

TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. Formation of Agreement

Subject to clause 15, these Purchase Order Terms and Conditions apply to the supply of the Goods and/or Services described in the Purchase Order. On the Supplier accepting the Purchase Order or commencing to supply the Goods and/or Services a contract is formed between Cladding Safety Victoria and the Supplier as the sole basis upon which the Goods and/or Services are to be provided. No terms and conditions submitted or referred to by the Supplier when quoting, tendering, confirming an order or at any other time will form part of the Agreement unless specifically agreed to in writing by Cladding Safety Victoria.

2. Cancellation

Cladding Safety Victoria may cancel the Goods and/or Services at any time for any reason by giving 7 days written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Goods and/or Services. Cladding Safety Victoria must pay all reasonable amounts due in accordance with clause 7 for all work performed by the Supplier up until cancellation (but not any loss of prospective profits).

3. Acceptance or rejection of Services

Cladding Safety Victoria will review the Services or any deliverable(s) (tangible outputs of the Service) to ensure they are fit for purpose and comply with the Agreement. If the Services and/or a deliverable(s) do not meet Cladding Safety Victoria's requirements, the Supplier must rectify the non-compliance at its own cost until Cladding Safety Victoria, in its discretion:

- (a) waives the requirement for the Services or deliverable(s) to comply with the Agreement (by written notice to the Supplier);
- (b) conditionally accepts the Services or deliverable(s), on the condition that the Supplier rectifies the non-compliance within a specified time; or
- (c) terminates the Agreement if the Services or deliverable(s) fail to pass acceptance testing on the second occasion.

If Cladding Safety Victoria terminates the Agreement, it will be entitled to a full refund of all money paid to the Supplier in respect of the relevant Services or deliverable(s) that Cladding Safety Victoria cannot use.

4. Delivery of Goods

The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by an authorised representative of Cladding Safety Victoria or acceptance is deemed to have occurred in accordance with below.

5. Acceptance or rejection of Goods

- (a) If the Goods conform with the Specifications, Cladding Safety Victoria will promptly issue written notification of acceptance of the Goods. If Cladding Safety Victoria does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- (b) If the Goods:
 - (i) do not conform with the Specification; or
 - (ii) on delivery are damaged, unfit for purpose or not of merchantable quality, Cladding Safety Victoria may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery or such other period of time agreed in writing by the parties. Cladding Safety Victoria is not obliged to pay for any rejected Goods.
- (c) The Supplier must, at its costs, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, Cladding Safety Victoria may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.

6. Title and risk

Title in the Goods will pass to Cladding Safety Victoria upon payment for the Goods subject to clause 5(a). Risk in the Goods will pass to Cladding Safety Victoria when the Goods are delivered to the Delivery Point in accordance with clause 4.

7. Invoicing and payment

- (a) The Supplier must submit to Cladding Safety Victoria at the address set out in the Purchase Order a valid, itemised tax invoice in respect of the Price for

Services once they are completed and/or for the Price of Goods following their supply.

- (b) Subject to the Supplier complying with these terms and those of the Purchase Order and supplying the Goods and/or Services to Cladding Safety Victoria's absolute satisfaction, Cladding Safety Victoria will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if Cladding Safety Victoria disputes the invoiced amount it will notify the Supplier and only pay upon the receipt of a corrected invoice.
- (c) Payment of an invoice is not to be taken as evidence that the Services and Goods have been supplied in accordance with the Purchase Order or these Terms and Conditions but must be taken only as payment on account.
- (d) Cladding Safety Victoria will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the Penalty Interest Rates Act 1983.
- (e) Invoices should contain the information necessary to be a tax invoice for the purposes of the GST Act and must include the Purchase Order number.

8. Warranties

The Supplier warrants to Cladding Safety Victoria that:

8.1. General

- (a) (Purpose) it will provide the Services to the satisfaction of Cladding Safety Victoria and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.
- (b) (Conflict) it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Purchase Order and these Conditions, which have not been declared to Cladding Safety Victoria prior to the supply of the Goods or Services.
- (c) (IP) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services or Goods.

