

## **Catholic Education Western Australia (CEWA) – Purchase Order Terms and Conditions**

### **1. Agreement**

- 1.1 The Supplier has agreed to supply the Goods and/or Services to CEWA in accordance with the Purchase Order, these terms and conditions, any other attachments to the Purchase Order or these terms and conditions or incorporated by reference to these terms and conditions.
- 1.2 In the event of any inconsistency between the documents detailed in clause 1.1, unless otherwise provided, the document (or part of document) in clause 1.1 will prevail to the extent of any inconsistency.
- 1.3 The **Supplier** and the **Goods** or **Services** to be provided by the Supplier are as specified in the Purchase Order.
- 1.4 This Agreement contains the entire agreement between the parties with respect to the supply of the Goods or Services and supersedes all prior communications and negotiations unless expressly included in this Agreement.

### **2. Term**

- 2.1 This Agreement commences on the date the Purchase Order is issued to the Supplier or the date the Supplier commences the supply of the Goods or Services, whichever is earlier, and remains in force, unless terminated earlier in accordance with this Agreement, until completion of the Supplier's obligations under this Agreement.

### **3. Supply of Goods or Services**

- 3.1 The Supplier must comply with all applicable laws and approvals in supplying the Goods or Services and must ensure:
  - (a) that the Goods or Services:
    - (i) match the description, and conform to the specifications and requirements, as detailed in the Purchase Order;
    - (ii) conform to any applicable Australian Standards and any other standards in detailed in the Purchase Order;
    - (iii) are delivered or completed by the date and to the site or delivery address and any other instructions specified in the Purchase Order;
    - (iv) are manufactured (if applicable) and supplied without infringing any person's Intellectual Property Rights;
    - (v) are delivered in a professional manner in accordance with any generally accepted industry standards; and
    - (vi) that it does not use products, materials or substances which contain, or were manufactured with chlorofluorocarbons;
  - (b) that CEWA receives the full benefit of any manufacturer's warranties applicable to the Goods or Services; and
  - (c) that the Supplier shall notify CEWA immediately if there is any delay in the supply of the Goods and Services under the Purchase Order.

- 3.2 **(Goods)** Unless otherwise stated in the Purchase Order, the Supplier must comply with any delivery instructions in the Purchase Order and ensure that the Goods:

- (a) are suitably packed and labelled to ensure delivery in good and whole condition;
- (b) correspond with any sample provided by the Supplier;
- (c) are free from any defects or errors (including viruses) in materials, workmanship or installation; and
- (d) are new, of merchantable quality, fit for purpose and free from defects in materials, manufacture, workmanship and (if applicable) installation;
- (e) include, at no additional cost, one hard copy and one electronic copy of the most recent version of any Document applicable to the supply of the Goods at the time of delivery or Acceptance; and
- (f) include, at no additional cost, any training required by CEWA to safely operate or use the Goods.

- 3.3 **(Goods)** The Supplier warrants that it has good and unencumbered title to the Goods. Title to the Goods transfers to CEWA in accordance with clause 6.7 below.

- 3.4 **(Services)** The Supplier shall ensure that the Services are provided with due care and skill, in a timely and efficient manner and by personnel who are appropriately skilled and qualified in providing the Services under the Purchase Order.

### **4. Site Access**

- 4.1 CEWA will provide the Supplier with reasonable access to CEWA's premises as reasonably necessary to enable the Supplier to supply, install or test the Goods or Services. The Supplier shall not access or use CEWA's premises except for the supply, installation or testing of the Goods or Services.
- 4.2 If the Supplier or the Supplier Personnel require access to CEWA's premises to supply the Goods or Services, the Supplier shall and shall ensure that the Supplier Personnel act in a safe and lawful manner and comply with CEWA's policies and all reasonable directions relating to occupational health, safety, security, confidentiality, child protection, and access to the premises. The Supplier is deemed to be aware of all applicable CEWA policies and is responsible for procuring all further approvals or clearances required thereunder for Supplier Personnel (including police clearances where applicable).
- 4.3 If supply, installation or testing of the Goods or Services is likely to interfere with any normal use of the site or facility by CEWA, the Supplier shall inform CEWA of the extent and duration of the interference so that the parties can agree a solution to minimise the impact of the interference.
- 4.4 The Supplier shall notify CEWA immediately on becoming aware of any actual or potential safety incident or security breach in relation to the site or facilities.

