

1. INTERPRETATIONS AND GENERAL MATTERS**1.1 Definitions**

- 1.1.1 "Background Supplier Material" means all Material owned by, or licensed to, the Supplier, that arose independently of this Purchase/Service Order.
- 1.1.2 "Contract Material" means all Material developed by the Supplier for the purpose of providing the Goods and/or Services.
- 1.1.3 "Customer" means TransdevTSL Pty Limited (ACN 118 342 162).
- 1.1.4 "day" means a calendar day.
- 1.1.5 "Director" means the Director of Public Transport under the *Transport Act 1983 (Vic)*.
- 1.1.6 "FIS" means, in relation to delivery of the Goods, free in store and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.
- 1.1.7 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase/Service Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.
- 1.1.8 "Intellectual Property Rights" means all rights in copyright, trade marks (including service marks), trade and service names, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and
- (a) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,
- (b) that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered.
- 1.1.9 "Losses" means all direct loss, damage, liability, cost or expense arising naturally from the performance or non performance (including any negligent or wilful act or omission), any breach or default of parties' obligations under this Purchase/Service Order and includes any direct loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.10 "Material" includes any data, information and other documents (including electronic documents) and software.
- 1.1.11 "Purchase/Service Order" means the purchase order and/or service order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase/Service Order Form.
- 1.1.12 "Purchase/Service Order Form" means the section of the Purchase/Service Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase/Service Order.
- 1.1.13 "Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.
- 1.1.14 "Services" means the services as set out and further detailed in the Purchase/Service Order Form.
- 1.1.15 "Warranty Period" means:
- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof;
- (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereof.

1.2 Interpretations

- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 1.2.2 Rights and remedies under the Purchase/Service Order are in addition to rights or remedies available at law (including under statute).

1.3 Supplier to Inform Itself

- 1.3.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase/Service Order.

1.4 Order of Precedence

- 1.4.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase/Service Order Form, will be as follows:
- (a) The Purchase/Service Order Form
- (b) General Terms and Conditions (this document)
- (c) Specification(s)
- (d) Drawing(s)

1.5 Ambiguities

- 1.5.1 If the Supplier discovers any ambiguity in the Purchase/Service Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase/Service Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase/Service Order price.

1.6 Use of Documentation and Equipment

- 1.6.1 Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.
- 1.6.2 The Supplier will keep any equipment included in the assistance provided by the Customer safe and return it to the Customer in its original state on expiry or termination of this Purchase/Service Order (fair wear and tear excepted), failing which the Supplier will pay the cost of repair or replacement (at the Customer's option).

1.7 Confidentiality

- 1.7.1 Any information provided by the Customer to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of the Customer. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase/Service Order for a period of three (3) years from the completion or termination of the Purchase/Service Order.
- 1.7.2 Unless where required by law, the Supplier must not issue any information which includes details about the Services and/or the Goods and/or the Purchase/Service Order, for publication in any news or communication media, without the prior written approval of the Customer.

1.8 Waiver

- 1.8.1 No failure or delay on the part of the Customer in exercising any of its rights under the Purchase/Service Order shall be construed as constituting a waiver of any such rights.

1.9 Subcontracting and Assignment

- 1.9.1 The Supplier must not subcontract nor assign all or any part of the Purchase/Service Order without the prior written approval of the Customer (in its absolute discretion). The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.
- 1.9.2 Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order.

1.10**1.10.1****Entire Agreement**

The Purchase/Service Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase/Service Order has any effect on the Purchase/Service Order unless specifically incorporated herein. Without limitation, no quotation or Supplier standard terms and conditions of supply shall form part of this Purchase/Service Order unless otherwise agreed in writing by the Customer.

1.11**1.11.1****Communications**

Any notice or other communication required under the Purchase/Service Order shall be delivered in writing. Such written communication will be provided in English. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

1.12**1.12.1****Licences and Laws**

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, directions received from the Director, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws. No change in licenses or laws will affect the Purchase/Service Order price.

