

### Part A: Application of Conditions

#### 1 Interpretation

- 1.1 Unless the context otherwise requires, terms defined in Part B have the same meaning in this Part A.
- 1.2 Clauses 6.2 and 6.4 of the Conditions apply to this Part A.

#### 2 Application of the Conditions

- 2.1 By registering to become a supplier of works to LTU on LTU's procurement website, You agree to perform works ordered from You by LTU from time to time, on the terms and conditions set out in the Conditions.
- 2.2 The Conditions do not apply to any works in respect of which authorised signatories of You and LTU have executed a separate written agreement, whether that agreement is entered into before or after You registered as a supplier to LTU.

#### 3 Engaging You to perform Works

- 3.1 To engage You to perform works on the terms and conditions set out in the Conditions, LTU will issue You with a PO.
- 3.2 Subject to clause 2.2, a contract for you to perform Works is formed between LTU and You when LTU issues a PO in respect of those Works, on the terms and conditions set out in the Conditions.
- 3.3 LTU is not obliged to issue You with any PO and does not represent that it will engage You to perform any quantity of Work.

#### 4 Amendment of the Conditions

- 4.1 LTU reserves the right to amend the Conditions from time to time. LTU will make amendments to the Conditions available on its procurement website and will give notice of the amendments to the contact person specified by You upon registration as a supplier to LTU on LTU's procurement website (as updated by You via LTU's procurement website from time to time). Any PO Contracts formed more than two Business Days after notice of the amendment is sent to that contact person will be on the terms of the Conditions as amended.
- 4.2 LTU may terminate this agreement with immediate effect by written notice to the contact person specified by You upon registration on LTU's procurement website (as updated by You via LTU's procurement website from time to time).
- 4.3 Any amendment of the Conditions or termination of this agreement under this clause 4 does not vary the terms of, or terminate, any PO Contracts formed prior to the amendment or termination.

#### 5 General

- 5.1 Clauses 19, 32.1(d) and 32.2 to 32.6 (inclusive) of the Conditions apply to this Part A as if references to a PO Contract are references to this Part A.

### Part B: Conditions

#### 6 Interpretation

- 6.1 In these Conditions, unless the context otherwise requires:
  - Background IP** means Intellectual Property created independently of a PO Contract
  - Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia
  - Conditions** means the terms and conditions set out in this Part B
  - Confidential Information** means all information that is by its nature confidential, is designated by LTU as confidential or You know or ought to know is confidential, but does not include information which:
    - (a) is or becomes public knowledge other than by breach of a PO Contract or unlawful means; or
    - (b) is required by law to be disclosed

**Harmful Code** means any computer code or routine that is harmful, destructive, disabling or that assists in or enables theft, alteration, denial of service, unauthorised disclosure or destruction or corruption of data, including viruses, worms, spyware, adware, keyloggers, trojans and any new types of programmed threats that may be classified, but excluding passwords, software keys, trial period software and like features that are security features or intended elements of software used to prevent unauthorised access or use

**Intellectual Property** includes copyright and all neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary, artistic fields or any other fields  
**LTU** means La Trobe University ABN 64 804 735 113

**LTU Data** means any Materials:

- (a) submitted or provided by or on behalf of LTU to You; or
  - (b) created, developed or produced by or on behalf of You under a PO Contract,
- and includes any Materials copied or derived from such Material

**LTU Policies** means any LTU statute, regulation, policy or procedure in force from time to time

**Material** includes all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, software, equipment, goods, files, computerised data or photographic, audio or audio-visual recordings

**Moral Right** means a moral right under and in accordance with the *Copyright Act 1968* (Cth), namely the rights of an author, being an individual:

- (a) to be attributed as author of his/her work
- (b) not to have his/her work falsely attributed; and
- (c) not to have his/her work subjected to derogatory treatment

**Part A** means Part A of this agreement

**Part B** means Part B of this agreement

**Personal Information** means any personal information or health information as defined in the Privacy Laws

**PO Contract** means a contract formed under clause 7 of these Conditions

**Price** means the price for the Works set out in the PO

**Privacy Laws** includes the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic), the *Privacy Act 1988* (Cth) and all other applicable privacy and data protection laws

