

## 1. Definitions

The following terms will, if not inconsistent with the context, have the meanings indicated:

**"Delivery Date"** means the date set out in the Purchase Order being the final date by which the goods/service must be supplied.

**"Goods/Services"** means the goods and/or services described in the Purchase Order

**"Purchase Order"** means the Purchase Order placed by RBGV, including these terms, for the duration of the engagement between the Supplier and RBGV.

**"Purchase Price"** means the total amount shown on the Purchase Order.

**"RBGV"** means the Royal Botanic Gardens Victoria who are the recipient of the goods/services of this Purchase Order.

**"Supplier"** means the party described as such in the Purchase Order.

## 2. Completion

The Supplier must supply the goods/services on or before the Delivery Date in accordance with the Purchase Order.

## 3. Warranties

In addition to other warranties in the Purchase Order and implied by law, it is a condition of RBGV's purchase of the Goods/Services that:

- 3.1 the Goods will be new, unless agreed otherwise;
- 3.2 the Goods/Services will be fit for the purpose for which items of the same kind are commonly supplied and consistent with any description and details set out in the Purchase Order;
- 3.3 the Goods are merchantable quality and free from defects;
- 3.4 the Goods/Services will be supplied with due skill, diligence, and care;
- 3.5 the Goods/Services will be compliant with all recognised standards and laws applicable in the jurisdiction where the Goods/Services are supplied; and
- 3.6 the Supplier is capable of passing title in the Goods/Services free of encumbrances and all other adverse interests at the time they are supplied to RBGV.

## 4. Variation or Termination

- 4.1 RBGV may, at any time, by giving written notice to the Supplier, terminate the Purchase Order and the Supplier must on receipt of such notice immediately cease all working connection with the supply of the Goods/Services and take all appropriate action to mitigate any loss and prevent further costs being incurred. In such event RBGV will pay the reasonable fees and expenses of the Supplier in accordance with the Purchase Order but not at any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.
- 4.2 RBGV may at any time give written notice to the Supplier proposing a variation to the quantity of Goods. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Goods. RBGV may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance the Purchase Order will continue as if no proposal under this sub-clause had been made.

## 5. Confidentiality

The Supplier will not disclose, and will ensure its employees, agents, and contractors do not disclose, any confidential information relating to RBGV or its affairs which may come to their knowledge during the term of the Purchase Order without the prior written consent of RBGV.

## 6. Acceptance and Rejection of Goods/Services

All risk in the Goods/Services remains with the supplier until they are fully delivered to the delivery location and the Goods are accepted by RBGV. RBGV may reject any of the Goods which do not comply in all respects with the Purchase Order. RBGV is not required to make payment for any rejected Goods.

## 7. Payment

If the Supplier complies with its obligations under the Purchase Order, RBGV must pay the Purchase Price to the Supplier. Payment shall be made within 30 days after delivery of Goods/Services and receipt of a correctly addressed invoice.

## 8. Goods and Services Tax ("GST")

The Purchase Price is inclusive of GST. Where RBGV is required to pay the Supplier any amount under the Purchase Order on account of GST, the amount representing GST will only be payable by RBGV to the Supplier where the Supplier supplies to RBGV a tax invoice for GST purposed, in a form approved by RBGV.

## 9. Default by the Supplier

- 9.1 If the Supplier defaults in the performance or observance of any obligation it has under the Purchase Order, RBGV may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.
- 9.2 If, within 14 days after receipt of the notice, the Supplier fails to remedy the default to the satisfaction of RBGV, RBGV (without prejudice to any other rights that it may have under the Purchase Order or at common law against the Supplier) may:
  - 9.2.1 suspend payment under the Purchase Order; or
  - 9.2.2 terminate the Purchase Order and any other Purchase Order between the parties.

## 10. Insolvency of the Supplier

If the Supplier –

- 10.1 Being a person, commits any act of bankruptcy; or
  - 10.2 Being a company, commits any act of insolvency –
- RBGV may terminate the Purchase Order immediately.

## 11. Sub-Contracting and Assignment

The Supplier must not, except with the written consent of RBGV, sub-contract or assign the whole or any portion of its rights and obligations under the Purchase

Order, and no sub-contractors or assignees will have any rights under the Purchase Order against RBGV or be entitled to receive any payments under the Purchase Order from RBGV. Where RBGV gives its consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under the Purchase Order.

## 12. Statutory Requirements

The Supplier must obey and must ensure that its employees, subcontractors, and agents obey any Acts and regulations in anyway applicable to the performance of the Purchase Order; including, without limitation, any occupational health and safety legislation, and privacy legislation. The Supplier must maintain all insurances required by law.

## 13. Indemnity and Advance Release

The Supplier fully indemnifies RBGV, its Board and Staff from and against all actions, claims, losses, damages, penalties, or demands consequent on, occasioned by, or arising from its performance or purported performance of its obligations under the Purchase Order, including, without limitation, any acts or omissions of the Supplier's agents and employees.

## 14. Amendment

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

## 15. Further Assurance

Each party must promptly execute and deliver all documents and take all other necessary or desirable to effect, perfect, or complete the transactions as specified in the Purchase Order.

## 16. Time of the Essence

Time is of the essences as regards all dates, periods of time and times specified in the Purchase Order.

## 17. No relationship

Nothing in the Purchase Order will be construed or deemed to constitute a partnership, joint venture, or employee, employer, or representative relationship between any of the parties. Nothing in the Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

## 18. Number and Gender

In the Purchase Order, a reference to:

- 18.1 a singular indicates the plural and vice versa; and
- 18.2 a gender includes the other genders.

## 19. Whole Understanding

The Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods or Services are to be supplied by the Supplier. If the Supplier's acceptance or supply of the Purchase Order contains any terms in conflict with the Purchase Order, the Purchase Order will have precedence unless otherwise agreed by RBGV in writing.

## 20. Governing Law

The laws of the State of Victoria govern the Purchase Order and any other legal proceedings under the Purchase Order.

## 21. Joint and Several Obligations

If the Supplier consists of two or more parties, the Purchase Order binds each of them severally and jointly.

## 22. Method of Giving Notices

A notice required or permitted to be given by one party to another under the Purchase Order must be made in writing, addressed to the other party and:

- 22.1 delivered to that party's address; or
- 22.2 transmitted by email to that party's email address.

## 23. Receipt of Notices

A notice given to a party in accordance with Term 22 must be treated as having been duly given and received;

- 23.1 if delivered to a party's address, on the day of delivery; or
- 23.2 if transmitted by email to a party's email address, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered.

## 24. Occupational Health and Safety

For the avoidance of doubt the Supplier must comply with all occupational health and safety legislation. The Supplier must provide a current safe work method statement or equivalent to RBGV prior to the commencement of work to the satisfaction of RBGV. The supplier must also comply with all instruction by RBGV staff in relation to OH&S.

## 25. Environmental, Social and Governance (ESG)

The supplier notes RBGV is a Child Safe organisation. The Supplier acknowledges and supports RBGV's commitment to environmental sustainability, and diversity and inclusion.

## 26. Intellectual Property

- 26.1 The Supplier warrants that it owns or is licensed to use all intellectual property required to be used for or associated with the manufacture and supply of the Goods/Services. The Supplier also warrants that where any such intellectual property is owned by third parties, it has the requisite permission and authority from such third parties to grant to RBGV the licences.
- 26.2 The Supplier agrees to assign exclusively to RBGV the copyright and ownership for all artwork, drawings, documents, images, photographs, blueprints, maps, character, calculation, information, instructions, and other such documents that are prepared or provided in associating with the Goods/Services detailed in the Purchase Order.