

# School Council Agreement for the purchase of school uniforms for sale by School

[Instructions for use of this document: wherever brackets [ ] or highlighted text appear within this document, complete instruction or delete if not applicable – including these instructions]

## Between

The School Council listed in Item 1(a) of Schedule 1 (**School Council**)

and

The Supplier listed in Item 1(b) of Schedule 1 (**Supplier**)

## Background

- A. The Supplier wishes to supply the Goods to the School Council.
- B. The School Council has agreed to engage the Supplier to supply the Goods on and subject to the terms of this Agreement.

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## Agreed Terms

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this agreement, unless the context otherwise requires:

**Agreement** means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

**Applicable Entity** has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

**Child-connected work** has the meaning given to it in the Ministerial Order.

**Child Safety Laws** means any Laws that in any way relate to child safety, including the *Child Wellbeing and Safety Act 2005* (Vic).

**Code of Practice** means a code of practice as described in, and approved under, the PDP Act.

**Commencement Date** means the date set out in Item 2 of Schedule 1.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the School Council, including any information designated or treated by the School Council as confidential, in its sole and absolute discretion, which is disclosed, made available, communicated or delivered to the Supplier in connection with this Agreement, but excludes information which:

- (a) is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality;
- (b) the Supplier can demonstrate was in its possession prior to the date of this Agreement;
- (c) the Supplier can demonstrate was independently developed by the Supplier;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from another person who is not bound by a confidentiality agreement with the School Council or otherwise prohibited from disclosing the information to the Supplier; or
- (e) is disclosed pursuant to Law.

Confidential Information includes any information (regardless of its form) that is:

- (f) personal information (as that term is defined in the PDP Act) relating to students of the School or Personnel of the School and/or School Council;
- (g) business information relating to the School and/or School Council; and
- (h) copies of the information, notes or other records referred to in paragraphs (f), (g) and (h) immediately above.

**Contract Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments and some agencies, including any replacement or amended system.

**Data** means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (a) supplied by or on behalf of the School Council in connection with this Agreement (**Input Data**); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or the Goods.

**Delivery Point** means the location or address to which the Goods are to be delivered, as specified in the relevant Purchase Order (or such other location or address as may be agreed in writing).

**Department** means the Department of Education and Training in the State of Victoria.

**Expiry Date** means the date set out in Item 2 of Schedule 1, or if no date is inserted, the date when all Goods have been delivered in accordance with this Agreement and all payments required to be made under this Agreement have been made.

**Goods** means the goods (or any of them) specified in Schedule 2 (as amended from time to time in accordance with clause 3.2) and, in relation to a Purchase Order Contract, means the goods specified and quantified in the relevant Purchase Order.

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**IBAC** means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

**Information Privacy Principles** means the information privacy principles set out in the PDP Act.

**Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, trade secrets and know how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means the law in force in the State and the Commonwealth of Australia, including common law and legislation.

**Losses** has the meaning given to that term in clause 10(a).

**Ministerial Order** means Ministerial Order 1359 (as amended or replaced from time to time).

**Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

**Notice of Delay** has the meaning given to that term in clause 5.2(a)(i).

**Panel** means a panel of approved suppliers established by the Department.

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Personnel** of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

**Privacy Obligations** has the meaning given to that term in clause 15.3.

**Protective Data Security Standard** means any standard issued under Part 4 of the PDP Act.

**Purchase Order** means an order for Goods, submitted by the School Council Representative to the Supplier in accordance with clause 4.1, that is in or substantially in the form set out in Annexure A or as otherwise notified by the School Council from time to time.

**Purchase Order Contract** means the contract which arises between the School Council and the Supplier when the Supplier receives a Purchase Order.

**Purchase Price** means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered under a Purchase Order Contract.

**School** means the school which the School Council represents.

**School Council Child Safety Policies** means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to the Ministerial Order.

**School Council Representative** means the person nominated by the School Council pursuant to clause 11.1(a)(i) for the time being.