**Purchase Order** or **PO** means the documents provided by LTU to You detailing the scope of the Work being purchased (including a notice of acceptance of bid or an official purchase order or letter) and includes any documents attached to, or incorporated by reference into, those documents (including any drawings and descriptions of, or specifications or statements of requirements for, the Works)

**Vendor Terms** means any documents provided by You to LTU setting out terms for the provision of Works (including a quotation) prior to LTU issuing a PO to You in respect of those Works, and includes any documents attached to, or incorporated by reference into, those documents, but only to the extent that those documents grant rights or benefits to LTU (including the benefit of representations or undertakings made by You) or impose obligations on

You

**Work** or **Works** means any works and deliverables You are to provide to LTU as described in the relevant PO or Vendor Terms, and any services the provision of which is incidental to the provision of such works and deliverables described in the relevant PO or Vendor Terms; and **You** or **Your** means the person that has registered to become a supplier of Works to LTU using LTU's procurement website or that person's successors and permitted assignees.

- 6.2 In this agreement and the Conditions, unless the context otherwise requires: where a word or phrase is given a particular meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings; words importing the singular include the plural and vice versa and words importing the masculine include the feminine and neuter; references to a person includes a body corporate, a natural person and any other entity; headings are for guidance only; and the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.
- 6.3 All references to any statutory enactment or law will be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction.
- 6.4 A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Conditions or any part of them.

#### **7 Terms on which Works are to be performed**

- 7.1 Upon LTU submitting a PO to You for the performance of any Works to which these Conditions apply in accordance with Part A, a PO Contract is formed on the terms described in this clause 7.
- 7.2 Each PO Contract is on the terms set out in the relevant PO, any Vendor Terms, and these Conditions.
- 7.3 If there is any inconsistency between the terms of these Conditions and the terms of a PO, the PO will prevail to the extent that it specifically amends these Conditions and otherwise these Conditions prevail to the extent of the inconsistency.
- 7.4 If there is any inconsistency between the terms of the Vendor Terms and the terms of these Conditions or of the relevant PO (including the description of the Works or the Price), the Conditions or the PO (as applicable) prevails to the extent of the inconsistency.

#### **8 Performance and completion**

- 8.1 Upon receipt of a PO You must:
- (a) perform the Works strictly in accordance with the requirements of the PO
  - (b) where possible, perform the Works outside scheduled class activities; and
  - (c) carry out any Works likely to cause noise, vibration or other disturbance in accordance with LTU's directions.
- 8.2 You must promptly commence the Works and complete the Works to LTU's reasonable satisfaction by the completion date specified in the PO, or such later date as specified by LTU. If no completion date is specified in the PO, LTU may require You to undertake the Works or any part of the Works in conformity with a reasonable time schedule issued by LTU.
- 8.3 If You fail to complete the Works by the completion date referred to in clause 8.2, You shall be liable to pay to LTU by way of liquidated and pre-ascertained damages a sum calculated in accordance with the rate stated in the PO for every day of delay until the earlier of the date that the Works are complete, or the PO Contract is terminated by LTU.
- 8.4 You must comply with written instructions given by LTU to

vary the Works at any time prior to completion of the Works. The cost of any such variation will be an amount as approved by LTU.

- 8.5 Time is of the essence for the provision of the Works pursuant to a PO Contract.
- 8.6 You are engaged to perform the Works on a non-exclusive basis. LTU may engage any other person to perform the same or similar works without restriction.

#### **9 Quality and compliance**

- 9.1 You must:
- (a) perform the Works to a high standard with all due care, skill and diligence, in accordance with the highest professional standards, and to the satisfaction of LTU
  - (b) perform the Works in accordance with all applicable laws, any requirements of relevant authorities, and any LTU Policies notified by LTU to You from time to time (including under a PO Contract)
  - (c) ensure all goods and materials forming part of the Works are new, free from any security, charge or encumbrance, free from defects in materials and workmanship, and are of acceptable quality
  - (d) ensure that the Works comply with any standards or requirements set out in the PO Contract; and
  - (e) ensure that the completed Works are fit for the purpose for which works of the same kind are commonly supplied, and for any other purpose LTU expressly or impliedly discloses to You.
- 9.2 You must use all reasonable efforts to inform Yourself of LTU's requirements for the Works, and for that purpose must consult with LTU and its staff and third parties nominated by LTU prior to and throughout the performance of the Works. You must, as soon as practicable, consult with LTU in relation to any matter which arises that may materially affect Your ability to comply with Your obligations under a PO Contract.

