduce and otherwise exploit all materials provided in connection with the Goods and/or Services to the extent necessary to enjoy the benefit of the Goods and Services.

11.3 You must not use any of Our or any City Customer's trade marks for any purpose without the prior written consent of the registered trade mark owner.

11.4 You agree that You will not do anything which may infringe any IPR of Ours or a third party (including a City Customer).

12 YOUR WARRANTIES

12.1 In respect of each Order, you warrant that:

- (a) You have full capacity and all necessary licences, permits, consents and authorisations to contract with Us and supply the Goods and/or Services;
- (b) You will comply with the Order, these Terms and Conditions, the OHS Requirements and all Legal Requirements and provide the Goods and/or Services in accordance with Good Industry Practice;
- (c) all information You provide with the Goods and/or Services is comprehensive, current and accurate;
- (d) the Goods and all materials You provide under the Order are free of any encumbrance, safe, free from defects, and fit for the purpose for which they were supplied and comply with all specifications and relevant standards and recommendations of the original manufacturer;
- (e) if You provide Us with a sample of the Goods, the Goods provided under the Order will correspond with the most recent sample We approved;
- (f) the Goods and Services, and the exercise of any rights you grant to Us under these Terms and Conditions, will not infringe any IPR; and
- (g) You are not aware of any Claims in relation to the Goods and/or Services and have made reasonable enquiries to determine if there are any Claims where the Goods are imported into Australia by a third party.

13 INDEMNITIES

13.1 You indemnify Us, Our Related Bodies Corporate and each City Customer against all Claims made against, or Costs incurred by, Us, Our Related Bodies Corporate or each City Customer arising out of or about:

- (a) any wilful misconduct or fraudulent act or fraudulent omission of You or Your Personnel;
- (b) any breach by You of an Order, these Terms and Conditions, any Legal Requirement or any OHS Requirement;
- (c) any loss of, or damage to, any property (including IPR) caused by any act, omission or negligence of You or Your Personnel;
- (d) any injury to or death of any person caused by any act, omission or negligence of You or Your Personnel;
- (e) use or possession by Us of any material provided by You under an Order;
- (f) any breach of warranty or negligence or other Claim with respect to Goods and/or Services provided by You;
- (g) any Costs or liabilities incurred in respect of a Claim by a third party;
- (h) any defects in the materials or Goods provided by You, or the recall or withdrawal of those materials or Goods;
- (i) any Claim of infringement of IPR by any person in respect of the Goods and/or Services or the material You provide under an Order;

- (j) the steps taken, or omitted to be taken, by You in Your discharge of Your obligations under the OHS Requirements, except to the extent that the Claim made against or Cost incurred by Us is directly attributable to Our negligence or wrongful act or omission.

14 INSURANCE

Prior to providing the Goods and/or Services You must obtain and maintain (with insurers acceptable to Us) a:

- (a) public liability insurance policy of \$20,000,000 per occurrence and unlimited in the aggregate, indemnifying You against liability for property damage, personal injury or death arising from the Services or the Goods manufactured, distributed or sold by You;
- (b) product liability insurance policy of \$20,000,000 per occurrence;
- (c) professional liability insurance policy of \$5,000,000 per occurrence and unlimited in the aggregate, which must be maintained for two years following the completion of the Order; and
- (d) workers compensation insurance policy as required by State laws in the applicable State in which You provide the Goods and/or Services.

15 CONFIDENTIALITY

15.1 You must:

- (a) take all action reasonably necessary to maintain the confidentiality of Our Confidential Information;
- (b) not disclose Our Confidential Information to any person except as permitted under clause 15.3;
- (c) only use the Confidential Information to provide the Goods and/or Services;
- (d) take all steps reasonably necessary to secure all Our Confidential Information against theft, loss or unauthorised disclosure; and
- (e) immediately return or permanently delete or destroy (and if requested, certify such deletion or destruction of) all records of the Confidential Information in Your possession or control upon (i) completion of the Order; or (ii) cancellation of the Order; or (iii) otherwise when We direct you to do so.

15.2 The obligations of confidentiality in clause 15.1 will not apply to information:

- (a) that is or becomes in the public domain (except as a result of breach of the Order or these Terms and Conditions by You);
- (b) that is obtained by You from a third party without any restriction of non-disclosure;
- (c) required to be disclosed by You by law, provided that, prior to disclosing any information, You have promptly notified Us in writing and exhausted all reasonable steps to maintain such information in confidence; or
- (d) required to be disclosed in accordance with the rules or regulations of a stock exchange upon which Your securities are listed.