8.2. Goods

- (a) (Title) it has the right to sell and transfer title to and property in the Goods to Cladding Safety Victoria
- (b) (Goods) the Goods:
 - (i) are new 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);
 - (ii) conform in all respects with the Specification;
 - (iii) are free from defects (including defects in installation);
 - (iv) are free from any charge or encumbrance; and
 - (v) are of merchantable quality and comply with all laws.
- (c) (Warranty Period) If the Goods do not meet the requirements of clause 8.2(b), the Supplier must during the Warranty Period (and at Cladding Safety Victoria's discretion) rectify the non-compliance or replace the Goods. If the non-compliance cannot be rectified to the satisfaction of Cladding Safety Victoria, Cladding Safety Victoria may return the Goods to the Supplier and will be entitled to a full refund of all money paid to the Supplier in respect of the relevant Goods.
- (d) (Manufactory Warranties) Further, the Supplier must obtain, where provided for in the Specification, for Cladding Safety Victoria the benefit of any manufacturer's warranties for the Goods.

9. Liability

The Supplier indemnifies, and will at all times keep Cladding Safety Victoria and each of its employees and agents fully indemnified, against any liabilities, losses, damages, costs, actions and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:

- (a) personal injury, including sickness and death and/or property damage;
- (b) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
- (c) fraudulent acts or omissions or wilful misconduct and/or any unlawful act or omission;
- (d) breaches of logical or physical security;
- (e) loss or corruption of Data;
- (f) 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
- (g) 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 must indemnify Cladding Safety Victoria and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to provide the Services and supply the Goods in accordance with these Conditions.

10. Intellectual Property Rights

Unless otherwise stated in the Purchase Order or Specifications, ownership of any Contract Intellectual Property shall vest in the Supplier upon the time of its creation. The Supplier hereby irrevocably and unconditionally grants to Cladding Safety Victoria, free of additional charge, a non-exclusive, worldwide, perpetual, transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, publish, distribute and communicate any Contract Intellectual Property for any purpose except commercial exploitation.

- (a) The Supplier grants to Cladding Safety Victoria a non-exclusive, perpetual, royalty-free transferable licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow Cladding Safety Victoria the full use and enjoyment of those Goods and the Supplier must, upon request by Cladding Safety Victoria, do all things as may be necessary (including executing any documents) to give full effect to such rights.
- (b) All Pre-Existing Intellectual Property used and identified by the Parties in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the Parties or its licensors. The Supplier hereby irrevocably and unconditionally grants to Cladding Safety Victoria, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Supplier in connection with the provision of Services or the creation of Contract Intellectual Property.
- (c) Data will remain (and, if necessary, will become) the property of Cladding Safety Victoria. The Supplier will assign to Cladding Safety Victoria from the date of creation all Intellectual Property Rights in any data created by or on behalf of the Supplier.
- (d) The Supplier must only use the Data to the extent necessary to perform its obligations under the Agreement.

11. Confidentiality and privacy

- (a) The Supplier must not disclose or otherwise make available any Confidential Information to any other person, except: (i) with Cladding Safety Victoria's prior written consent; or (ii) to its Personnel on a need to know basis solely for the purpose of the Agreement.
- (b) The Supplier consents to Cladding Safety Victoria publishing or otherwise making available information in relation to the Supplier (and the provision of the Services and supply of Goods) as may be required: (i) to comply with the Contracts Publishing System; (ii) by the Auditor-General or (iii) to comply with the Freedom of Information Act 1982 (Vic).
- (c) The Supplier agrees to be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Supplier in connection with the Agreement in the same way as Cladding Safety Victoria would have been bound had the relevant act or practice been done or engaged in by Cladding Safety Victoria.