#### **10 Completion**

- 10.1 Upon receipt of a notice from You advising that the Works are complete, LTU may inspect and test the Works. If the Works conform with the requirements of the PO Contract, LTU will promptly confirm that the Works are complete by giving notice to You. LTU may reject any Works that do not conform with the requirements of the PO Contract. If LTU does not confirm that the Works are complete within 30 days after receipt of Your notice under this clause, those Works will be deemed to have been completed.
- 10.2 Acceptance of Works by LTU in no way constitutes a waiver or limitation of any rights or remedies that are conferred by law or are otherwise provided under the PO Contract.
- 10.3 Without limiting any other rights or remedies available to LTU, if LTU rejects any part of the Works or notifies You of any defects in the Works during the defects liability period specified in the PO (being 12 months from the completion date if no defects liability period is specified in the PO), You must comply with a requirement of LTU to, within 7 days after the rejection or notification (or such other timeframe as is reasonable) repair or replace the relevant Works so that they comply with the PO Contract, to the satisfaction of LTU. If You fail to comply with Your obligations under this clause 10.3, LTU may perform or have performed the necessary work and recover the cost from You without prejudice to any other rights or remedies LTU may have.
- 10.4 LTU may monitor the performance of the Works and You must provide LTU with information and assistance reasonably required by LTU to carry out such monitoring. If any of the Works have not been performed in accordance with the PO Contract, LTU may by notice require You to take all necessary steps to ensure that the Works comply with the PO Contract at no additional cost to LTU.
- 10.5 If You fail to take any required steps within 14 days after

notification by LTU under clause 10.4, LTU may perform or have performed the necessary work and recover the cost from You without prejudice to any other rights or remedies LTU may have.

### 11 Passing of risk

- 11.1 Risk of loss of or damage to, the Works passes to LTU on acceptance of those Works.

### 12 Inclusive price

- 12.1 Unless otherwise specified in the PO, the Price includes all:
- (a) amounts payable for the use (whether in the course of the performance or enjoyment of the Works) of any Intellectual Property; and
  - (b) costs, fees and charges for the performance of the Works, including all ancillary work and services relating to the Works.
- 12.2 Despite any other provision in a PO Contract, if a party (**Supplier**) makes a supply under or in connection with the PO Contract on which GST is imposed (not being a supply the consideration for which is specifically described in the PO Contract as GST inclusive), the consideration payable or to be provided for that supply under the PO Contract but for the application of this clause (**GST exclusive consideration**) is increased by an amount equal to the GST payable by the Supplier on that supply. The amount by which the GST exclusive consideration is increased must be paid to the Supplier by the recipient of the supply without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to the recipient of the supply receiving a valid tax invoice for the supply at or before the time of payment. Notwithstanding the foregoing, the recipient of the supply may be required to withhold from any payment it is to make to the Supplier such amount required by the *Taxation Administration Act 1953* (Cth) unless the Supplier has, on or before the time payment is due, provided the recipient with an invoice quoting the Supplier's correct ABN.
- 12.3 If a payment to You or LTU under a PO Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- 12.4 Words or expressions used in clauses 12 and 13 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses 12 and 13.

### 13 Payment

- 13.1 Subject to the satisfactory performance of the PO Contract by You and receipt of a correctly rendered invoice, LTU undertakes to pay the Price within 30 days from the end of the month in which that invoice is dated, unless otherwise agreed to in accordance with the terms of payment specified in the PO Contract.
- 13.2 A tax invoice will be correctly rendered if it:
- (a) contains Your name, address for payment and ABN
  - (b) contains pre-GST amounts, the amount of GST applied, any discount applicable and the total amount payable by LTU
  - (c) contains the purchase order number or other reference number provided by LTU
  - (d) contains an itemised list of the Works performed and, if applicable, the price of each item
  - (e) contains itemised details of any other fees and expenses properly payable by LTU
  - (f) complies with the requirements of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)
  - (g) is accompanied by reasonable documentation

substantiating the amount claimed; and

- (h) is provided to LTU by email to [accountspayable@latrobe.edu.au](mailto:accountspayable@latrobe.edu.au) or any replacement address notified by LTU from time to time.