15.3 You may disclose Our Confidential Information only on a 'need-to-know' and confidential basis:

- (a) with Our prior written consent; or
- (b) to Your directors, agents, professional advisers, employees and contractors, solely for the exercise of rights or the performance of obligations under the Order and these Terms and Conditions, provided they are obliged to keep the information confidential and comply with terms equivalent to this clause 15. You must take reasonable steps to enforce such terms, including by bringing legal proceedings at Your cost if necessary.

15.4 At Our request you must promptly provide a list of all persons to whom you have disclosed Our Confidential Information has been disclosed.

16 PRIVACY AND DATA SECURITY

16.1 If You are provided with, or have access to, Personal Information, You must:

- (a) comply with the provisions of the *Privacy Act 1988* (Cth) and any other laws regarding the collection, use and disclosure of personal information applicable to each jurisdiction in which You provide the Goods and Services;
- (b) use or collect the Personal Information for the sole purpose of providing the Goods and/or Services;
- (c) protect the Personal Information from misuse and loss and from unauthorised access, modification or disclosure;
- (d) not access or transfer Personal Information outside Australia without Our prior written consent;
- (e) comply with Our reasonable directions, policies and guidelines which concern the security, use and disclosure of Personal Information;
- (f) notify Us promptly of any breach or anticipated breach of this clause 16 and co-operate with Us in the event of any privacy complaint.

16.2 You must:

- (a) implement appropriate technical and organisational measures against the unauthorised or unlawful disclosure or processing of Personal Information and other Data and against accidental loss or destruction of or damage to the Personal Information and other Data; and
- (b) notify Us in writing and give full details of a suspected or actual Data Breach within 24 hours of becoming aware of an actual or suspected Data Breach;
- (c) reasonably co-operate with Us regarding the format, timing and content of any required notices to regulators or affected individuals in relation to any Data Breach;
- (d) not notify any third party including a regulator or affected individual in relation to any Data Breach without our prior written consent; and
- (e) keep Us reasonably informed regarding the status of any remediation efforts in relation to any Data Breach.

17 SUBCONTRACTING

17.1 You may not subcontract any of Your obligations under an Order or these Terms and Conditions without Our prior written consent.

17.2 We may on reasonable grounds and with reasonable notice to You, require You to cease using any subcontractor to which We have provided Our consent in accordance with clause 17.1.

- 17.3 You must ensure that none of Your subcontractors assign or subcontract their obligations under the Order or these Terms and Conditions without first obtaining Our written approval.
- 17.4 If You subcontract the provision of the Goods and/or Services, you must ensure the subcontractor complies with the Order, these Terms and Conditions and any applicable Legal Requirements and OHS Requirements.
- 17.5 You are liable to Us and each City Customer, for the acts, defaults and omissions of Your subcontractors (and Personnel of Your subcontractors) as if those acts, defaults and omissions were Yours.

18 AUDIT

- 18.1 On request by Us, We, a City Customer or their Related Bodies Corporate or any independent third party auditor they may appoint, may at any time during the Term, and for up to 18 months after expiry or termination, conduct an audit in relation to the performance of the Services, supply of the Goods and Your compliance with these Terms and Conditions.
- 18.2 You must co-operate in any audit and inspection, including by providing access to Your premises, providing copies of any documents, records or data, making appropriate Personnel available to answer questions, installing and running any generally commercially available 'off the shelf' audit software on Your information technology system; and providing other assistance requested by Us.
- 18.3 If an audit shows an overcharging or other failure to comply with these Terms and Conditions or an Order, You must:
- (a) reimburse Us for cost of the audit and the amount of the overcharging; and
 - (b) at Your own cost, remedy the failure to comply with these Terms and Conditions or an Order.

19 GENERAL PROVISIONS

- 19.1 Entire Agreement: The Order together with these Terms and Conditions constitutes the entire agreement of the parties about its subject matter.
- 19.2 Variation: These Terms and Conditions may not be varied except as agreed in writing.
- 19.3 Assignment and novation: We may assign Our rights under the Order and these Terms and Conditions to any person at any time by giving You written notice. If requested Us, You agree to do all things necessary to effect a novation of the Order and these Terms and Conditions to a City Customer or a Related Body Corporate of the City Customer. You may not assign or novate any of Your rights or obligations under an Order or these Terms and Conditions without Our prior written consent.
- 19.4 Set-Off: We may set off or apply any amounts payable by Us under these Terms and Conditions or any other agreement towards satisfaction of any amount payable to Us under these Terms and Conditions or any other agreement. If You become Insolvent, We may set off any amounts You owe Us even if such amounts are not yet due and payable.
- 19.5 Severance: If any part of these Terms and Conditions is void, illegal or unenforceable for any reason, that part will be regarded as severed, and the remainder of the Terms and Conditions will remain effective.
- 19.6 Survival: Any obligations in these Terms and Conditions which by their nature are continuing, or which are not fully discharged on the end of the Term, continue to apply following the end of the Term.
- 19.7 Waiver: If either party fails to insist on strict compliance by the other party with of any part of these Terms and Conditions, it is not a waiver of any later breach or default. A waiver is only valid or binding on the party granting that waiver if made in writing.
- 19.8 Governing law: The Order and these Terms and Conditions are governed by the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

20 DEFINITIONS

The following terms have these meanings:

Adjustment Note and **Adjustment Event** have the meaning given by Section 195-1 of the GST Law.

Business Day means a day on which banks are open for business in Victoria, excluding a Saturday, Sunday or public holiday.

City Group means City Holdings (Aus) Pty Ltd and each of its subsidiaries.

City Customer means any third party business entity that contracts with Us for the provision of the Goods and/or Services described in the Order.

Claim means any claim made by allegation, demand, suit, action or other proceeding of any nature, whether arising under contract, tort, equity or otherwise.

Confidential Information means all information (including without limitation, information relating to Us and any City Customer, and Our and any City Customer's business dealings, customers, operations and other sensitive corporate information) which should reasonably be regarded in all the circumstances as confidential to Us or a City Customer.

Costs means any, cost, loss, liability, damage charge, outgoing or expense, including any costs and disbursements on a full indemnity basis.

Data means any data (including any personal data relating to the staff, customers, or suppliers of Ours or a City Customer), documents, text, drawings, graphs, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to You by or on behalf of Us or a City Customer, or which You are required to generate, process, store or transmit pursuant to the Order or these Terms and Conditions.

Data Breach means any unauthorised disclosure, misuse, modification, interference or loss of, or other unauthorised access to Personal Information or any other Data that is accessed or held by You.

Developed Material means all documents, data, databases, software or other materials specifically developed or created by, or on behalf of, You or Your subcontractors in providing the Goods and/or Services.

Fees means the fees for the Goods and/or Services set out in an Order and includes all taxes, levies and duties and all insurance costs.

FIS means Free into Store wherein You will deliver the Goods into the store specified in the Order, including procuring storage, loading, freight and transportation of the Goods and/or Services as required.

FOB means Free on Board wherein You will deliver the Goods to Us at any agreed delivery point, from which point We are responsible for the freight.

Good Industry Practice means that degree of skill, care, judgement and foresight that would reasonably be expected of a skilled and experienced person, engaged in the same type of activities as You under the same or similar circumstances.

Goods means the goods described in an Order and includes samples, packaging and labelling and any accessories and documentation pertaining to the Goods.

GST has the meaning given by Section 195-1 of the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time.

Insolvent means a party:

- (a) is in liquidation or provisional liquidation or under administration;
- (b) is unable to pay its debts as they fall due; or
- (c) any analogous event under the laws of any jurisdiction, unless occurring as part of a solvent reconstruction, amalgamation, merger or consolidation.

Invoice has the meaning given to Tax Invoice by Section 195-1 of the GST Law.

IPR means intellectual property rights and includes all present and future rights including any applications for such rights in respect of copyright, trademarks, patents, designs, protection of confidential information, inventions, know how, product or business concepts, the right to object to the passing off of goods or services or misleading or deceptive conduct in relation to goods or services, and any other identifiable result of intellectual endeavour, whether arising under statute, contract or otherwise.

Legal Requirements means all relevant industrial awards, laws, regulations, requirements of government authorities in Australian and New Zealand and any other mandatory standards relating to the Goods and/or Services.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

OHS Requirements mean the requirements set out in the Health, Safety, and Environmental Obligations (HSEQ-FM-120) which is subject to change from time to time (as notified to you) and available at: <https://www.cityfm.com.au/governance/>

Order means Our order for the purchase of Services and/or Goods.

Personal Information means information or an opinion (including information or an opinion forming part of a database) about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personnel means employees, secondees, agents, principals and contractors (including subcontractors), and in relation to You, includes employees, secondees, agents, principals and contractors of any of Your subcontractors.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Services means the services described in an Order.

Sites means premises identified in the Order where the Services are to be provided and/or the Goods are to be delivered, and any other locations as notified by Us from time to time.

Taxable Supply has the meaning given by the GST Law.

Us or We or Our means the relevant entity in the City Group, as stated in the Order.

You means the supplier of the Services and/or Goods, as stated in the Order.