2.**PERFORMANCE AND QUALITY****2.1****Materials and Workmanship****2.1.1**

All Services and/or Goods shall be fit for purpose. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase/Service Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

2.2**Supplier Qualifications****2.2.1**

The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase/Service Order.

2.3**Testing and Inspection****2.3.1**

The Goods and/or Services must be tested in accordance with the requirements of the Purchase/Service Order, including any Specification. Unless otherwise stated in the Purchase/Service Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.

2.3.2

The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

2.4**Quality Standards****2.4.1**

The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

2.5**Defects and Warranty****2.5.1**

The Supplier warrants that the Goods shall:

- (a) be free from liens, charges, encumbrances, mortgages or other defects in title;
- (b) be new and made to the specified quality.

2.5.2

The Supplier warrants that the Goods shall:

- (a) be free from defects in design, materials and workmanship;
- (b) conform to the conditions and specifications of the Purchase/Service Order;
- (c) conform to all applicable laws and regulations to which the Services or Goods are subject; and
- (d) be performed in accordance with any performance standard specified in the Purchase/Service Order.

2.5.3

The Supplier warrants that it will comply with any of the Customer's policies notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy policies.

2.5.4

The warranties noted in clause 2.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.

2.5.5

During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:

- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
- (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.

2.5.6

If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.

2.5.7

Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.

2.5.8

Where the Supplier is not the original equipment manufacturer of the Goods the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Purchase/Service Order and where more are offered, then the Supplier must provide such additional warranties, indemnities and rights to the Customer.

3.**DELIVERY/DELAY****3.1**

Unless otherwise specified in the Purchase/Service Order, Goods must be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase/Service Order Form

3.2

Title in the Goods will transfer to the Customer upon payment for the Goods. Such payment is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order.

3.3

The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:

- (a) the delay is caused by any breach or act of prevention by the Customer, (without fault of the Supplier);