### 14 Conflict of interest

- 14.1 You warrant that no conflict of interest exists or is likely to arise in the performance with Your obligations under a PO Contract.
- 14.2 If a conflict of interest arises or appears likely to arise during the term of a PO Contract, You undertake to notify LTU immediately in writing and to take such steps as LTU may reasonably require to resolve or otherwise deal with the conflict. If You fail to notify LTU or are unable or unwilling to resolve or deal with the conflict as required, LTU may terminate any PO Contract in accordance with clause 27.1 of these Conditions.

### 15 Confidentiality

- 15.1 You agree not to disclose any Confidential Information to any third party without prior approval in writing from LTU. In giving written approval, LTU may impose such terms and conditions as it thinks fit.

### 16 Privacy and security

- 16.1 If You collect, receive or access any Personal Information or LTU Data in connection with the Works (together the 'Data'), You must:
- (a) comply with the Privacy Laws with respect to the Data in the same way and to the same extent as they would have applied to LTU in respect of acts and practices that concern a PO Contract as if they had been directly done or engaged in by LTU
  - (b) use the Data only for the purposes of fulfilling Your obligations under a PO Contract
  - (c) take all reasonable measures to ensure Data is protected against loss, unauthorised access, misuse, modification or disclosure
  - (d) ensure any person who has access to the Data is made aware of, and undertakes in writing, to observe the obligations in this clause
  - (e) not transfer or disclose Data outside Australia without obtaining the prior written consent of LTU, and LTU may in its discretion grant, decline or impose such conditions as it thinks fit
  - (f) within 14 days of the cessation of a PO Contract (howsoever occurring), promptly return to LTU, or at LTU's written request destroy, all Data held by You in connection with that PO Contract; where LTU requires destruction, such destruction to be confirmed by You in writing
  - (g) establish and maintain safeguards against the destruction, loss or alteration of Data in the possession, custody or control of You that:
    - (i) are no less rigorous than those safeguards employed by LTU, and in any event are no less rigorous than safeguards that meet generally accepted industry standards; and
    - (ii) comply with all applicable laws
  - (h) comply with all of LTU's statutes, regulations, policies and procedures notified to it from time to time relating to security
  - (i) prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Data or LTU's systems; and
  - (j) ensure that all Data remains and is signified as the property of LTU and must not (and must ensure that Your personnel do not):
    - (i) purport to sell, let for hire, assign rights in or otherwise dispose of any Data
    - (ii) alter Data in any way, other than to perform the

