

## GEELONG GRAMMAR SCHOOL – TERMS AND CONDITIONS

### 1. APPLICATION OF TERMS AND CONDITIONS

These terms and conditions shall apply wherever the School procures goods (**Goods**) and/or services (**Services**) from the Supplier if there is no effective written agreement with Supplier executed by the School. A binding contract under these terms and conditions will be formed either upon the written acceptance by the School of the Supplier's quotation or the Supplier's acceptance of a School purchase order (**Purchase Order**), whichever is applicable, and the terms contained herein shall take precedence over and prevail to the extent of any inconsistency with the Supplier's terms or conditions of trade.

### 2. ENTIRE AGREEMENT

The contract shall be constituted by the Purchase Order and the Schedule if applicable attached to these terms and conditions, these terms and conditions and the written acceptance of the Purchase Order by the Supplier or by the School, whichever is earliest (together, **Agreement**). This Agreement supersedes and cancels all prior oral or written agreements, understandings and negotiations in connection with it and may only be amended as agreed in writing signed by both parties. Any term and condition that may be stated in any other document issued by the Supplier that purposes to amend the terms of this Agreement is not binding on the School without the prior written consent of the School.

### 3. SCOPE OF AGREEMENT

- 3.1 The School may place purchase orders with the Supplier for Goods or Services throughout the period of time of this Agreement (**Term**).
- 3.2 The Supplier must provide the Goods or Services in accordance with this Agreement at the price specified in this Agreement.

### 4. WARRANTIES

- 4.1 The Supplier warrants that at the commencement of this Agreement and during the Term:
  - 4.1.1 it has the power and authority to enter into this Agreement and to perform its obligations under this Agreement and it has not relied on any information provided by the School to enter into this Agreement;
  - 4.1.2 it will produce and provide all Goods and Services in a diligent and professional manner with the degree of skill and care that is normally exercised by suppliers supplying Goods or Services of a similar nature and the Goods or Services will match the description in this Agreement and be of quality which is in the opinion of the School fit for purpose and of the nature, substance, quantity or quality specified by the School;
  - 4.1.3 the Goods supplied to the School are safe and free from risk to health and safety comply with all relevant laws and any applicable Australian standards;
  - 4.1.4 if the Goods supplied are electrical equipment the Supplier is responsible for the electrical safety of the new equipment as at the date of supply to the School. The Goods will be tagged as new to service by the School;
  - 4.1.5 it has good and complete title to the Goods and that the Goods are free from all liens and encumbrances (including but not limited to any security interests), do not infringe any patent, trademark, copyright or other intellectual property and comply with all applicable laws and regulations; and
  - 4.1.6 it has effected all insurance as required by law and under this Agreement.

### 5. INSPECTION AND REJECTION OF GOODS

- 5.1 The School shall be entitled to inspect any of the Goods at any stage prior to or upon delivery.
- 5.2 The School may (without prejudice to any of its other rights) reject any of the Goods which are defective or which otherwise do not comply with the requirements of this Agreement (including any Goods which are not delivered by the time specified in this Agreement). If requested by the School, any of the Goods rejected must (if delivered, be collected from the School and) be rectified or replaced by the Supplier at its own cost.
- 5.3 The School in its discretion may accept any of the Goods which it has rejected, at a price agreed between the Supplier and the School.
- 5.4 Any inspection by the School shall not relieve the Supplier of any of its obligations under this Agreement. The School shall not be liable for any of the Supplier's costs in connection with inspection of the Goods or any work related to the Goods.
- 5.5 Any amount paid for any of the Goods which are subsequently rejected shall be a debt due from the Supplier to the School which is payable immediately.

### 6. PHOTOGRAPHS

Any photograph commissioned by the School is commissioned on the basis that the owner of the copyright in any photograph grants a perpetual royalty free licence to the School to use that photograph as the School sees fit.

### 7. CONFIDENTIALITY

- 7.1 The parties agree not to disclose, or permit to be disclosed, any confidential information relating to this Agreement without the prior written consent of the other party.
- 7.2 Any goods or works made or created according to the School's design or using the School's logo or specifications or developed for the School at the direction of the School or any original or copy designs or specifications supplied by the School are held by the Supplier on the School's behalf and at the School's disposal and must not be disclosed or furnished to any other person, firm or government without the School's prior written consent. The Supplier must take all reasonable precautions to protect such confidentiality.
- 7.3 The obligation in this clause 7 survives termination or expiry of this Agreement.

### 8. ADVERTISING

The Supplier must not, without the School's prior written consent, in any manner advertise or publish the fact that the Supplier has contracted to the School for the provision of Goods or Services.

### 9. DELIVERY

The Supplier shall ensure that the Goods are delivered undamaged to the address nominated on the Purchase Order on the date for delivery advised by the School (unless otherwise notified in writing by the School) and in accordance with any other instruction by the School regarding transportation.

