**Contract refresh matrix: General conditions for the supply of Goods Department of Treasury and Finance**

| **General conditions for the supply of Goods** | | |
| --- | --- | --- |
| **Relevant clause** | **Amendment/inclusion** | **Reason for amendment/inclusion** |
| 1 | A new clause included setting out the duration of the Agreement. | This allows either the Organisation or the Supplier, with the written consent of the other party, to extend the term for pre-agreed periods (e.g. 3 years + 1 + 1).  Previously, there was no option for extension of the Agreement. |
| 3(b) | Payment is linked to acceptance of the Goods. | If the Goods do not conform with the Agreement or are damaged, unfit for purpose or not of merchantable quality on delivery, the Organisation may reject the goods (by written notice to the Supplier).  The Organisation is not obliged to pay for rejected goods. |
| 3(c) | Removal of rejected Goods by the Supplier. | The Supplier must collect and remove any rejected Goods at its own cost. If the Suppliers fails to do so, the Organisation may return the rejected Goods to the Supplier at the Supplier’s expense or destroy the Goods (following further notification). |
| 5 | Invoicing and payment. | The Supplier must invoice the Organisation following the Organisation’s acceptance of the Goods, or otherwise in accordance with the Purchase Order. |
| 9 | A new clause regarding the Organisation’s Data has been included. | This clause:   1. provides that ownership of any Intellectual Property Rights in the Data remains vested in the Organisation at all times; and 2. sets out the Supplier’s right to use that Data, which is limited to the purpose of performing its obligations under the Agreement. |
| 10 | Indemnities have been updated to address specific issues that are within the Supplier's control as well as the Australian Consumer Law (**ACL**) provisions regarding unfair contract terms (to the extent the Agreement is a consumer contract within the meaning of the ACL). | The Supplier must indemnify the Organisation and its Personnel in respect of any:   1. personal injury, including sickness and death; 2. property damage; 3. breach of an obligation of confidence or privacy, whether under the Agreement or otherwise; 4. fraudulent acts or omissions; 5. any wilful misconduct or unlawful act or omission; 6. breaches of logical or physical security; 7. loss or corruption of Data; 8. third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or 9. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,   which was caused or contributed to by any act or omission of the Supplier or any of its Personnel.  The Supplier's liability under this indemnity is reduced to the extent that any wilful, unlawful or negligent act or omission by the Organisation or its Personnel contributed to the liability, loss, damage, cost, expense or compensation incurred.  The previous indemnities were extremely broad and may not have been accepted by some suppliers (particularly if the result was to leave the supplier uninsured for those events under the terms of its insurance policies). The previous indemnities may have also constituted unfair contract terms under the *Australian Consumer Law and Fair Trading Act 2012* (Vic). This clause has been updated to refer to specific types of loss which ought to be at the Supplier's risk. |
| 11(a) | A new clause has been included governing the Organisation's right of termination for cause under the Agreement. | The Organisation may terminate the Agreement by giving notice in writing to the Supplier if the Supplier:   1. fails to provide the Goods in accordance with the Agreement; 2. breaches any provision of the Agreement and fails to remedy it; 3. breaches any provision of the Agreement that is not capable of remedy; 4. or any of its Personnel involved in the provision of the Goods is guilty of fraud, dishonesty or other serious misconduct; 5. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or 6. suffers from an Insolvency Event. |
| 11(b) and (c) | New clauses have been included allowing the Organisation to terminate without cause (for convenience). | The Organisation will pay the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination for convenience, including the cost of any Goods provided up to the date of termination. This is to reduce the risk that the right to terminate for convenience is viewed as an unfair contract term under the *Australian Consumer Law and Fair Trading Act 2012* (Vic). The Supplier must do everything possible to mitigate its losses arising from the termination. |
| 11(e) | The Supplier may only terminate the Agreement for non-payment by the Organisation. | The Supplier must give at least 20 Business Days written notice to the Organisation to exercise its right of termination for non-payment. |
| 12(a) | Clause amended to require the Supplier, on request by the Organisation, to maintain insurance cover for a period of up to 7 years after the Goods have been delivered. | This ensures that the Supplier has an appropriate level of insurance cover for any claims that may arise after the delivery of Goods. |
| 13(b) | The circumstances in which the Organisation may disclose information relating to the Supplier have been updated. | The Organisation may disclose information relating to the Supplier where required:   1. to comply with the Contracts Publishing System; 2. to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Goods; 3. to any public sector agency (of the State, any other state or territory of the Commonwealth) for the purposes of benchmarking provided that it will not identify the Supplier; 4. by the office of the Auditor General or the Ombudsman; 5. to comply with Law, including the *Freedom of Information Act 1982* (Vic); or 6. to the IBAC. |
| 13(c) | A reference to the Health Privacy Principles has been included. | Ensures that the Supplier is required to comply with all relevant privacy laws. |
| 14(e) | Amended to require the Supplier to comply with any lawful directions of the Organisation or its Personnel when at the Organisation's premises. | To ensure safety, it is reasonable for the Supplier to comply with the lawful directions of the Organisation or its Personnel when on the Organisation's premises. |
| 16(b) | Obligations regarding the Supplier Code of Conduct have been included. | A substantive obligation for suppliers to comply with the Code has not been included. The clause requires the Supplier to acknowledge that:   1. the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers; 2. it has read and aspires to comply with the Supplier Code of Conduct; and 3. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law. |
| 18 | A new clause has been included which provides a process for dispute resolution. | If a dispute arises under the Agreement, a party may give a written notice to the other requesting that a meeting take place to seek to resolve the dispute. If the dispute is not resolved in 15 Business Days it will be referred to mediation. If the parties fail to settle the dispute at mediation, the parties may agree to submit the dispute for resolution at final and binding arbitration. |
| 19 | A number of general clauses have been included. | Various standard general clauses have been included, covering items such as waivers, inconsistency, set-off, assignment and transfer or novation. |
| 20(a) | Order of precedence included. | When entering into this Agreement, the Organisation should create a Purchase Order. The Purchase Order contains the specifications for the supply of the Goods under the Agreement (see Guidance material). If there is an inconsistency between the General conditions under the Agreement and the Purchase Order, the terms of the General conditions for the supply of Goods will prevail to the extent of the inconsistency. |
| 20(b) | Entire understanding included . | The General conditions under this Agreement represent the entire agreement between the Organisation and the Supplier. Neither party may rely on any document entered into, or discussion had, prior to the execution of this Agreement. |
| 21 | Survival. | The parties have particular rights and obligations under the Agreement which survive termination or expiry of the Agreement, or completion of the supply of the Goods. This provision ensures that these rights and obligations continue to be operative and enforceable at any time. |