- Works in accordance with a PO Contract; or
- (iii) cause or have caused any pledge, lien, charge, mortgage, encumbrance of a third party or any other security interest to be placed on Data or any database (electronic or otherwise) in which such Data is stored.
- 16.2 You will use reasonable commercial endeavours consistent with industry best practices to detect and prevent Harmful Code from being installed, released or otherwise introduced into (or sent from) any part of LTU's environment or systems or Your systems used to perform the Works, including by:
- use of the most appropriate and up-to-date virus detection software and intrusion detection systems for preventing and detecting Harmful Code
  - implementing practices and procedures that are consistent with industry standards
  - pro-actively monitoring known threats of Harmful Code; and
  - promptly informing LTU of any actual or potential Harmful Code and the steps necessary to avoid its introduction.
- 16.3 You must ensure any property and Materials of LTU (including security-related devices and clearances) provided to You by LTU for the purposes of a PO Contract are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.
- 16.4 If You become aware of a contravention or possible contravention of this clause 16 (**Security Breach**), You must:
- notify LTU immediately and comply with all directions of LTU
  - provide all information reasonably requested by LTU in relation to the Security Breach and the effect the Security Breach has had or is likely to have
  - take all necessary remedial action to eliminate the Security Breach and prevent re-occurrence, and rectify any consequences (to the extent that they are capable of rectification)
  - if the Security Breach causes a loss of Data or other loss of operational efficiency, assist LTU to mitigate the losses and restore the efficiency or Data
  - retain evidence and logs regarding the incident to help in determining cause, damage and likely source of the Security Breach; and
  - ensure You have (and makes available) sufficient resources and technology to meet Your obligations under this clause.
- 16.5 If any Security Breach is caused by You or Your personnel or as a result of Your negligence or failure to meet Your obligations under this clause, You must perform Your obligations under this clause at Your own cost and pay any costs and expenses incurred by LTU in connection with the restoration activities contemplated by this clause.
- 16.6 LTU's knowledge of, or response to, any such notice, in whatever form, does not affect any other rights of LTU under a PO Contract.
- ### 17 Intellectual Property
- 17.1 The ownership of any Background IP shall not be altered, transferred or assigned merely by virtue of its use for the purposes of a PO Contract.
- 17.2 Upon its creation all Intellectual Property, other than Background IP, in Material created for the purpose of, or as a result of, performing Your obligations under a PO Contract (**Contract Material**) vests in LTU and You assign to LTU all such Intellectual Property (including by way of assignment of future Intellectual Property) with effect from the date of creation. You must not use, disclose, copy or reproduce such Intellectual Property except for the purposes of the PO Contract under which such Intellectual Property was created.
- 17.3 You grant LTU a perpetual, world-wide, royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, publish, adapt, modify and communicate any Background IP and Material supplied with or incorporated in the Contract Material to the extent necessary for LTU to enjoy its rights in the Contract Material, or to otherwise receive the full benefit of the Works.
- 17.4 You warrant that:
- You have the necessary rights to assign the Intellectual Property and grant the licences as provided in this clause 17
  - LTU's use of the Works or the Contract Material will not infringe the Intellectual Property rights of any person; and
  - to the best of Your knowledge, the Works and the Contract Material will not be defamatory or breach any law or confidentiality undertaking, and You agree to indemnify LTU against any loss, damage or expense which LTU incurs as a result of breach of any of these warranties.
- 17.5 If You or a person involved in the creation of any of the Material has a Moral Right to any Material, You consent, and will obtain the consent of any person in a form approved by LTU, to LTU doing or omitting to do anything that, but for this consent, would infringe those Moral Rights. This includes reproducing, publishing, performing, communicating, exhibiting, adapting, altering or using the Material with or without attribution of authorship and whether or not such acts may be prejudicial to the author's honour or reputation.
- 17.6 If LTU's use of the Works or Contract Material infringes a third party's Intellectual Property rights or Moral Rights, You must, in addition indemnifying LTU under clauses 17.4 and 17.7 and any other rights and remedies that LTU may have, promptly, at Your expense:
- use Your best efforts to secure the rights for LTU to continue to use the affected Works or Contract Material free of any claim or liability for infringement; or
  - replace or modify the affected Works or Contract Material so that the Works or Contract Material, or the use of them, does not infringe the Intellectual Property rights or Moral Rights of any other person, without any degradation of the performance or quality of the Works or Contract Material.
- 17.7 You indemnify LTU against any costs, expenses, loss, claims or damage arising out of, or as a consequence of, the infringement or alleged infringement of any Intellectual Property rights or Moral Rights by reason of the purchase, possession or use of the Works or Contract Material by LTU or any of its assignees or licensees.
- 17.8 You must deliver to LTU (or at LTU's option, destroy) all Contract Material in which Intellectual Property subsists upon request by LTU and in accordance with clause 16.1(f).
- ### 18 Publicity
- 18.1 You shall not use the name or logo of LTU in any press release, advertising or other promotional activity or refer to a PO Contract in any such promotional activity without the express written consent of LTU.
- 18.2 LTU may publish details of a PO Contract, including Your name, payments and description, in order to comply with any audit or public disclosure requirement of any government authority or policy or as otherwise required by law.
- ### 19 Your status
- 19.1 A PO Contract does not create any agency, employer-employee relationship or a partnership of any kind. You are



an independent contractor and neither You nor Your personnel are agents or employees of LTU by virtue of a PO Contract. You must not represent or hold out to any third party that You act as agent, employee or partner of LTU. You acknowledge You have sole responsibility for the payment, if any, of superannuation, workers' compensation, wages and taxes incidental to employment of Your own personnel.

