

Standard Terms applicable to purchase orders

I. General

I.1 Offer and acceptance

World Vision Australia ABN: 28 004 778 081 (**WVA**) invites the Contractor to provide the goods or services (**Item**) in the quantity and at the amount (inclusive of GST, where applicable) recorded in the purchase order on the terms set out below. By commencing delivery of the Item, the Contractor is bound by these terms (**Agreement**) unless a formal agreement has been executed by the parties prior to commencement of delivery.

I.2 Good name and use of logo

The Contractor will not do, cause to be done, or allow to be done, anything within the Contractors' reasonable control, that may harm or result in detriment to the good name and reputation of WVA. The Contractor must not use or reproduce WVA's logo without written consent.

I.3 Confidentiality

The Contractor must:

- (a) treat this Agreement and all information obtained by the Contractor in connection with this Agreement as (and take all reasonable steps to ensure they remain) strictly confidential; and
- (b) not discuss, publish or otherwise disclose the information referred to above to any person except:
 - (i) to the extent such disclosure is necessary for the Contractor to perform this Agreement; or
 - (ii) as otherwise approved in writing by WVA; or
 - (iii) as, and to the extent, required by law.

This provision does not apply to information in the public domain (except where information is in the public domain as a result of a breach of this provision).

I.4 Invoicing and payment

- (a) The Contractor must invoice WVA within 15 days after delivery of the Item. The invoice must be in the form of a GST-compliant tax invoice (where applicable) and delivered to WVA's address as noted in the purchase order.
- (b) In consideration for the Item, WVA will pay the Contractor the Amount in accordance with the Payment Terms (25 days end of month or according to purchase order). To the extent of any inconsistency between an invoice provided by the Contractor and this Agreement, the terms of this Agreement will prevail.
- (c) Any payment of money is not evidence of the value of work, that work has been satisfactorily carried out in accordance with this Agreement, an admission of liability, or approval by WVA of the Contractor's performance or compliance with this Agreement, but is only to be taken as payment on account.

I.5 Insurance

The Contractor must have and maintain appropriate liability insurance (public liability, product and professional indemnity) in relation to the provision of the Item.

I.6 Release and indemnity

- (a) **Release:** except for the specific obligations of WVA set out in this Agreement, the Contractor releases WVA from any claim that it or any employee, director, officer, adviser, or associate of it at any time may have against WVA in respect of any loss, damage or injury suffered in performance of this Agreement.
- (b) **Indemnity:** the Contractor agrees to indemnify (and keep indemnified) WVA from and against any loss, damage or liability (including loss due to negligence and consequential loss) that WVA may suffer or incur arising (directly or indirectly) from or in connection with this Agreement, including, without limitation, breach of agreement or applicable law and any claim made by any person against WVA.
- (c) This release and indemnity will survive the completion or termination of this Agreement.

I.7 Right of set-off

WVA may deduct the following from moneys due to the Contractor:

- (a) any moneys due from the Contractor to WVA; and
- (b) any claim to money which WVA may have against the Contractor, whether for damages or otherwise,

whether under this Agreement or otherwise at law relating to the Item.

I.8 Termination

- (a) **For convenience:** either party may terminate this Agreement for any reason at any time by giving 10 business days' notice in writing to the other party. If this Agreement is terminated under this clause:
 - (i) the Contractor must invoice WVA for Items delivered but not invoiced as at the date of termination; and
 - (ii) WVA must pay the Contractor all amounts properly due under invoices rendered by the Contractor.
- (b) **For cause:** either party may terminate this Agreement with immediate effect if:
 - (i) the other party breaches any material provision of this Agreement and fails to remedy the breach within 5 business days after receiving notice requiring it to do so;
 - (ii) the other party breaches any material provision of this Agreement and that breach is incapable of remedy;
 - (iii) there is a change in control or management of the other party which the first party reasonably considers may result in harm to its intellectual property, goodwill or reputation;
 - (iv) the other party disposes of the whole or part of its assets, operations or business, other than in the ordinary course of business;

- (v) subject to this Agreement, the other party purports to assign or sub-contract its obligations under this Agreement without prior written consent; or
- (vi) the other party becomes subject to proceedings by any government or regulatory body which materially affect its ability to perform its obligations under this Agreement.

If this agreement is terminated by WVA for cause, WVA will have no liability to pay the Contractor.

- (c) Subject to this Agreement, any termination of this Agreement does not affect any accrued rights or remedies of either party.

I.9 Complaint Resolution

The Contractor shall, on receipt of a complaint from WVA, do all that is reasonable to remedy the complaint to the reasonable satisfaction of WVA and advise WVA of the action taken and outcome.

I.10 Notices

- (a) All notices must be in writing.
- (b) All notices under or in connection with this Agreement must be delivered to the address, facsimile number or email address stated the purchase order or last notified in writing.
- (c) Notices delivered by email must be as an attachment in a stable format (such as pdf format or other format that is a scanned image of an original communication). The e-mail must state that the attachment is a communication under this Agreement.

I.11 Entire agreement

Subject to clause I.1, to the extent permitted by law, this Agreement embodies the entire understanding of the parties, constitutes the entire terms agreed upon between the parties and supersedes any prior agreement (whether or not in writing) between the parties, in relation to its subject matter.

I.12 Assignment and subcontracting

- (a) WVA may assign, transfer or novate its obligations or rights under this Agreement at any time without the Contractor's consent.
- (b) The Contractor cannot assign, transfer or novate its obligations or rights under this Agreement without WVA's prior written consent.
- (c) The Contractor cannot sub-contract the delivery of the Item without WVA's prior written consent.

I.13 Governing law and jurisdiction

This Agreement will be governed by and interpreted using Victorian law and each party submits to the non-exclusive jurisdiction of the Victorian courts.

2. Specific terms - provision of goods

Where the Item is a provision of goods (**Goods**), the following applies in addition to clause 1:

2.1 Delivery of Goods

The Contractor will deliver the Goods:

- (a) in accordance with the purchase order and any other instructions given by WVA in writing or otherwise from time to time;
- (b) in a prompt and timely manner to the location specified, on or before the required date and time;
- (c) exercising all due skill, care and attention;
- (d) in a manner which is fit for the intended use of the Goods; and
- (e) so as to ensure compliance with all applicable laws and free of any liens or encumbrances.

2.2 Effective delivery

Delivery will be deemed to have been effected upon the signing of a receipt by an authorised representative of WVA following acceptance of the Goods.

2.3 Property and risk

Property in and ownership of the Goods will pass to WVA on effective delivery in accordance with clause 2.2 above. All risk of loss of, damage to or deterioration of the Goods remains with the Contractor until effective delivery, when this risk passes to WVA.

2.4 Contractor's warranties

In addition to all warranties available to WVA at law, the Contractor warrants that the Goods:

- (a) will be fit for their intended use;
- (b) will be free from defects and of merchantable quality; and
- (c) will not infringe any protected rights including patents, registered designs, trade marks or names, or copyright.

Each of the above warranties are deemed to be repeated by the Contractor at the time of delivery and the Contractor acknowledges that WVA has entered into this Agreement and accepts delivery of the Goods in continuing reliance upon each of these warranties.

2.5 Actions and liability on termination

- (a) If this Agreement is terminated for convenience by WVA, the Contractor must invoice WVA for all Goods ordered which are in production or held in stock by the Contractor as at the date of termination and WVA must pay the Contractor all amounts properly due under invoices rendered by the Contractor.
- (b) If this Agreement is terminated for convenience by the Contractor, the Contractor will be liable for all loss sustained by WVA as a result of WVA having ordered Goods which will not be supplied.

- (c) If this Agreement is terminated for any reason, the Contractor must assist in the orderly transfer of any information or Goods it holds to a new Contractor or as otherwise directed by WVA.
- (d) The rights and obligations of the parties in this clause will survive the termination of this Agreement.

3. Specific terms - provision of services

Where the Item is a service (**Services**), the following applies in addition to clause 1:

3.1 Relationship

The relationship between WVA and the Contractor is that of principal and contractor. Nothing will be taken as constituting the Contractor (including any employee, servant, agent or sub-contractor involved in the provision of the Services "**Contractor's Employee**") an employee, servant, agent, partner or joint venturer of WVA.

3.2 Contractor's Employees

A reference to the Contractor in this Agreement includes all of the Contractor's Employees unless the context indicates otherwise.

3.3 Performance of Services

In providing the Services, the Contractor must:

- (a) exercise the standard of skill, care and diligence in the performance of the Services that would generally and reasonably be expected of a professional provider of similar services; and
- (b) use appropriate personnel and equipment.

3.4 Review and approval of Services

The Contractor must, if required by WVA:

- (a) submit details of Services to WVA for its review and approval; and
- (b) revise or re-perform any of the Services, which in the reasonable opinion of WVA fail to comply with this Agreement, at the Contractor's sole cost until approved by WVA.

3.5 Compliance with privacy legislation

- (a) The Contractor acknowledges that:
 - (i) the Contractor may become privy to personal information or sensitive information (as defined in the Privacy Act 1988 (Cth)) held by WVA concerning individuals in the course of providing the Services; and
 - (ii) WVA is obliged to protect such information from misuse, loss, unauthorised access, modification or disclosure.
- (b) The Contractor must, in carrying out the Services (and must ensure that each Contractor's Employee):
 - (i) take all reasonable steps to protect such information from misuse, loss, unauthorised access, modification or disclosure;

- (ii) comply with any reasonable directions WVA may give the Contractor from time to time with respect to the collection, use, disclosure, storage, protection and disposal of such information;
- (iii) use such information only for the purpose of fulfilling the Contractor's obligations to provide the Services;
- (iv) not disclose such information or make any communication regarding it to any other person (including the individual to whom the personal information relates) other than as directed by WVA, except to the extent necessary to perform the Services or as required by law; and
- (v) without limiting the above, comply with the provisions of the Privacy Act 1988 (Cth) as if it were an organisation to which this legislation applies.

3.6 Ownership of documents

All documents received or created by the Contractor in the course of carrying out the Services are the exclusive property of WVA. If requested by WVA, the Contractor must deliver all such documents to WVA.

3.7 Ownership of intellectual property

- (a) All industrial and intellectual property rights created by the Contractor in providing the Services are automatically assigned to WVA upon creation (without the need for any action by either party). If requested by WVA, the Contractor must do all things necessary to perfect assignment under this clause and to enable WVA to register its ownership of these rights. WVA grants the Contractor a licence to use these rights in order to provide the Services and for no other purpose.
- (b) Any industrial or intellectual property rights owned by the Contractor prior to entering this Agreement which are used for providing the Services will remain the Contractor's property. The Contractor grants to WVA a perpetual, non-exclusive licence to use these rights.
- (c) Any industrial or intellectual property rights owned by WVA prior to entering this Agreement which are provided to the Contractor for carrying out the Services, will remain WVA's property ("**WVA IP**"). The Contractor must use WVA IP only to provide the Services and for no other purpose.
- (d) WVA may prescribe reasonable standards of quality and performance in relation to the Contractor's use of WVA IP. The Contractor must comply with these standards and all reasonable directions regarding the Contractor's use of WVA IP.

3.8 Moral Rights

- (a) The Contractor must:
 - (i) ensure that, in carrying out the Services, it and the Contractor's Employees do not infringe any "**Moral Right**" of any author of an "**Artistic Work**" (both as defined in the Copyright Act 1968 (Cth)); and
 - (ii) obtain irrevocable written waiver and consent for the benefit of WVA and the Contractor, from the author of any Artistic Work to be used in connection with the Services or the author of any Artistic Work that is created in the course of performing the Services.

- (b) The Contractor indemnifies WVA against all damages (including consequential and special damages), losses, costs, expenses or liabilities incurred by WVA at any time as a direct or indirect result of any claim by any person of an infringement of a Moral Right in an Artistic Work in relation to the provision of the Services.

3.9 Taxation, superannuation, workers' compensation etc

To the maximum extent permitted by law, the Contractor acknowledges and agrees that WVA is in no way liable to the Contractor or any Contractor's Employee for payment of any remuneration (including salaries, wages and termination liabilities), taxes, superannuation contributions, leave entitlements (including long service, annual, parental and sick leave), payroll tax, workers' compensation or any other employer/employee responsibilities.

3.10 No ABN

If the Contractor does not have an Australian Business Number (ABN), WVA, in accordance with the relevant provisions of the Australian Pay As You Go (PAYG) legislation, may be required to withhold a prescribed proportion of the amount payable to the Contractor under this Agreement.

3.11 Survival

The rights and obligations of the parties under this clause 3 will (where relevant) survive termination or completion of this Agreement.