### 10. TITLE AND RISK

- 10.1 The Goods shall be at the sole risk of the Supplier until delivery at which time title to and risk in the Goods shall pass to the School regardless of whether the School has paid the Supplier for the Goods, except that title to and risk in Goods rejected by the School shall remain with the Supplier.
- 10.2 For the avoidance of doubt, the School does not grant the Supplier any security interest in Goods or in relation to Services supplied or any proceeds.

### 11. INDEMNITY

- 11.1 The Supplier shall indemnify and keep indemnified the School against all:
  - 11.1.1 loss and damage to property of the School; and
  - 11.1.2 loss or liability incurred by the School; and
  - 11.1.3 claims made by any person against the School in respect of personal injury or death, loss or damage to any property, including legal costs and expenses on a solicitor/own client basis and the costs of all time spent or resources used by the School and disbursements and expenses incurred by the School in defending any claim; arising out of any act or omission by the Supplier or any employees, agents or subcontractors of the Supplier whose fault or conduct or omission has caused or contributed to that liability, loss, damage or expense and/or any breach by the Supplier or its employees, agents or subcontractors of any obligation or performance under this Contract.
- 11.2 The indemnity under clause 11.1 is in addition to and not exclusive of any other right, power or remedy by law.

### 12. PRICES AND PAYMENT

- 12.1 Prices are as agreed between the parties per the agreed pricing detailed in the Purchase Order and are not subject to increases in price without the School's prior approval in writing.
- 12.2 Price adjustments for any variations notified by the School shall be at the prices or rates included in the Purchase Order or, if there are no applicable prices or rates, they shall be agreed between the Supplier and the School.
- 12.3 Subject to clause 21 and to the receipt of a properly rendered tax invoice, the School shall pay the value of the Goods or Services supplied by reference to the price set out in the Purchase Order or as otherwise agreed under clause 12.1 on the basis of the payment terms provided on the tax invoice, or on or before the 30<sup>th</sup> day of the month following the month in which the invoice was received by the School.

### 13. TAX INVOICES

- 13.1 The Supplier must provide the School with a tax invoice for the Goods delivered or Services provided and accepted under this Agreement which must show the Supplier's Australian Business Number (**ABN**), Purchase Order number, date and address nominated on the order and fully itemise the Goods and Services delivered or provided, including any amounts of goods and services tax payable on those Goods or Services

- 13.2 The School will not process any Tax Invoice for payment unless it references the Purchase Order number provided to the Supplier.
- 13.3 If any supply made under this Agreement is subject to GST, the invoice rendered by the Supplier in clause 13.1 must be a valid tax invoice.
- 14. CHILD SAFETY**  
The School has a zero tolerance of child abuse. The Supplier must ensure all its employees comply with the School's Child Safety Policy at all times. The Child Safety Policy is available on the School's website.
- 15. COMPLIANCE**  
A Supplier of Services must ensure compliance with the School's third party contractor management system, including provision of valid Working with Children checks for all employees or subcontractors prior to any commencing any Services at the School. Failure to do so may result in being denied access to School premises.
- 16. INSURANCE**
- 16.1 The supplier must maintain:
- 16.1.1 public or liability or professional indemnity insurance as applicable; or
- 16.1.2 product liability insurance if applicable; and
- 16.1.3 workers compensation insurance, and will provide the School with the certificates of currency for such insurances when requested to do so by the School.
- 17. PRIVACY**
- 17.1 The Supplier agrees to comply with all privacy laws whether of a state or territory or the Commonwealth, and agrees that any personal information received, created or held by the Supplier for the purposes of this Agreement shall be treated as confidential and not disclosed to any other person or firm unless the School consents to such disclosure.
- 17.2 Personal information may be collected by the School or on behalf of the School by any authorised third party to assist with the School's business functions, compliance and with its child safety obligations. By accepting the terms and conditions of this Agreement, the Supplier consents to the collection and disclosure of such information. The School's current third party contractor management system is LinkSafe and its Privacy Policy is located on its website.
- 18. SUBCONTRACTING AND ASSIGNMENT**
- 18.1 The Supplier shall not, without the prior consent of the School, subcontract the delivery or provision of any of the Goods. Any such consent shall not relieve the Supplier of any of its obligations under this Agreement.
- 18.2 The Supplier shall not, without the prior written consent of the School, assign, charge, or encumber this Agreement or any rights under this Agreement or any part of this Agreement or any Goods.
- 19. DEFAULT**
- 19.1 If the Supplier:
- 19.1.1 is in breach of any warranty or material term or condition of this Agreement;
- 19.1.2 becomes insolvent or is unable to pay its debts when they fall due;
- 19.1.3 is the subject of an event described in section 459C (2)(b) or section 585 of the *Corporations Act 2001* (Cth);
- 19.1.4 has imposed on it any arrangement for the benefit of its creditors;
- 19.1.5 or any part of its property or undertaking has a receiver, receiver and manager, agent for a mortgagee, administrator, controller or provisional liquidator appointed,
- 19.2 the School may, without prejudice to any other rights it may have, cancel this Agreement, cease payments and recover as a debt due any sums paid for undelivered Goods and for Services not provided and any extra costs, losses, expenses or damages it may suffer or incur in purchasing similar goods or services from alternative suppliers.
- 19.3 No waiver of a breach of any provision of this Agreement by the School shall constitute a waiver of any breach or any other provision of this Agreement.
- 20. CONFLICT OF INTEREST**
- 20.1 The Supplier warrants to the best of its knowledge after making reasonable inquiries, that at the date of this Agreement no conflict of interest exists or is likely to exist in respect of the Supplier's obligations under the Agreement.
- 20.2 The Supplier agrees that if a conflict of interest arises after the Agreement has been placed to:
- 20.2.1 immediately notify the School in writing of the conflict and the steps the Supplier proposes to take to resolve or deal with the conflict;
- 20.2.2 make full disclosure to the School of all relevant information relating to the conflict of interest; and
- 20.2.3 allow the School to take reasonable steps to resolve or otherwise deal with the conflict of interest.
- 20.3 The Supplier must not:
- 20.3.1 receive any payment, or any form of financial accommodation or any other benefit (financial or otherwise) from a third party that is in anyway related (including but not limited to the method of tendering for the Goods or Services) to the performance or provision of Goods or Services under this Agreement; or
- 20.3.2 make any payment, or provide any form of financial accommodation or any other benefit (financial or otherwise) to a third party that is in anyway related (including but not limited to the method of tendering for the Goods or Services) to the performance or provision of Goods or Services under this Agreement that is not disclosed in full to the School, and any breach of this provision shall entitle the School to cancel this Agreement or any part of this Agreement or a previous Agreement.
- 21. RECOVERY OF MONEYS**  
Any debt due from or moneys payable by the Supplier to the School whether under this Agreement or otherwise may be deducted by the School from any moneys due or to become due to the Supplier under this Agreement. The School shall be entitled to recover from the Supplier any balance that remains owing after deduction.
- 22. DISPUTE**  
Without affecting the rights of the School or of the Supplier at law or under any relevant or applicable statute, any dispute or difference in connection with this Agreement shall in the first instance be referred to mediation by a person and process agreed upon by the Supplier and the School or, failing such agreement or resolution by or through that process within 20 working days of one party notifying the other of a dispute in writing, either party may submit the dispute for resolution to Court.
- 23. NO AUTHORITY**  
The Supplier acknowledges that it has no authority or power for or on behalf of the School to enter into agreements, give or receive any instructions, or to incur or to assume any obligations on behalf of the School.
- 24. RELATIONSHIP BETWEEN PARTIES**  
The placement of the Purchase Order will not constitute or be construed as a party being a partner, agent, employee or representative of the party.
- 25. TERMINATION**
- 25.1 If either party commits a breach of this Agreement ("Defaulting Party"), the non-Defaulting Party may give the Defaulting Party a written notice specifying the breach and requiring the Defaulting Party to rectify the breach ("Default Notice"). If the Defaulting Party does not rectify the breach within fourteen (14) days of receiving the Default Notice, the non-Defaulting Party may terminate this Agreement immediately by giving written notice to the Defaulting Party ("Termination Notice").
- 25.2 If the Agreement is terminated in accordance with clause 25.1, the rights and liabilities of the parties will be the same as they would have been at common law had the Defaulting Party repudiated this Agreement and the non-Defaulting party had elected to terminate this Agreement.
- 25.3 If either party suffers an insolvency event or is wound up or becomes subject to administration or any form of receivership or external control then the other party may immediately terminate this Agreement.
- 25.4 Termination of this Agreement by either party is without prejudice to the rights and remedies which either party may have against the other part at the time of termination.
- 26. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE**  
Nothing in this Agreement shall have the effect of or be taken to have the effect of excluding, restricting or modifying the mandatory provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.
- 27. GST**  
If the provision of any service or supply by either party to the other under this Agreement constitutes a taxable supply in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any act repealing or replacing that act, then the recipient of the taxable supply (recipient) must reimburse the Supplier of the taxable supply an amount equal to the GST payable on the taxable supply upon service upon the recipient of a written demand by the Supplier of the taxable supply for the reimbursement and upon receipt of the reimbursement the Supplier of the taxable supply must provide the recipient with a tax invoice.
- 28. COMPLY WITH LAWS**  
The Supplier must comply with all relevant laws, regulations, bylaws and requirements of any Commonwealth, state, territory or local authority which

are relevant to the provision of the Goods or Services to the School and, in particular conduct of the Supplier when on School premises.

**29. JURISDICTION**

The terms and conditions of this Agreement will be governed by the law of the State of Victoria and each party submits to the jurisdiction of the Courts of the State of Victoria.