**20 Personnel**

- 20.1 If the PO Contract specifies that particular personnel be involved in Your performance of the PO Contract, You must perform the PO Contract using those personnel. If any of the specified personnel are unable to perform, You must notify LTU immediately and replace those personnel with suitably qualified and experienced personnel to the reasonable satisfaction of LTU.
- 20.2 LTU may at any time request You to cease using any of Your personnel to perform the work carried out under a PO Contract. You must promptly arrange for the removal and replacement of such personnel.

**21 Compliance with laws and LTU Policies**

- 21.1 *General:* You must comply with all applicable laws in performing the Works, including but not limited to those relating to occupational health and safety, the *Equal Opportunity Act 2010* (Vic) and the *Labour Hire Licensing Act 2018* (Vic). You must obtain and maintain all licences or other approvals required for the lawful performance of the Works and where requested, provide to LTU evidence of such licences or other approvals held.
- 21.2 *Occupational Health and Safety:* You must ensure that the Works are carried out in accordance with the requirements of the *Occupational Health and Safety Act 2004* (Vic) (the "OH&S Act") and all regulations, advisory standards and codes of practice made under the OH&S Act. If You fail to do so, LTU may have those obligations performed by LTU or by others at Your cost.
- 21.3 *LTU Policies:* In performing the Works and when using LTU's premises or facilities, You must comply with LTU Policies, including but not limited to any LTU Policies relating to occupational health and safety and security, any LTU Policies notified to You from time to time, or any LTU Policies as might otherwise reasonably be inferred from the nature of the Works or the use to which the relevant premises or facilities are being put.
- 21.4 *Migration:* You warrant You have confirmed that any person involved in performing the Works who is a non-citizen of Australia has the appropriate Australian Visa to or perform the Works. You warrant that You have complied and will continue to comply with the *Migration Act 1958* (Cth) in performing the Works.
- 21.5 *Child Safety:* You must comply (and ensure Your employees, officers, volunteers, agents and subcontractors comply) with all applicable child safety laws, regulations, policies and procedures as in force from time to time, including:
- the *Child Wellbeing and Safety Act 2005* (Vic) and the *Worker Screening Act 2020* (Vic); and
  - LTU's Working with Children Policy and Child Safety and Wellbeing Policy which are available online at <https://policies.latrobe.edu.au>, and You must immediately notify LTU if You become aware of any suspected breach of this clause and agree to provide all reasonable information and assistance to LTU (at any time) to review compliance with this clause, including to investigate any suspected breach.
- 21.6 *Modern Slavery:* You shall comply (and ensure Your employees, officers, agents, contractors and subcontractors comply) with the *Modern Slavery Act 2018* (Cth) (the **Act**) and take reasonable steps to ensure that no Modern Slavery (as defined in section 4 of the Act) exists in

Your business or supply chain. You warrant You conduct Your business in a manner consistent with the principles of the Act and are not subject to any investigation, enforcement or conviction involving Modern Slavery. You must promptly notify LTU if You become aware of any actual or suspected Modern Slavery in Your supply chain, and agree to provide LTU upon request any information and assistance that may be necessary for LTU to comply with or prepare any report or statement required by the Act.

- 21.7 *Checks:* Upon request of LTU, You agree to obtain for Your employees, officers, agents and subcontractors a police check, working with children check or similar enquiry required by LTU, before You engage or deploy such personnel to perform the Works, or upon request of LTU from time to time.
- 21.8 You agree that LTU may immediately terminate or suspend a PO Contract in the event of a breach or suspected breach of this clause 21.8 by You.

**22 Access to records**

- 22.1 You must at all reasonable times give to LTU or a person authorised by LTU access to premises occupied by You where the Works are being undertaken, and any Materials relating to the Works are held by You, and must permit LTU or a person authorised by LTU to inspect the performance of the Works and any LTU Material or other Material relevant to the Works.

**23 Insurance**

- 23.1 You must effect before the commencement of the Works and maintain for the duration of the PO Contract in which those Works are performed, the following insurances with an insurer with a minimum financial strength rating of A/Stable (Standard & Poor's):
- insurance to cover loss or damage to the Works
  - professional indemnity insurance to the value of \$5 million and in the aggregate any one policy period
  - public and products liability insurance to the value of \$20 million any one occurrence and for products liability in the aggregate any one policy period; and
  - workers' compensation and employer's liability insurance covering all actual or deemed employees for Your activities and as required by law.
- 23.2 You must provide a valid certificate of currency for the insurances required under this clause 23 before commencing the Works and upon written request of LTU.