### **5. Supplier Personnel**

- 5.1 **(Key Personnel)** Where Key Personnel are detailed for performance of the Goods or Services under the Purchase Order, the Supplier shall provide those individuals to supply the Goods or Services. If the Key Personnel become unavailable, the Supplier shall promptly advise CEWA and propose a suitable alternative. CEWA, acting reasonably, may accept or reject the proposed alternative or may give its approval subject to any conditions deemed necessary to protect the interests of CEWA.
- 5.2 **(Minimum Wage)** The Supplier shall ensure that the remuneration and terms of employment of all Supplier Personnel shall be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.
- 5.3 **(Criminal History Check)** Without limiting clause 4.2 above, CEWA may request, at any time, that the Supplier obtain and provide a Nationally Coordinated Criminal History Check (NCCHC) through the Department of Education, within 30 days of the request, for any Supplier Personnel engaged in the Supply of the Goods or Services. If the provided NCCHC details that any Supplier Personnel has committed a criminal offence, then CEWA may, without prejudice to its other rights under these terms and conditions, request the Supplier to promptly remove that Supplier Personnel from involvement in the supply of the Goods and Services at the cost of the Supplier. On removal of Supplier Personnel under this clause 5.3, the Supplier shall arrange for the replacement of that Supplier Personnel subject to the approval of CEWA.
- 5.4 **(Working with Children)** If the Goods or Services under the Purchase Order involve "child related work" (as defined in section 6 of the Working with Children (Criminal Record Checking) Act 2004 hereby referred to as **the Act**) then:
- (a) The Supplier shall ensure:
    - (i) all Supplier Personnel who will undertake child related work shall provide to CEWA an assessment notice under section 12 of the Act before they commence the supply of the Goods or Services under the Purchase Order;
    - (ii) the Supplier shall otherwise always comply, and ensure that all Supplier Personnel comply with the act; and
  - (b) A breach of this clause 5.4 shall be deemed a material breach of the Agreement which cannot be remedied.
- 6. Delivery and Acceptance**
- 6.1 The Supplier bears the risk of loss or damage to the Goods or Services until such time as the Goods or Services are delivered in accordance with the Purchase Order.
- 6.2 CEWA shall not be deemed to have accepted the Goods or Services until CEWA has had a reasonable opportunity to inspect the Goods or Services to determine if they have been delivered in accordance with the Purchase Order.
- 6.3 If the Goods or Services do not comply with the Purchase Order, CEWA may within 14 days after the later of installation and delivery or performance by the Supplier ("**Acceptance Period**"), by written notice to the Supplier, reject the Goods or Services, detailing the reason for the rejection and (acting reasonably) direct the Supplier to within the time specified in the notice:
- (a) replace the rejected Goods;
  - (b) refund any payment for the rejected Goods or Services; or
  - (c) repair the rejected Goods or re-perform the Services to the satisfaction of CEWA.
- Acceptance of the Goods or Services does not relieve the Supplier of its obligations under the Purchase Order, these terms, and conditions or at Law.
- 6.4 The Supplier shall, at its own cost, comply with CEWA's direction under clause 6.3 and if the Supplier fails to comply within the time specified in the notice, CEWA may have the Goods or Services supplied or performed by others and the costs incurred by CEWA will be a debt due and payable by the Supplier to CEWA on demand.
- 6.5 Remedied Goods or Services are subject to Acceptance in accordance with this clause 5.
- 6.6 If CEWA does not reject the Goods or Services during the Acceptance Period, CEWA is taken to have accepted the Goods or Services.
- 6.7 Title to the Goods or Services under the Purchase Order passes from the Supplier to CEWA, free from any encumbrances, on the earlier of delivery or the payment of the price stated in the Purchase Order by CEWA.
- 7. Price and Payment**
- 7.1 The Price stated in the Purchase Order is final, exclusive of GST and includes all costs and charges of the delivery and Acceptance of the Goods or Services under the Purchase Order. No other amounts shall be payable unless accepted in writing by CEWA.
- 7.2 CEWA will pay any undisputed amount owing to the Supplier under a Tax Invoice (as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*) duly submitted in accordance with the Contract within 30 days from the date of invoice. A Tax Invoice must quote the Purchase Order number.
- 7.3 If an invoice is found to be incorrect by CEWA or the Supplier following payment of the invoice to the Supplier, then the over or under payment will be an amount recoverable or owed to the Supplier as applicable.
- 7.4 CEWA may offset any overpayments to the Supplier against any amount due by CEWA to the Supplier.
- 8. Disputed Invoices**
- 8.1 If CEWA, acting reasonably, disputes the amount owing under a Tax Invoice provided by the Supplier, CEWA may, on written notice to the Supplier, withhold or suspend payment of the disputed part of the invoice until the dispute has been resolved by the parties.