12. Insurance

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times (including if required by Cladding Safety Victoria for a period of six years after the Goods or Services have been completed), sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of Services and the supply of Goods.
- (b) Unless otherwise stated in the purchase order, the insurance coverage must include:
 - (i) professional indemnity insurance
 - (ii) product liability insurance to the value of the Purchase Order.
 - (iii) public liability insurance (if applicable).
- (c) Product liability insurance must match any warranty period or three years after acceptance of the Goods, whichever is the greater.
- (d) On request, the Supplier must provide Cladding Safety Victoria with evidence of the currency of any insurance it is required to obtain.

13. Compliance with Law and Policy

- (a) The Supplier must, in performing its obligations under the Purchase Order, comply with the laws relevant to the provision of the Goods and/or Services by the Supplier under the Purchase Order and any policies or standards specified in the Purchase Order.

- (b) This Agreement is governed by and is to be construed in accordance with the laws in force in the State of Victoria.
- (c) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (d) Time is of the essence in relation to the supply of the Goods and/or Services.

14. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all fees or other sums payable or consideration for a taxable supply made by the Supplier under or in connection with the Purchase Order are inclusive of GST.
- (c) Subject to the recipient being provided with a valid tax invoice in respect of a taxable supply, if GST is imposed on any supply made under or in connection with the Purchase Order, the recipient of that supply must pay to the supplier an amount equal to the GST payable in respect of the taxable supply, at the same time and in the same manner as the consideration payable for that supply.
- (d) CSV is not obliged to pay the Supplier GST in respect of a taxable supply made by the Supplier under or in connection with the Purchase Order unless CSV is provided with a valid tax invoice for that taxable supply.

15. Order of precedence

In interpreting the documents, which describe the Goods and/or Services, the following order of precedence will apply to the extent of any inconsistency:

- (a) These Conditions; and
- (b) The Purchase Order and any attachments

Where the parties enter into a formal contract for the provision of the Goods and/or Services, the subject matter of this Purchase Order, the terms of the formal contract will take precedence over these Conditions.

16. Entire Understanding

- (a) These Conditions and the Purchase Order constitute the entire agreement in respect of the supply of the Goods and/or Services.
- (b) Any terms or conditions the Supplier attempts to impose in connection with the supply of the Goods and/or Services (whether in or attached to any quotation, tax invoice or other document or communication) or any variations to the Purchase Order or these terms shall be null and void.
- (c) In supplying the Goods and/or Services the Supplier has not relied on any representations made by CSV apart from those expressly made in the Purchase Order and these terms.

17. Interpretation

In these Conditions, unless the context otherwise requires:

Code of Practice means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).

Conditions means these terms and conditions for the provision of Services and Goods.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Supplier in the course of providing the Services, except any Intellectual Property Rights in Data.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, Cladding Safety Victoria, including any information designated by Cladding Safety Victoria as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information: (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions; (b) which the Supplier can demonstrate was in its possession prior to the date of the Purchase Order; (c) which the Supplier can demonstrate was independently developed by the Supplier; or (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Data means any information, data, datasets or databases created by or on behalf of the Supplier in the course of providing the Services.

Delivery Point means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

Due Date means the date for which an invoice amount is due for payment

Goods means the Goods (or any of them) specified in the Purchase Order.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents),

registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Overdue Amount means an amount (or part thereof) that: (a) is not, or is no longer, disputed; (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions; (c) which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

Personnel means a Supplier's officers, employees, agents or subcontractors.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems which are the property of either party and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

Price means the price for Goods and/or fees for Services set out in the Purchase Order.

Purchase Order means any form of order or acknowledgment from Cladding Safety Victoria for the provision of the Services and supply of Goods which incorporates these Conditions.

Services means the Services (or any of them) specified in the Purchase Order.

Specification means the specifications to which the Goods and Services must comply, as set out in the Purchase Order.

Supplier means the person providing the Services and supplying the Goods under these Conditions.

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

Warranty Period means the period of 24 months from the date Goods are accepted by Cladding Safety Victoria under clause 5 (unless a different warranty period is specified in the Purchase Order).