**24 Warranty**

- 24.1 You warrant that:
- the Works:
    - are fit for the purpose stated in the PO Contract, or if no purpose is stated, the purpose for which the Works would ordinarily be used and for any other purpose that LTU expressly or impliedly discloses to You
    - are free from defects (including defects in materials, workmanship and installation); and
    - are of acceptable quality, comply with all laws and conform to any legally applicable standards
  - the Works shall be carried out with all due care and skill and in accordance with the highest applicable standards, principles and practices
  - in all of Your dealings with LTU, You will act fairly and reasonably
  - if any circumstances arise whereby You claim that an issue is the responsibility of LTU or a third party, rather than You, You shall accept the onus of demonstrating the same to LTU's reasonable satisfaction
  - the Works will be carried out at the location specified in a PO Contract or, if no locations are specified for

performance of Your obligations, at those locations agreed between You and LTU

- (f) all subject matter to be supplied by You pursuant to a PO Contract shall comply with all relevant industry specifications and standards
- (g) You have the authority to enter into any PO Contract and that entry into a PO Contract does not breach any existing contractual undertaking
- (h) other than as set out in a PO Contract, LTU has not made any promises, representations or inducements to You to enter a PO Contract
- (i) You possess and will use the specific skills and experience relevant to the Works
- (j) You have had full opportunity to consult legal advisers concerning the nature and effect of any PO Contract and these Conditions, and will enter any PO Contracts voluntarily; and
- (k) You understand Your obligations to take out the insurances specified in these Conditions, and You acknowledge that LTU is relying on these warranties in entering into any PO Contract.

## 25 Indemnity

- 25.1 You must indemnify and keep indemnified LTU, its employees and agents from and against any loss, costs, expenses, demands or liability incurred by LTU in connection with a PO Contract arising from or as a consequence of the negligence, wilful misconduct or default of You, Your employees, subcontractors or agents except to the extent that the loss, cost, expense, demand or liability is caused by the negligence, wilful misconduct or default of LTU or its employees or agents.
- 25.2 Notwithstanding anything else contained in these Conditions, a party's aggregate liability to the other party under or arising from a PO Contract or in tort (including negligence) or under statute arising from acts or omissions of the first mentioned party shall not exceed the sum of \$10 million. This limitation of liability does not apply to liability for personal injury including death or for loss or destruction of, or damage to, any tangible property, or a breach of Your confidentiality and security obligations in clauses 15 and 16.

## 26 Dispute resolution

- 26.1 If a dispute occurs between the parties in connection with a PO Contract, the following dispute resolution procedure must be followed:
  - (a) the party claiming that a dispute has arisen (**Complainant**), must give written notice (**Notice**) to the representative of the other party to the dispute referred to in clause 30 (**Respondent**) specifying:
    - (i) the nature of the dispute
    - (ii) what outcome the Complainant wants; and
    - (iii) what action the Complainant considers will settle the dispute
  - (b) upon the Respondent receiving the Notice, the parties to the dispute must endeavour in good faith to resolve the dispute; and
  - (c) if the dispute is not resolved within 21 days after the Respondent receives the Notice (or within such further period as the parties may agree) then either party may refer the dispute to a mediator agreed by the parties and if the parties cannot agree about who should be the mediator within 35 days after the Respondent received the Notice (or within such further period as the parties agree), either party may ask the President or Senior Office-bearer of the Law Institute of Victoria to appoint a mediator.
- 26.2 The parties agree to attend any mediation arranged under clause 26.1 and to endeavour in good faith to settle the dispute by mediation before having recourse to arbitration

or litigation.

- 26.3 Unless otherwise agreed between the parties in writing, the parties are equally liable for the costs of the mediation. However, each party must bear its own costs associated with attending the mediation.
- 26.4 Clause 26 does not affect the right of a party to take legal proceedings under a PO Contract.

## 27 Termination for default

- 27.1 LTU may, without prejudice to any right of action or remedy which has accrued or which may accrue in favour of LTU, terminate a PO Contract immediately by notice in writing to You, if You:
  - (a) fail to perform the Works, or otherwise breach a PO Contract
  - (b) subject to any requirements in the *Corporations Act 2001* (Cth), have any winding up petition presented against You or are placed under official management, administration or provisional liquidation, or a receiver or receiver and manager or controller (as those terms are defined in the *Corporations Act 2001* (Cth)) is appointed over Your undertaking or property or any part of Your property or undertaking or, in the case of an individual, become bankrupt or insolvent or enter into any arrangement or assignment with creditors; or
  - (c) undergo a change in Your actual or beneficial ownership or control, or otherwise a change in the composition of Your governing body that has the effect of reducing Your legal or financial independence.

## 28 Termination for convenience

- 28.1 LTU may, at any time, by written notice to You, terminate a PO Contract.
- 28.2 If a PO Contract is terminated under clause 28.1, LTU is liable only for:
  - (a) payments under clause 13 for Works provided in accordance with the PO Contract before the effective date of termination; and
  - (b) reasonable costs actually incurred by You and directly attributable to the termination.
- 28.3 LTU is not liable to pay compensation under clause 28.2 for an amount which would, in addition to any other amounts paid or payable to You under the relevant PO Contract, exceed the Price.
- 28.4 You are not entitled to compensation for loss of profits (prospective or otherwise).
- 28.5 Termination of a PO Contract under clause 27 or 28 of these Conditions does not affect any accrued rights or remedies of a party.

## 29 Assignment and subcontracting

- 29.1 You must not assign or subcontract any of Your rights or obligations under a PO Contract without LTU's prior written consent (which may be granted, granted subject to conditions, or withheld in LTU's discretion).
- 29.2 If You subcontract any of Your obligations under a PO Contract, You remain responsible for the performing Your obligations under that PO Contract and will be liable to LTU for the acts and omissions of any subcontractor as if they were Your acts and omissions.

## 30 Representatives

- 30.1 Any person named in a PO Contract as a party's representative may do all things necessary to be done by a party under that PO Contract except to the extent set out in the PO Contract or notified to the other party, but is not entitled to amend or modify the terms of the PO Contract.
- 30.2 A party may alter its representative at any time by sending the other party a notice.

**31 Notices**

- 31.1 A notice, demand, consent, approval or communication under a PO Contract (**Notice**) must be in writing, in English and signed by a person duly authorised by the sender, and hand delivered or sent by prepaid post or email to the recipient's address for notices specified in the PO Contract, as varied by any Notice given by the recipient to the sender.
- 31.2 A Notice given in accordance with clause 31.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, on the second Business Day after the date of posting; or
  - (c) if sent by email, when transmission and acknowledgment of the email has been recorded on the sender's computer,
- but if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

**32 General**

- 32.1 Each PO Contract:
- (a) constitutes the entire agreement between the parties in connection with the Works contemplated by that PO Contract, provided that this clause 32 does not prevent LTU from relying on any representations made by You in relation to the Works
  - (b) may be executed electronically and in counterparts
  - (c) may only be varied by the further written agreement of the parties; and
  - (d) is governed by the laws of Victoria and under the exclusive jurisdiction of the courts of Victoria.
- 32.2 You must sign all documents and do all things necessary or desirable to give effect to a PO Contract and will ensure Your employees, agents and subcontractors do so.
- 32.3 If a party to a PO Contract consists of more than one person those persons shall be jointly and severally bound under that PO Contract.
- 32.4 Any provisions in a PO Contract or these Conditions which are held to be illegal or otherwise in conflict with any laws, statutes or regulations will be deemed to be severed from the remainder of the PO Contract or these Conditions (as applicable) and the validity of the remaining provisions will not be affected.
- 32.5 Waiver of any provision of or right under a PO Contract must be in writing signed by the party entitled to the benefit of that provision or right, and is effective only to the extent set out in the written waiver.
- 32.6 The provisions within clauses 8.3 (liquidated damages), 15 (confidentiality), 16 (privacy and security), 17 (intellectual property), 21 (compliance), 22 (access to records), 23 (insurance), 24 (warranties), 25 (indemnity), 32.1(d) (jurisdiction), 32.2-4 (general) and this clause that apply to a PO Contract survive the expiration or termination of, and continue to apply in respect of, that PO Contract.