- 8.2 On notice of a disputed invoice, the Supplier and CEWA shall jointly review the invoice and negotiate in good faith to promptly resolve the dispute.
- 8.3 The Supplier shall continue to perform the supply of the Goods or Services pending the resolution of any dispute in relation to an invoice.
- 8.4 In the event a disputed invoice is subsequently agreed or found to be correct, CEWA shall pay the amount owing under the invoice within 30 days of the dispute being resolved.
- 9. Purchase Order Cancellation or Amendment**
- 9.1 CEWA may, at any time prior to the supply of the Goods or Services cancel or amend the Purchase Order by notice to the Supplier.
- 9.2 In the event of a cancellation of the Purchase Order, CEWA will pay the Supplier for any Goods or Services delivered prior to the cancellation or amendment, plus any costs actually and reasonably incurred by reason of the cancellation and which the Supplier (acting reasonably) was unable to mitigate or avoid. In the event of an amendment of the Purchase Order, CEWA will pay the Supplier for any costs actually and reasonably incurred by reason of the amendment and which the Supplier (acting reasonably) was unable to mitigate or avoid
- 9.3 Payment under clause 9.2 shall be the Suppliers only remedy in the event of a cancellation or amendment of the Purchase Order by CEWA.
- 10. Supplier's Obligations**
- 10.1 **(Insurance)** The Supplier shall take out and maintain, with a reputable and solvent Australian Prudential Regulation Authority approved insurer:
- (a) all insurance required by law;
  - (b) such insurance as is consistent with good industry practice and that a prudent supplier would hold in connection with the Goods or Services to be delivered under the Purchase Order, including appropriate:
    - (i) Public and Products Liability insurance to a value of \$10,000,000 in respect of any one occurrence and unlimited as to the number of occurrences;
    - (ii) if the performance of the Contract involves the performance of professional services Professional Indemnity Insurance to a value of \$5,000,000 in respect of any one claim; and
    - (iii) Workers Compensation Insurance as required by Law, including cover for common law liability for an amount not less than \$50,000,000 for any one event and an extension to indemnify CEWA as principal for claims and liability under section 175(2) of the Workers Compensation and Injury Management Act 2023 (WA); and
    - (iv) any other insurance specified in the Purchase Order.
- 10.2 **(Records)** The Supplier shall maintain proper records relating to the supply of the Goods or Services for 7 years after the later of expiry or

termination of the Agreement and must provide CEWA access to such records and all reasonable assistance for any purpose associated with the Agreement.

**11. Confidential Information**

- 11.1 Each party must keep confidential any Confidential Information of the other party and only use the Confidential Information to the extent necessary to provide the Goods or Services under the Purchase Order, except:
- (a) where the Confidential Information is in the public domain;
  - (b) with the prior written consent of the other party;
  - (c) on a need-to-know basis to the other parties officers, agents, professional advisors, auditors, employees, contractors, subcontractors and insurers; or
  - (d) Where a party is compelled to disclose the Confidential Information by Law, provided that a written notice of the Confidential Information to be disclosed is provided to the other party.
- 11.2 Each party may only use the Confidential Information of the other party for the purpose for which it was disclosed and in connection with the supply of the Goods and Services under the Purchase Order.
- 11.3 If requested by CEWA, the Supplier shall arrange for the Contractor Personnel involved in the supply of the Goods and Services under the Purchase Order to execute a confidentiality undertaking in a form acceptable to CEWA.
- 12. Intellectual Property**
- 12.1 The Supplier grants (and must ensure that any other owner of any Intellectual Property Rights grants) to CEWA an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide, and transferrable (including sub-licensable) licence to exercise all the Intellectual Property Rights in the Goods or Services to ensure CEWA receives the full benefit of the Goods or Services. The Supplier warrants that it is entitled to grant this licence and indemnifies CEWA from any loss resulting from any non-compliance or breach of Intellectual Property Rights in connection with the provision of Goods and Services under the Purchase Order.
- 12.2 Nothing in this Agreement shall change the ownership of any pre-existing Intellectual Property.
- 12.3 CEWA grants to the Supplier a non-exclusive, non-transferrable royalty free license to use any CEWA pre-existing Intellectual Property only to the extent required to supply the Goods and Services under the Purchase Order.
- 12.4 The ownership of any Intellectual Property created in the supply of the Goods and Services under the Purchase Order and any associated Deliverables shall vest with CEWA free of all encumbrances and third-party rights.
- 12.5 The Supplier shall, at its own cost, do all things necessary to grant the assignment under clause

12.1, including executing any required documents or effecting any required registrations.

- 12.6 **(Moral Rights)** The Supplier shall procure for CEWA's benefit any Moral Rights Consent to enable CEWA to make full use of the Goods and Services under the Purchase Order and any associated deliverables.

### 13. Privacy

#### 13.1 The Supplier:

- (a) shall comply with the Australian Privacy Principles and all other Privacy Laws with respect to the supply of the Goods and Services under this Purchase Order to the same extent as CEWA would have been bound had the supply of the Goods and Services had been completed by CEWA;
- (b) without limiting clause 13.1(a), shall, and ensure the Supplier Personnel, comply with:
  - (i) the Australian Privacy Principles and all other applicable Privacy Laws; and
  - (ii) CEWA's privacy or related Executive Directives, procedures, or policies, as advised by CEWA from time to time.

- 13.2 Without limiting its obligations under this clause 13, if the Supplier collects or has access to Personnel Information in connection with the supply of the Goods and Services under this Purchase Order, the Supplier:

- (a) shall take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
- (b) may only disclose the Personal Information to the Supplier Personnel who need to know that information for the purposes of supplying the Goods and Services (and only to that extent) and who have undertaken in writing to comply with the obligations set out in this clause 13; and
- (c) shall not otherwise disclose (directly or indirectly) the Personal Information to any person without CEWA's prior written consent.

- 13.3 If the Supplier becomes aware that the Supplier or the Supplier Personnel (or any of their respective personnel) is using or disclosing, or has used or disclosed, Personal Information in breach of this clause 13, the Supplier shall promptly notify CEWA of the full details of the breach. CEWA's knowledge of, or response to any notice of the breach, shall not affect any other rights of CEWA under this Agreement.

### 14. Data Protection

- 14.1 The Supplier shall not (and shall ensure that the Supplier Personnel do not):

- (a) use Data held by the Supplier, or to which the Supplier has access in connection with the supply of the Goods and Services under the Purchase Order, other than for the purposes of fulfilling its obligations under this Agreement;
- (b) intend to commercially exploit the Data; or

- (c) alter Data in any way, other than in performing the Supply of the Goods and Services under the Purchase Order.

- 14.2 The Supplier shall not cause or have caused any pledge, lien, charge, mortgage, encumbrance of a third party or any other Security Interest to be placed on the Data or any database (whether electronic or otherwise) on which such Data is stored.

- 14.3 The Supplier shall maintain appropriate operational and technological processes and procedures to prevent:

- (a) Any misuse, destruction, loss, or theft of;
- (b) Any unauthorised or unlawful access to, or use, modification, disclosure or other handling of; and
- (c) Any damage to, any Data in the possession, custody or control of the Supplier.

- 14.4 Without limiting the generality of clause 14.3, the Supplier shall ensure that the operational and technological processes and procedures referred to in that clause:

- (a) are no less rigorous than those safeguards that meet generally accepted industry standards; and
- (b) comply with all applicable Laws regarding privacy and data protection.

- 14.5 The Supplier shall ensure that the Data is stored in a consistent format (and in a manner) from which specific information can be:

- (a) located quickly and accurately;
- (b) erased and able to have data portability for that Data; and
- (c) provided to CEWA in a form reasonably required by CEWA that is compatible with CEWA's system requirements and permits the records to be ordered for reports and analysed and stored.

- 14.6 Where requested by CEWA, the Supplier shall promptly provide CEWA with:

- (a) Access to the Data in the possession or control of the Supplier or its related bodies corporate or their respective personnel; or
- (b) An electronic copy of part or all of the Data, in the file format(s) and using the data structures required by CEWA.

- 14.7 In supplying the Goods and Services under the Purchase Order, the Supplier shall not store or process any Data or other Personal Information collected by the Supplier in connection with the supply of the Goods and Services in any country outside of Australia without CEWA's prior written consent.

### 15. Data Incidents

- 15.1 In the event of any loss or corruption of, or damage to, any Data, the Supplier shall (without prejudice to any other remedies that may be available to CEWA under this Agreement or otherwise) promptly:

- (a) notify CEWA;
- (b) after the incident causing the loss, corruption or other damage (Data Incident), restore or

procure the restoration of that Data to the last available backup (or other copy) of that Data; and

- (c) take all further available steps to restore or procure the restoration of the Data to its former state immediately prior to the Data incident (or, if requested by CEWA, have a third party nominated by CEWA do so at the cost of the Supplier).

15.2 The Supplier must take such steps as are necessary to ensure that it can comply with clause 15.1 in the event of a Data Incident.

15.3 To the extent that the Supplier is unable to restore any lost, corrupt, or damaged Data in accordance with clause 15.1, CEWA may recover from the Supplier any costs and expenses that CEWA reasonably incurs in taking its own action (including engaging third parties) to restore that Data.

## 16. Dispute Resolution

16.1 Neither party will commence court proceedings or action against the other party under or in connection with this Agreement (**Dispute**) (other than where urgent interlocutory relief is required) unless the party has first attempted to resolve the dispute in accordance with this clause 16.

16.2 In the event of a Dispute under this Agreement, the parties will attempt to resolve the Dispute as follows:

- (a) Either party may notify the other party in writing of the Dispute (**Dispute Notice**) and the parties must meet within 14 days, unless otherwise agreed between the parties, to discuss and attempt to resolve the Dispute;
- (b) If the Dispute remains unresolved within 21 days after the initial meeting to resolve the dispute in accordance with clause 16.2(a), the parties will refer the Dispute for mediation to be conducted by an agreed mediator independent to the parties or, failing agreement, by a person appointed by the Resolution Institute.
- (c) If the Dispute is not settled following mediation, then either party may within 28 days of the Dispute Notice, give notice (**Arbitration Notice**) to the other party referring the Dispute to a single arbitrator appointed by the parties to make a determination on the dispute in accordance with the provisions of the *Commercial Arbitration Act 2012 (WA)*.
- (d) The parties must continue to perform the obligations under this Agreement while any Dispute is being resolved in accordance with this clause 16, except where the Dispute relates to an invoice, in which case CEWA may withhold payment of the disputed portion of the invoice in accordance with clause 8 of this Agreement.

## 17. Force Majeure

17.1 Delay or failure to perform the supply of the Goods or Service under the Purchase Order does not constitute a breach of this Agreement by that party if and to the extent the delay or failure is caused

by an event of Force Majeure, provided the party claiming Force Majeure:

- (a) gives notice to the other party within 7 days of the Force Majeure event occurring providing details of the event and the anticipated likely duration and effect; and
- (b) uses its best endeavours to overcome or limit the effects of the Force Majeure event as promptly as possible and provides written notice to the other party within 7 days of the end of the Force Majeure event.

17.2 If a delay or failure to perform the supply of the Goods or Service under the Purchase Order continues for more than 90 days, CEWA may terminate this Agreement by giving 14 days written notice to the Supplier.

## 18. Conflict of Interest

18.1 The Supplier must declare any perceived or actual conflict of interest prior to providing the supply of the Goods or Service under the Purchase Order, as soon as the perceived or actual conflict of interest comes to the attention of the Supplier.

## 19. Anti-bribery and Corruption

19.1 The Supplier shall:

- (a) at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the Criminal Code Act 1995 (Cth), Foreign Corrupt Practices Act 1977 (United States) and the Bribery Act 2010 (United Kingdom);
- (b) not give, offer or promise to give, receive or agree to accept any payment, gift or other benefit or advantage which violates this clause 19;
- (c) not prepare, approve or execute any contract or document or make any record in connection with this Agreement that the Supplier knows, or ought to reasonably know, is false, inaccurate or misleading;
- (d) promptly notify CEWA of any breach of this clause, or any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement which will or may be in breach of this clause 19; and
- (e) procure and be responsible for the observance and performance of this clause 19 by all Supplier Personnel performing services or providing goods in connection with this Agreement on behalf of the Supplier or under its supervision or control.

19.2 The Supplier shall have and maintain its own policies and procedures to comply with this clause 19 including adequate procedures to ensure compliance and enforcement.

## 20. Modern Slavery

20.1 In performing the supply of the Goods and Services under the Purchase Order, the Supplier shall and shall ensure all its agents, contractors and subcontractors comply with the requirements of the *Modern Slavery Act* and take reasonable

steps to ensure that there is no Modern Slavery in its supply chains.

20.2 The Supplier represents and warrants that:

- (a) It conducts business in a manner that is consistent with the principles of the Modern Slavery Act and investigates the risk of Modern Slavery within its business operations and its supply chains;
- (b) It assesses and addresses risks regarding Modern Slavery including implementing appropriate due diligence and remediation programs and will notify CEWA as soon as possible of any actual or suspected Modern Slavery in its business operations or supply chains and the actions undertaken by the supplier to remedy such instances;
- (c) It has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 20.1 and 20.2.

20.3 The Supplier authorises and will support CEWA (or its agent) to conduct its own due diligence of the Suppliers operations or supply chains for the purpose of ensuring any risks or occurrences of Modern Slavery are identified, assessed, and addressed.

20.4 The Supplier shall:

- (a) provide CEWA (or its agent) access to all relevant documents required to complete its due diligence and authorises CEWA (or its agent) without giving any notice to access, enter and inspect any of the Suppliers operations, premises, or sites in relation to the supply of the Goods or Services under this Purchase Order, including for the purposes of interviewing workers; and
- (b) take all reasonable steps to arrange for CEWA (or its agent carrying out such due diligence) to access the records, operations, premises, and sites, and to interview workers, of suppliers with the Suppliers supply chains.

20.5 If the Supplier:

- (a) is a reporting entity as defined in the Modern Slavery Act, it shall provide CEWA a copy of its published annual statement prepared in accordance with section 16(1) of the Modern Slavery Act; or
- (b) is not a reporting entity under the Modern Slavery Act, it shall provide CEWA a statement outlining all necessary and reasonable steps it has taken to reduce the risk of Modern Slavery within its operations or supply chains.

20.6 The Supplier shall on request provide evidence to the satisfaction of CEWA of its compliance with this clause 20 and shall ensure that it includes a clause similar to this clause 20 in all contracts it enters into with its suppliers.

20.7 The Supplier shall notify CEWA as soon as it becomes aware of any actual or suspected Modern Slavery in its operations or supply chains which has a connection to the supply of the Goods or Services under this Purchase Order.

20.8 Despite any other provision of this Agreement if the Supplier refuses or fails to:

- (a) meet any of its obligations under this clause 20; and/or
- (b) immediately, once notified of such instances, cease and within a reasonable time remediate instances of Modern Slavery in its operations or supply chains to the satisfaction of CEWA,

CEWA may immediately terminate this agreement in accordance with clause 22.

**21. Audit and Records**

21.1 The Supplier shall permit CEWA and its auditors access, on reasonable notice and during business hours, to all records, books, staff premises and other facilities of the Supplier and its subcontractors in connection with any audit of the Suppliers performance under this Agreement, including for the purpose of verifying the Price and other amounts paid or payable under this Agreement.

21.2 CEWA will bear the costs of any audit conducted under clause 21.1 unless the audit reveals that the Supplier has overcharged CEWA by 5% or greater in relation to the Price under the Purchase Order, in which case the Supplier will reimburse CEWA its reasonable costs and expenses of the audit and must promptly reimburse CEWA for the amount of any overcharges.

21.3 If an audit reveals that the Supplier is not complying with its obligations under this Agreement, the Supplier shall take such actions as are necessary to promptly remedy the non-compliance to the satisfaction of CEWA.

21.4 The Supplier shall comply with any reasonable direction or instruction from CEWA as to the timing and way the supplier must remedy the non-compliance referred to in clause 21.3.

21.5 The Supplier shall retain all financial and operational records relevant to this Agreement in an auditable and accessible format and otherwise as required by Law during the Term and for a minimum period of 7 years after the expiry or termination of this Agreement.

**22. Termination**

22.1 A party may, by providing written notice to the other party, immediately terminate this Agreement if the other party breaches a material term of the Agreement and the breach is not capable of remedy or the breach is capable of remedy and is not remedied within the reasonable period specified in a notice of breach issued by the non-defaulting party.

22.2 CEWA may by written notice immediately terminate this Agreement if the Supplier suffers or, in the reasonable opinion of CEWA, is at risk of becoming subject to any form of insolvency administration or bankruptcy (except to the extent that the right is stayed under applicable law).

22.3 CEWA may at any time with at least 30 days' written notice to the Supplier terminate this Agreement without cause and at its absolute discretion.

- 22.4 Subject to receipt of a valid Tax Invoice, CEWA's sole liability under this clause 22 shall be to pay the Supplier for Goods or Services accepted before the effective date of termination.

### **23. Indemnities**

- 23.1 The Supplier indemnifies CEWA and its personnel from and against any Claim arising out of or in connection with the performance or non-performance of the Supplier's obligations this Agreement, including:
- (a) any breach of this Agreement by the Supplier;
  - (b) the death or personal injury of any person arising out of the Supplier's performance of the Agreement;
  - (c) loss of, or damage to, any property arising out of the Supplier's performance of the Agreement;
  - (d) any breach of Law by the Supplier;
  - (e) any infringement, or alleged infringement; of a third party's rights (including Intellectual Property Rights and Moral Rights); and
  - (f) any negligent or wrongful act or omission of the Supplier or the Supplier Personnel.
- 23.2 If either party becomes aware of any claim that the supply of the Goods or Services under the Purchase Order infringes the Intellectual Property Rights or Moral Rights of another person, the Supplier at its cost and following consultation with CEWA must:
- (a) modify, replace, or re-perform any part of the supply of the Goods and Services under the Purchase Order to avoid any continuing infringement in a manner acceptable to CEWA and ensuring that the modified or replaced Goods and Services complies with the requirements of this Agreement; or
  - (b) procure for CEWA the right to continue to use or possess the part of the infringing Goods or Services under the Purchase Order.

### **24. Liability**

- 24.1 Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.
- 24.2 Clause 24.1 does not apply to the Suppliers liability under the indemnities in clauses 23.1(a) to (f).
- 24.3 To the maximum extent permissible by Law, CEWA's maximum aggregate liability to the Supplier (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount payable under the Purchase Order.

### **25. Personal Property Security Act**

- 25.1 CEWA may register any Security Interest granted under this Agreement in any manner it chooses. The Supplier shall provide CEWA with any information it requires for the purposes of effecting this registration.
- 25.2 The Supplier waives its right under section 157(3) of the PPSA to receive any notice from CEWA in

relation to the registration of a Security Interest arising under this Agreement.

- 25.3 The Supplier shall take such step as reasonably requested by CEWA to ensure the enforceability and first ranking priority of any Security Interest granted to CEWA under this Agreement.
- 25.4 If the Supplier believes that a Security Interest arises under this Agreement, it must notify CEWA at least 10 days prior to the Supplier taking steps to register a Security Interest on the PPS Register.
- 25.5 Within 10 days of the expiry or termination of this Agreement, the Supplier shall (at its cost), remove from the PPS Register each Security Interest it has registered in relation to this Agreement, and shall provide CEWA with verification of the removal of the Security Interest in compliance with section 157 of the PPSA.

### **26. Key Personnel**

- 26.1 Subject to clause 26.2, the Supplier shall engage the Key Personnel to provide the Goods or Services under the Purchase Order to CEWA.
- 26.2 The Supplier must not remove or replace any Key Personnel without the prior written consent of CEWA.
- 26.3 CEWA may, at its discretion and without giving a reason, direct the Supplier to remove the Supplier Personnel (including Key Personnel) from providing the Goods or Services. The Supplier shall promptly arrange for the removal and replacement of the Supplier Personnel with personnel acceptable to CEWA of equivalent or superior qualifications, competence and experience to the Supplier Personnel being replaced.
- 26.4 Where Supplier Personnel (including Key Personnel) are removed or replaced as a requirement of either party, the Supplier shall:
- (a) not charge CEWA for any costs (including travel expenses and flight costs) in providing the replacement or removal of the Supplier Personnel; and
  - (b) repay CEWA the full costs incurred by CEWA in any induction or training for the removed Supplier Personnel; and
  - (c) ensure that the removed Supplier Personnel conduct a handover to the replacement Supplier Personnel at the cost of the Supplier.

### **27. Subcontracting**

- 27.1 The Supplier shall not subcontract the supply of the Goods or Services under the Purchase Order, in whole or in part, without the prior written approval of CEWA.
- 27.2 The Supplier will not be relieved from the performance of any obligation under this Agreement because of any subcontracting arrangement and will be liable for all acts and omissions of any subcontractor as though they were the actions of the Supplier itself.

### **28. Publicity and Promotion**

- 28.1 The Supplier shall not use CEWA's name or logo because of or in connection with this Agreement without the prior written permission of CEWA.

28.2 Publication by the Supplier of any articles, presentations and scholarly works in relation to the supply of the Goods and Services under the Purchase Order requires the prior written approval of CEWA, such approval is not to be unreasonably withheld.

## 29. General

29.1 **(Notices)** Any notice, approval, consent or other communication under this Agreement must be in writing and delivered personally, given by prepaid registered post or by electronic mail to the other party's representative (as specified in the Purchase Order) or as notified to it by the other party from time to time.

29.2 **(No Exclusivity)** This Purchase Order is not evidence of, nor does it create, an exclusive relationship between CEWA and the Supplier in respect of the supply of the Goods or Services (or any aspect of it).

29.3 **(Governing law and jurisdiction)** This Agreement is governed by the laws in the State of Western Australia, and each party submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

29.4 **(Relationship)** Nothing in this Agreement gives a party authority to bind the other party in any way. The parties agree that the Supplier is an independent contractor.

29.5 **(Variation)** A term of this Agreement can only be varied if the variation is in writing and agreed to by both parties.

29.6 **(Assignment)** The Supplier shall not assign any rights under this Agreement without CEWA's prior written consent.

29.7 **(Entire agreement)** This Agreement represents the parties' entire agreement in relation to its subject matter.

29.8 **(Survival)** Clauses 1.1, 10.2, 11, 12, , 14, 15, 21, 22.4, 23, 24, 29.3, 29.8 and 30 survive the termination or expiry of the Agreement.

## 30. Definitions

30.1 In this Agreement, unless the context otherwise requires:

**Acceptance** means when the Goods are accepted under clause 6.

**Agreement** is defined in clause 1.

**Australian Privacy Principles** means the Australian Privacy Principles contained in the *Privacy Act 1988 (Cth)*.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**CEWA** means Catholic Education Western Australia ACN 634 504 135 and its related entities

**Claim** means a claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment.

**Confidential Information** in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology,

affairs, clients, customers, employees, contractors, or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

**Data** means:

(a) all content, data, information, and other materials provided to, or generated by or on behalf of, the Supplier relating to CEWA for the purposes of providing the Goods or Services under the Purchase Order (including Personal Information) (**Raw Data**); and

(b) all content, data, information, and other materials in any format whatever generated, stored, processed, retrieved, printed or produced by or on behalf of the Supplier utilising the Raw Data,

and includes:

(c) data created by the operation of any computer language or software, regardless of where such software is operated, executed or resident; and

(d) information (including reports) produced by, or outputs from, Supplier systems or tools.

**Document** means any documentation provided to CEWA as part of the supply of the Goods and Services including but not limited to any reports, guides, specifications, operating instructions, or drawings.

**Force Majeure** means an unforeseeable event or circumstance beyond the reasonable control of a party including:

(a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;

(b) strikes, or other industrial action other than strikes or other industrial action of some or all of the the Supplier Personnel; and

(c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, or epidemic,

but excludes any act or omission of a subcontractor (except where that act or omission was caused by a Force Majeure).

**Goods** means the goods specified under the Purchase Order.

**GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Intellectual Property Rights** means patents, copyright, rights to circuit layouts, registered designs, trademarks, plant breeder's rights, database rights and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential and any application or right to apply for registration of any of those rights.

**Key Personnel** means the persons specified in the Purchase Order (or any attachment to the



Purchase Order) or as otherwise notified in writing by CEWA to the Supplier from time to time.

**Law** means any applicable statute, regulation, by-law, ordinance, policy, or subordinate legislation in force from time to time, whether State, federal or otherwise, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Modern Slavery** has the meaning given in section 4 of the *Modern Slavery Act*.

**Modern Slavery Act** means the *Modern Slavery Act 2018 (Cth)*.

**Moral Rights** means the moral rights granted under the *Copyright Act 1968 (Cth)*, including the right of attribution of authorship, and any similar rights existing under foreign laws.

**Moral Rights Consent** means a waiver of Moral Rights to the extent permitted by Law and an unconditional consent to any act or omission in relation to the supply of the Goods or Services under the Purchase Order by or on behalf of the Supplier, or any licensee or subsequent owner of copyright in the supply of the Goods and Services.

**Personal Information** has the meaning given in the *Privacy Act 1988 (Cth)*.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

**PPS Register** means the Personal Properties Securities Register established under the PPSA.

**Price** means the amounts specified in the Purchase Order.

**Privacy Laws** means all Laws relating to data security and the protection of Personal Information in force from time to time, including the *Privacy Act 1988 (Cth)*.

**Purchase Order** means an order from CEWA for supply of the Goods or Services which incorporates or refers to these terms and conditions and includes all requirements in connection with the supply of the Goods or Services communicated by CEWA to the Supplier up to the date of the order.

**Security Interest** has the meaning given in the PPSA.

**Services** means the services specified in the Purchase Order.

**Supplier** means the party specified in the Purchase Order who is responsible for supplying the Goods or Services under the Purchase Order.

**Supplier Personnel** means all officers, employees or agents of the Contractor, and all officers, employees, or agents of subcontractors, engaged in relation to the supply of the Goods or Services.

**Term** means the period specified in clause 2.

### 31. Interpretation

31.1 In this Agreement, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of this Agreement;

- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) "includes" means without limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors and permitted assigns;
  - (iii) a document includes all amendments or supplements to that document;
  - (iv) a clause, term, party, schedule or attachment to, this Agreement;
  - (v) this Agreement includes all schedules and attachments to it;
  - (vi) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (vii) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.