- (b) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.
- 3.4 The Customer may in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time prior to expiration of the Warranty Period.
- 3.5 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase/Service Order either in whole or in part for default, in accordance with the provisions of clause 5.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase/Service Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.
- 4. VARIATIONS**
- 4.1 The Customer may vary the work under the Purchase/Service Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase/Service Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute in accordance with clause 9.
- 4.2 The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, without the written consent of the Customer.
- 5. SUSPENSION/TERMINATION**
- 5.1 Suspension**
- 5.1.1 The Customer may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase/Service Order within forty eight (48) hours of being directed to do so by the Customer.
- 5.2 Termination by Default**
- 5.2.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the contract pursuant to this clause 5.2 to the other party (the "defaulting party") in the event that the defaulting party:
- abandons or repudiates the Purchase/Service Order;
 - suspends performance of the contract for a significant time, or fails to pay monies due under the Purchase/Service Order, without reasonable cause;
 - breaches any of the terms and conditions of the Purchase/Service Order which is not remedied within seven (7) days of notice to do so; or
 - appears likely to become subject to an Insolvency Event described in clause 5.3.
- 5.3 Termination for Insolvency**
- 5.3.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these General Terms and Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the contract forthwith.
- 5.4 Termination at Customer's Option**
- 5.4.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order by giving fourteen (14) days written notice to the Supplier.
- 5.5 Supplier's Rights and Obligations on Suspension /Termination**
- 5.5.1 In the event of suspension of the Purchase/Service Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
- 5.5.2 In the event of insolvency of the Supplier or its default under Clause 5.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Supplier to complete the Purchase/Service Order in excess of what the Customer would have paid under the Purchase/Service Order shall be a debt due and payable by the Supplier to the Customer.
- 5.5.3 In the event of termination by the Customer under Clause 5.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for work carried out prior to termination and all reasonable costs incurred and associated directly with the cancellation of any orders placed by the Customer prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination.
- 6. PRICE AND PAYMENT**
- 6.1 Unless otherwise stated in the Purchase/Service Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 6.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 6.3 Unless otherwise specified in the Purchase/Service Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty (30) days from the end of month during which the invoice was received.
- 6.4 To the extent that any Taxable Supply occurs under the Purchase/Service Order then:
- the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase/Service Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
 - the recipient shall pay such increased consideration;
 - the supplier must in a situation such as described in Clause 6.4, issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid;
 - in Clauses 6.4(a) and (b), "Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated legislation and regulations, "GST" means the goods and services tax imposed by the Act and "Taxable Supply" means a taxable supply under the Act.
- 7. RELATIONSHIP**
- 7.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase/Service Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.
- 8. INTELLECTUAL PROPERTY**
- 8.1 The Supplier assigns to the Customer all Intellectual Property Rights in all Contract Material on creation. This does not prevent the Supplier from using the Contract Material to provide the Goods and/or Services. This use is on a non-exclusive, non-transferable, royalty-free basis for the term of the Purchase/Service Order and does not allow any further distribution or exploitation by the Supplier unless the Customer agrees otherwise.
- 8.2 The Supplier grants the Customer a perpetual, irrevocable, non-exclusive, royalty-free licence to use, copy, modify and create derivative works from all Background Supplier Material incorporated into the Contract Material for the purpose of exercising its rights in relation to the Contract Material.
- 8.3 The Supplier shall indemnify the Customer against all damages and costs awarded against the Customer for infringement of any Intellectual Property Rights granted or registered at the date of Purchase/Service Order in the country of destination of the goods or services specified in the Purchase/Service Order (or, if none be specified, in Australia) and resulting from the use, sale or supply of the Goods or Services but this indemnity shall not apply to any infringement which is due to the association or combination of the Goods with any other article, apparatus or device or to any goods or parts thereof made to designs supplied by the Customer.
- 8.4 The indemnity in clause 8.3 is conditional on the Customer giving the Supplier prompt written notice of any claim for infringement and consulting with the Supplier prior to settling or compromising any such claim.
- 9. DISPUTES**
- 9.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
- 9.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase/Service Order is continued without any effect on the specified delivery date.
- 9.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
- 9.4 If the parties cannot resolve a dispute within 21 days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within thirty (30) days after it is referred to the ACDC.
- 9.5 Neither party may litigate until the procedures in Clauses 9.1 to 9.4 above have first been complied with.
- 10. INSURANCE AND INDEMNITIES**
- 10.1 The Supplier must maintain the insurances specified below from the commencement of this Purchase/Service Order until seven (7) years after the completion of the delivery of the Goods and/or Services;
- The Supplier must maintain Public and Product Liability insurance for an amount of not less than \$20,000,000, Professional Indemnity Insurance for an amount of not less than \$5,000,000 and where applicable Goods in Transit Insurance (for the total replacement value of the Goods);
 - The Supplier must ensure that its public liability and products liability policy each name the Customer as an additional insured and contain a cross-liability clause which allows the Customer to make a claim as though individual insurance policies had been issued to the Supplier and the Customer;
 - not reduce the level of insurance required by this Purchase/Service Order without the written consent of the Customer; and
 - give evidence of the insurances, and their currency, acceptable to the Customer on request.
- 10.2 The Supplier indemnifies the Customer in respect of all Losses arising out of the Supplier's performance or non performance (including any negligent or wilful act or omission), or any breach or default of its obligations under this agreement to an amount equal to five (5) times the amount paid or payable by the Customer under this Purchase/Service Order, except for Losses arising from personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property Rights, breach of confidence and Loss arising from fraud or unlawful act where no limitation applies.
- 11. APPLICABLE LAW**
- 11.1 Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase/Service Order is issued. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of the said State or Territory.
- 11.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase/Service Order.
- 11.3 Clauses 1.1, 1.2, 1.3, 1.6, 1.7, 1.12, 2.5, 3.5, 5.5, 7, 8, 9, 10 and 11 survive the termination or expiry of this Purchase/Service Order as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination.