



City West Water™

Purchase Order Terms and Conditions

Dated June 2018

Template Reference 3

CITY WEST WATER CORPORATION
ABN: 70 066 902 467

GENERAL CONDITIONS FOR THE PROVISION OF GOODS AND/OR SERVICES TO CITY WEST WATER CORPORATION

1 Application

- 1.1 These General Conditions only apply to the supply of the Deliverables if the Purchase Order to which they are attached does not include a CWW contract number. If the Purchase Order includes a CWW contract number, the terms and conditions in the contract referred to will apply to the exclusion of these General Conditions.
- 1.2 This Agreement constitutes the entire agreement between the Contractor and CWW in respect of the Deliverables, and these General Conditions apply to the exclusion of any terms and conditions appearing on or forming part of the Contractor's dockets, invoices or other documentation, including any terms issued by the Contractor on supply of the Deliverables.
- 1.3 The Contractor is bound by this Agreement whether or not the Contractor or CWW signs this Agreement.

2 Interpretation

- 2.1 Definitions and interpretation provisions are contained at **clause 19** of this Agreement.

3 Performance

- 3.1 The Contractor must supply the Deliverables to CWW at the Site in accordance with this Agreement for the Fee.
- 3.2 If CWW or any of its representatives signs a docket or other document required by the Contractor to acknowledge receipt by CWW of the Deliverables, CWW will not be taken to have accepted the Deliverables as being in accordance with this Agreement (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of receipt.
- 3.3 CWW may, by written notice to the Contractor, vary the quantity, quality or description of the required Deliverables, the Delivery Date, the Term or any other aspect of the performance of the Deliverables. For that variation, the Fee will be altered by the amount agreed by the parties, or, where the parties are unable to reach agreement on the alteration to the Fee, by a reasonable amount determined by CWW.

4 Time

- 4.1 The Contractor must:
- perform the Services from the Commencement Date for the Term during the Service Hours;
 - complete the Services by the Delivery Date; and
 - deliver the Goods to the Site by the Delivery Date.
- 4.2 CWW is not obliged to accept early performance of the Deliverables.
- 4.3 The Contractor must notify CWW immediately upon the Contractor becoming aware or having reasonable grounds to believe that it will not be able to:
- deliver the Goods to the Site by the Delivery Date;
 - complete the Services by the Delivery Date; or
 - supply the Deliverables during the Term, or in the time otherwise required by this Agreement.
- 4.4 If the Contractor is or will be delayed by a Delay Event in a manner which will prevent it from delivering the Goods to the Site and/or completing the Services by the Delivery Date, CWW will extend the Delivery Date by a reasonable period to be notified in writing to the Contractor.
- 4.5 Without limitation to **clause 4.4**, the Delivery Date may be extended for CWW's sole convenience.

5 Inspection and Rejection of Deliverables

- 5.1 CWW may at any time enter the premises where the Deliverables are being performed to inspect, examine or test the Deliverables. The Contractor must at its cost procure access for CWW. No inspection, examination or testing of the Deliverables by CWW relieves the Contractor of its obligations under this Agreement.
- 5.2 If following any inspection, examination or testing of the Deliverables or at any time during the Defects Liability Period (if applicable), CWW discovers that the Deliverables may be defective or otherwise in breach of this Agreement (including any warranty given under **clause 6.1**), CWW may (without limiting any other right available to it):
- reject or return any Deliverables;
 - give the Contractor a notice requiring it to, at its cost and within the reasonable time prescribed in the notice, remove,

re-manufacture, re-perform or replace the Deliverables or to make good any defective works in the Deliverables; or

- rectify or re-supply the Deliverables or have the Deliverables rectified or re-performed and the cost, loss, damage and expense suffered or incurred by CWW will be a debt due from the Contractor to CWW.

- 5.3 If the Contractor does not remedy a defect in the Deliverables or other breach of this Agreement within the time identified in a notice under **clause 5.2(b)**, CWW may immediately terminate this Agreement by giving notice to the Contractor.
- 5.4 If CWW rejects any Deliverables under **clause 5.2(a)**, the Contractor must pay CWW all amounts paid by CWW for the rejected Deliverables.
- 5.5 The Contractor must, at its cost:
- comply with any notice under **clause 5.2(b)**; and
 - collect and remove any Deliverables that have been rejected under **clause 5.2**.

6 Warranties and intellectual property

- 6.1 In addition to its own standard warranty in respect of Goods, the Contractor holds any warranties from its suppliers that apply to the Goods for the benefit of CWW.
- 6.2 The Contractor warrants that:
- the Deliverables will be performed precisely in accordance with:
 - their descriptions in this Agreement (as may be varied under **clause 3.3**);
 - any relevant patterns or specifications;
 - any quality assurance requirements prescribed in the Purchase Order;
 - any other warranties or guarantees contained in this Agreement;
 - all applicable Australian and/or New Zealand standards; and
 - all laws, including the provisions of any legislation applicable to the Deliverables.
 - the materials and standards of workmanship used to produce the Goods and/or delivery of the Services are of a high quality;
 - the Goods are fit for their intended purpose and free from defects;
 - the Goods conform to any sample supplied;
 - the Goods are free from all security interests under the PPSA, liens and encumbrances and the Contractor has full title and ownership to sell such Goods;
 - it has the necessary skills, resources and experience to successfully, effectively and efficiently supply the Deliverables in accordance with this Agreement;
 - it will provide the Services in a proper, timely and efficient manner using a standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are identical with or similar to the Services;
 - it will provide any and all equipment necessary for the performance of the Services; and
 - it has all Intellectual Property necessary to supply the Deliverables in accordance with this Agreement, and that the performance of the Deliverables will not infringe any Intellectual Property.
- 6.3 The warranties in **clause 6.2** are in addition to any warranties which are or may be implied under any legislation applicable to the Deliverables (including the Australian Consumer Law).
- 6.4 The Contractor indemnifies CWW against any loss, cost, damage or expense incurred by CWW as a consequence of or in connection with any claim by a third party that it has a right to any Intellectual Property in the Deliverables.
- 6.5 The Contractor grants to CWW a royalty-free, perpetual and irrevocable licence to use all Intellectual Property in the Deliverables and any other works which CWW may perform in relation to the Deliverables in the future. The licence will remain vested in CWW despite the termination of this Agreement and CWW may assign or sublicense the rights granted by the licence without the consent of the Contractor.

7 Fee

- 7.1 The Fee is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in this Agreement.

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- 7.2 The Fee includes:
- (a) all taxes, levies and fees (excluding GST) which are payable in relation to the performance of the Deliverables. For the avoidance of doubt, the Contractor must pay all such taxes, levies and fees; and
 - (b) all costs associated with delivery, including the transport, loading and unloading of the Goods.
- 7.3 The Fee cannot be varied for any reason except where expressly agreed in writing, signed by CWW.
- 7.4 Once the Deliverables are performed under this Agreement, the Contractor may give CWW a valid tax invoice for the performed Deliverables (**Invoice**). An Invoice must include:
- (a) a reference to this Agreement, including any line item numbers on the order and the Purchase Order number;
 - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the Invoice relates and the relevant quantity;
 - (c) an individual reference number for CWW to quote with remittance of payment; and
 - (d) the Fee relating to the Deliverables, broken down to reflect the Fee components on this Agreement.
- 7.5 If CWW requests, the Contractor must provide CWW with all relevant records to calculate and verify the amount set out in any Invoice.
- 7.6 Subject to **clause 7.7**, CWW must pay the Contractor the amount claimed by the Contractor in the Invoice within 30 days of the date the Invoice is received by CWW.
- 7.7 If CWW disagrees with the amount claimed by the Contractor in the Invoice, CWW must determine the value of the Deliverables performed by the Contractor in accordance with this Agreement during the payment claim period and must issue a payment schedule to the Contractor within 10 Business Days of receiving an Invoice under **clause 7.4** stating:
- (a) the amount determined by CWW as the appropriate proportion of the Fee for the performed Deliverables (having regard to the provisions of this Agreement and the proportion of the total Deliverables performed);
 - (b) the reason why the amount in the payment schedule is different than the amount claimed; and
 - (c) if the reason for the difference is that CWW has deducted, set-off or withheld payment or proposes to deduct, set-off or withhold payment for any reason, the reason for the deduction, set-off or withholding.
- The Contractor must, within two (2) Business Days of receipt of the payment schedule, provide CWW with a revised valid tax invoice in accordance with **clause 7.4** for the amount assessed as payable in the payment schedule. Nothing in this **clause 7.7** will limit or affect the right of the Contractor to dispute CWW's determination of the value of the Deliverables performed by the Contractor in accordance with this Agreement during the payment claim period.
- 7.8 CWW must pay the Contractor the amount determined by CWW pursuant to **clause 7.7** as payable to the Contractor within the last to occur of:
- (a) 30 days of the date the Invoice is received by CWW; and
 - (b) 10 Business Days after receipt by CWW of the revised valid tax invoice, required under **clause 7.7**, for the amount stated in the payment schedule as payable to the Contractor.
- 7.9 CWW may deduct from any amount owing to the Contractor, including any part payment of the Fee, any amount which under this Agreement CWW determines is or may become payable by the Contractor to CWW including amounts by way of liquidated or unliquidated damages.
- 7.10 CWW may pay the Fee by cheque, bank cheque, electronic funds transfer, or cash payment or in any other manner agreed in writing by the parties.
- 7.11 All payments by CWW will be on account only and will not be an admission that the Deliverables comply with this Agreement.
- 7.12 CWW will, on demand by the Contractor, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic).
- 7.13 For the purposes of clause 7.12, "**overdue amount**" means an amount (or part thereof) that is not, or is no longer, disputed in accordance with this Agreement:
- (a) that is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) properly rendered by Contractor in accordance with this Agreement; and
- (b) which has been outstanding for more than 30 days from the date of invoice or the date that the amount ceased to be disputed, as the case may be.
- ### 8 Goods and Services Tax
- 8.1 Unless expressly stated otherwise in this Agreement, the Fee does not include GST. CWW is not required to pay the GST component of the Fee until CWW receives a *tax invoice* from the Contractor in respect of the *taxable supply*.
- 8.2 If an *adjustment event* occurs, the Contractor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- 8.3 Italicised expressions used in this **clause 8** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- ### 9 Risk and Indemnity
- 9.1 Risk in Goods passes to CWW when the Goods are delivered to the Site and accepted by CWW.
- 9.2 The Contractor shall indemnify CWW and its officers, employees, agents and other contractors against any claim, expense, liability or loss arising out of or in connection with:
- (a) personal injury or death or loss of, or damage to, any other property including, without limitation, CWW's property arising out of or as a consequence of the carrying out of Deliverables; and
 - (b) any breach by the Contractor of this Agreement, but the indemnity shall be reduced proportionally to the extent that the act or omission of CWW or its agents or other contractors (not being employed by the Contractor) contributed to the claim, expense, liability, loss, injury, death, or damage.
- 9.3 Notwithstanding any other provision of this Agreement:
- (a) neither CWW or the Contractor will be liable to the other in respect of any loss of profit, loss of revenue, loss of goodwill or loss of business opportunity; and
 - (b) the Contractor's liability to CWW under this Agreement, in tort, under any statute and otherwise at law and in equity, arising out of or in connection with the Contractor's performance of its obligations under this Agreement is limited to the amount stated in the Purchase Order (if any), except to the extent such liability:
 - (c) arises from fraudulent or criminal acts or omissions or wilful misconduct of CWW or the Contractor (as applicable);
 - (d) by law cannot be contract out of or limited;
 - (e) is as a result of the death of, or injury to, any person or the breach of any Intellectual Property; or
 - (f) is covered by a policy of insurance obtained by CWW or the Contractor (as applicable) or would have been covered but for a failure of a party to comply with its insurance obligations under this Agreement or the inclusion of this **clause 9.3** in this Agreement.
- 9.4 Without limitation to **clause 9.3(a)**, the Contractor's liability to CWW is uncapped unless expressly stated otherwise in the Purchase Order.
- ### 10 Occupational Health and Safety and Environment
- 10.1 The Contractor is responsible for the health and safety of its employees.
- 10.2 Without limitation to its other obligations under this Agreement, the Contractor must:
- (a) comply with all requirements under OH&S Legislation;
 - (b) comply with any directions of CWW or its nominees in relation to occupational health and safety at the Site;
 - (c) comply with all CWW's occupational health and safety, and environmental, requirements relating to the Contractor's conduct at the Site (as notified by CWW to the Contractor from time to time);
 - (d) not cause, and must take all necessary precautions to prevent harm, damage or nuisance to the environment in the provision of the Deliverables;
 - (e) comply with any reasonable directions issued by CWW in relation to the environment;
 - (f) cause all of its employees to complete such safety or other training or induction as CWW directs; and
 - (g) if the Deliverables involve the supply of Goods, ensure that:

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- (i) where applicable, the Goods comply with Australian and/or New Zealand standards;
- (ii) the Goods are suitably packed to avoid damage in transit or storage;
- (iii) bulk packaged Goods must be delivered on a pallet suitable for handling by a forklift;
- (iv) smaller quantities of packaged Goods must not exceed 16 kg per package;
- (v) safety labels are attach to the packaged Goods and the material safety data sheets are provided with the Goods;
- (vi) any Goods comprising electrical appliances have passed tests in accordance with AS 3760 and have attached an electrical test tag with the date and tester ID; and
- (vii) risk assessments, job safety analyses and safe work method statements are prepared.

10.3 All safety related documentation prepared for the provision of the Deliverables (including those referred to in **clause 10.2(g(vii))**) must be retained by the Contractor for a minimum of five (5) years and provided to CWW on request during this period.

11 Insurance

11.1 The Contractor shall effect and maintain for the term of this Agreement:

- (a) public liability insurance for not less than the amount set out in the Purchase Order or otherwise advised by CWW in respect of any single occurrence;
- (b) insurance against liability for death or injury to any third party in connection with the Deliverables including liability under statute and at common law;
- (c) workers compensation insurance as required under workers compensation legislation;
- (d) if required by the Purchase Order or otherwise advised by CWW, plant and equipment insurance in respect of all plant, equipment and supplies, including any temporary work and materials not for incorporation into the Goods, used or to be used by the Contractor in connection with the Deliverables, for a sum equivalent to the full replacement value of all such plant, equipment and supplies; and
- (e) insurance against the loss of or damage to any original designs and other documents in the control or possession of the Contractor.

11.2 If required by the Purchase Order or otherwise advised by CWW, prior to commencing the Deliverables, the Contractor shall effect, and maintain for at least seven (7) years after the completion of the Deliverables (or, if the Deliverables are not completed, the termination of this Agreement), professional indemnity insurance with a total cover of not less than the amount set out in the Purchase Order or otherwise advised by CWW in respect of any single occurrence.

11.3 The Contractor shall provide CWW with evidence of the terms and currency of insurances required to be effected by the Contractor before commencing the Deliverables and when requested by CWW.

11.4 Prior to the Contractor performing any Deliverables pursuant to this Agreement, if applicable CWW will effect and maintain until the date of completion of the Deliverables, contract works insurance (however described) covering the Deliverables performed on the Site (other than Goods before delivery to the Site and plant and equipment required to be insured by the Contractor under **clause 11.1(d)**).

12 PPSA

12.1 Title in any Goods passes to CWW free of any Security Interest upon the earlier to occur of the payment of the Fee or delivery of the Goods to the Site.

12.2 The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:

- (a) section 120 (enforcement of liquid assets);
- (b) section 126 (apparent possession); and
- (c) section 128 (secured party may dispose of collateral).

12.3 If, in the opinion of CWW the PPSA applies, or will in the future apply to CWW's rights pursuant to this Agreement, and that the PPSA:

- (a) affects or could affect CWW's security position or the rights or obligations of CWW under or in connection with this Agreement; and

- (b) enables or would enable CWW's security position to be improved,

CWW may give notice to the Contractor requiring the Contractor to do anything (including provide all reasonable assistance to CWW in relation to the registration of a security in respect of CWW's rights, including the execution of documents relating to such registration) that in CWW opinion is necessary or desirable. The Contractor must comply with the requirements of that notice within the time stipulated in the notice.

13 Confidentiality & Privacy

13.1 The Contractor must treat this Agreement and all information provided by CWW or on behalf of CWW under or in respect of this Agreement, including Personal Information as defined in the PDPA, as confidential and must not disclose:

- (a) its existence, the information contained in it or its subject matter to any third party or use it for advertisement, display or publication without the prior written consent of CWW; or
- (b) information about the obligations secured by any Security Interest under this Agreement, the terms of payment or performance in respect of any obligation under this Agreement at any particular time or any information of the kind described in section 275(1) of the PPSA,

except:

- (c) to its officers, employees, legal and other advisers and auditors for the purpose of performing the Deliverables;
- (d) with the consent of CWW; or
- (e) to the extent it is necessary for the Contractor to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.

13.2 The Contractor, its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any confidential information relating to CWW or the affairs of others which may have come to its or their knowledge as a result of this Agreement.

13.3 In performing this Agreement, the Contractor must:

- (a) only use Personal Information for the purposes of fulfilling its obligations under this Agreement;
- (b) not use, modify or disclose Personal Information except with the prior written consent of CWW;
- (c) take all reasonable measures to ensure that Personal Information in its possession or control or to which it has access in connection with this Agreement, is protected against loss and unauthorised access, use, modification or disclosure;
- (d) comply with any reasonable direction, policy and/or guidelines of CWW which concern the security, use and disclosure of Personal Information;
- (e) take all reasonable steps to avoid placing CWW in breach of Privacy Laws; and
- (f) ensure that any person who is authorised to have access to any Personal Information is made aware of, and undertakes in writing to observe the obligations of, this **clause 13.3**.

13.4 The Contractor agrees to be bound by the Information Privacy Principles in the PDPA and any applicable code of practice made under the PDPA that may apply to CWW with respect to any act done, or practice engaged in, by the Contractor for the purposes of this Agreement in the same way and to the same extent as CWW would have been bound by them in respect of that act or practice had it been directly done or engaged in by CWW.

13.5 If in performance of the Deliverables the Contractor collects, stores or transmits any Cardholder Data on behalf of CWW, the Contractor acknowledges it is responsible for security of that Cardholder Data and shall:

- (a) effect and maintain PCI Compliance for the duration of this Agreement,
- (b) provide prior to the Commencement Date a copy of the Contractor's most recent Attestation of Compliance,
- (c) provide CWW annually an updated Attestation of Compliance (before each anniversary of this Agreement), and
- (d) immediately inform CWW if it no longer meets the PCI Data Security Standards.

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14 Suspension and termination

- 14.1 CWW may, acting reasonably, suspend all or part of the performance of the Deliverables at any time for any period by notice to the Contractor. The Contractor must comply with such a notice and must recommence performance of the Deliverables when required by notice from CWW. The Contractor will be entitled to be paid by CWW the direct, reasonable and demonstrable extra costs incurred by the Contractor as a result of any such suspension, unless the suspension arises as a result or consequence of the Contractor's failure to perform its obligations in accordance with this Agreement, and subject to the Contractor taking all reasonable steps to mitigate the extra costs incurred by it as a result of the suspension.
- 14.2 CWW may immediately terminate this Agreement at any time by giving the Contractor written notice. Subject to any rights of set off or deduction which CWW may have, on termination of this Agreement CWW's only obligation will be to pay the Contractor:
- for Deliverables which have been performed in accordance with this Agreement prior to the date of termination; and
 - except where the termination arises as a result or consequence of the Contractor's failure to perform its obligations in accordance with this Agreement and subject to the Contractor mitigating its costs and expenses:
 - the cost of materials reasonably ordered by the Contractor for the Deliverables which the Contractor is liable to accept, but only if the materials become the property of CWW upon payment; and
 - the reasonable cost of removal of Contractor's plant and equipment from the Site.

15 Assignment and subcontracting

- 15.1 The Contractor must not assign or deal with the Contractor's interests under this Agreement without the prior written consent of CWW. Any purported dealing by the Contractor in breach of this clause 15.1 is of no effect. CWW may assign or deal with its interest under this Agreement at any time by notice in writing to the Contractor.
- 15.2 The Contractor must not subcontract any part of the Deliverables without the prior written approval of CWW, which may be given or withheld in CWW's absolute discretion and may be given subject to conditions.
- 15.3 The Contractor will be liable to CWW for the acts, defaults and omissions of the Contractor's subcontractors (and the employees and agents of such subcontractors) as if they were those of the Contractor.

16 Proportionate Liability Legislation

- 16.1 The parties agree that to the extent permitted by the law, the operation of Proportionate Liability Legislation is excluded, except as provided in clause 16.2.
- 16.2 The operation of Proportionate Liability Legislation is not excluded for any loss or damage caused or contributed to by CWW or its other contractors.

17 Policies and procedures

- 17.1 Without limitation to its other obligations under this Agreement, the Contractor must supply the Deliverables in accordance with any procedures, policies and rules identified in the Purchase Order, as may be amended from time to time.

18 General

- 18.1 Where this Agreement allows CWW a discretion as to whether to do or not to do any act, matter or thing of any kind, or confers on CWW a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute, unless this Agreement states otherwise, and CWW is not obliged to give its reasons.
- 18.2 No waiver by CWW of a breach of this Agreement by the Contractor constitutes a waiver for any subsequent or continuing breach by the Contractor.
- 18.3 If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from this Agreement and the remainder of this Agreement will continue to be effective and valid notwithstanding such severance.
- 18.4 A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss,

cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- 18.5 Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.
- 18.6 Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- 18.7 This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria. 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.
- 18.8 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- 18.9 This Agreement will not create a partnership, joint venture or agency relationship between the parties.

19 Definitions and interpretation

- 19.1 In this Agreement, unless the context otherwise requires:
- Agreement** means the Purchase Order, the Special Conditions (if any), the General Conditions and any other documents attached to, or prescribed in, the Purchase Order as forming part of this Agreement, which, in the event of any inconsistencies, must be construed in that order of priority;
 - Attestation of Compliance** means the annual declaration of compliance with PCI Data Security Standards.
 - Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic);
 - Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria;
 - Cardholder Data** means data and information derived from or relating to CWW customer credit and debit cards.
 - Collateral** has the meaning given in the PPSA;
 - Commencement Date** means the date of commencement identified in the Purchase Order (if any);
 - Contractor** means the supplier of the Deliverables identified in the Purchase Order;
 - CWW** means City West Water Corporation ABN 70 066 902 467;
 - Defects Liability Period** means the defects liability period commencing on the completion of the Deliverables in accordance with this Agreement and expiring on the date set out in the Purchase Order (if any);
 - Delay Event** means:
 - any delay or disruption caused by CWW, but does not include any delay or disruption caused by CWW acting in accordance with this Agreement; and
 - any other delay or disruption not caused or contributed to by the Contractor which:
 - the Contractor has not accepted the occurrence or consequence of under this Agreement; and
 - could not reasonably have been foreseen by the Contractor at the date of this Agreement,provided the Contractor has taken reasonable steps to preclude the reason for the delay or disruption and to avoid or minimise the consequences of the delay or disruption;
 - Deliverables** means the supply and delivery of the Goods and/or the performance of the Services as the case requires;
 - Delivery Date** means the date identified in the Purchase Order (if any), as may be extended in accordance with this Agreement;
 - Fee** means:
 - the lump sum stated for the Goods or Services in the Purchase Order; or
 - if no lump sum is so stated the amount ascertained by applying the Unit Rate set out in the Purchase Order to the appropriate total units of Goods supplied, or units of time properly and reasonably incurred by the Contractor in the provision of the Services;
 - General Conditions** means these general conditions for the supply of the Deliverables;
 - Goods** means the goods described in the Purchase Order (if any);

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- (q) **Invoice** has the meaning given in **clause 7.4**;
 - (r) **Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions, and other results of intellectual activity, including moral rights, in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable;
 - (s) **OH&S Legislation** means the *Occupational Health & Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2017* (Vic) and any other occupational health and safety statutes enacted or which may be enacted in any Australian States and/or Territories (if applicable);
 - (t) **PCI Compliance** means the Contractor is certified as compliant with the PCI Data Security Standards.
 - (u) **PCI Data Security Standards** means the Payment Card Industry Data Security Standards mandated by the Payment Card Industry Security Standards Council
 - (v) **PDPA** means the *Privacy and Data Protection Act 2014* (Vic);
 - (w) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
 - (x) **PPS Register** means the Personal Property Securities Register established under the PPSA;
 - (y) **Privacy Laws** means the PDPA, the *Privacy Act 1988* (Cth), the *Health Records Act 2001* (Vic) and any other relevant privacy legislation, regulation or binding code and CWW's privacy policies;
 - (z) **Proportionate Liability Legislation** means Part IVAA of the *Wrongs Act 1958* (Vic) and any other proportionate liability legislation enacted or which may be enacted in any Australian States and/or Territories (if applicable);
 - (aa) **Purchase Order** means the document to which these General Conditions are attached (including any other documents attached to or prescribed in the Purchase Order which contains the written order from CWW to the Contractor for the provision of Goods or Services;
 - (bb) **Relevant Collateral** means Collateral which is the subject of a Security Interest granted under this Agreement;
 - (cc) **Security Interest** has the meaning given in the PPSA;
 - (dd) **Services** includes all services or works described in the Purchase Order (if any) and all other things which can reasonably be inferred from the description of the services in the Purchase Order;
 - (ee) **Site** means the site identified in the Purchase Order (if any);
 - (ff) **Special Conditions** means the conditions (if any), which may or may not effect an amendment to these General Conditions, identified in the Purchase Order;
 - (gg) **Term** means the term described in the Purchase Order (if any) as may be extended in accordance with this Agreement; and
 - (hh) **Unit Rate** means the rate payable to the Contractor (per units of items or units of time as the case may be) for the provision of the Goods or Services as identified in the Purchase Order (if any). Unit rates are fixed for the duration of this Agreement.
- 19.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
 - (c) where the Contractor comprises two (2) or more persons, then the obligations on the Contractor will bind and be observed and performed by those persons jointly and severally;
 - (d) "include", "includes" and "including" means "includes without limitation";
 - (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
 - (f) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
 - (g) where time is calculated by reference to a day or event, that day or the day of that event is excluded; and
 - (h) a notice or other communication means a notice or communication in writing in the English language, addressed to the postal addresses of the recipient party.
- 19.3 A reference to:
- (a) a person includes that person's legal personal representatives, successors and assigns;
 - (b) time is to local time in Melbourne, Victoria;
 - (c) "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
 - (d) a clause is a reference to a clause of this Agreement.