**School Staff** has the meaning given to it in of the Ministerial Order.

**Special Conditions** means the special conditions (if any) specified in Schedule 4.

**Specifications** means the specifications to which the Goods must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Schedule 2.

**State** means the Crown in right of the State of Victoria.

**Supplier Representative** means the person nominated by the Supplier pursuant to clause 11.1(a)(ii) for the time being.

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

**Tender Documentation** (where applicable) means the documentation submitted by the Supplier in response to a request for tender or request for proposal, in the form finally accepted by the School Council and more particularly described in Item 5 of Schedule 1.

**Term** means the term of this Agreement determined in accordance with clause 2.

**Time for Delivery** means the date and, where relevant, the time specified in the relevant Purchase Order (or such other date or time as may be agreed in writing or notified by the School Council pursuant to clause 5.2(d)) by or on which delivery of the Goods must be effected by the Supplier.

**Unit Price** means the price per item of each of the Goods, as stated in Schedule 3, as amended from time to time in accordance with this Agreement.

**Victorian School Term** means a Victorian school term as published on the Department's website from time to time.

## 1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Supplier, if more than one person, under this Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally);
- (h) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia; and

(vi) a party or parties is a reference to the School Council and the Supplier (as the case requires); and

(i) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

## 2. Term

### 2.1 Term

This Agreement commences on the Commencement Date and, unless terminated earlier or extended in accordance with this Agreement, ends on the Expiry Date.

### 2.2 Extension of term

(a) The School Council may elect (in its absolute and sole discretion), by notice in writing to the Supplier not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in Item 2 of Schedule 1.

(b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this clause 2.2).

## 3. Supply of Goods

### 3.1 Standing offer for the supply of Goods

The Supplier hereby makes a standing offer to supply the Goods during the Term, on and subject to the terms of this Agreement.

### 3.2 New Products

(a) If, during the Term, the School Council wishes to order from the Supplier any item that is not at that time one of the Goods (**New Product**), the School Council will notify the Supplier of that fact in writing.

(b) Within 5 Business Days of receiving a notification under clause 3.2(a), the Supplier must provide to the School Council a quote detailing the price at which the Supplier is prepared to supply the New Product to the School Council, together with any other conditions applicable to such supply. The Supplier undertakes that, in determining the Unit Price for any New Product, it will:

(i) have regard to the obligations contained in clause 11.4; and

(ii) to the extent that it is reasonably possible to do so, calculate the Unit Price on the same basis as that on which

the Unit Price of the Goods was calculated.

(c) The parties must negotiate in good faith with a view to reaching agreement as to the terms on which the requested New Product will be supplied by the Supplier under this Agreement.

(d) If the parties reach agreement pursuant to clause 3.2(c), the New Product will be deemed to form part of the Goods for the purposes of this Agreement, and the Supplier must promptly provide to the School Council updated versions of Schedule 2 and Schedule 3 containing a list of all Goods and their respective Unit Prices.

(e) If the parties are unable to reach agreement pursuant to clause 3.2(c) within a timeframe reasonably acceptable to the School Council, the New Product will not form part of the Goods for the purposes of this Agreement.

### 3.3 Inability to supply

If, at any time during the Term, the Supplier is unable or is likely to become unable, for whatever reason, to supply a particular Good, irrespective of the reason for that inability to supply, the Supplier must:

(a) immediately notify the School Council of that fact; and

(b) promptly provide to the School Council for its consideration, a substitute for the relevant item.

Any substitute or replacement item will be supplied at the same cost (or lower) as the item that it has replaced, unless otherwise agreed in writing by the School Council. If the School Council agrees to accept the substituted item in replacement for the original item that substituted item will become part of the Goods and the Supplier must promptly provide to the School Council updated versions of Schedule 2 and Schedule 3 containing a list of all Goods and their respective Unit Prices.

### 3.4 Price for the Goods

(a) The initial Unit Price for each of the Goods is set out in Schedule 3. Subject to any change in the Unit Price for any Goods resulting from the application of clause 3.2, 3.3 or 11.3, the Unit Prices are fixed for the Term.

(b) Except as expressly provided otherwise in this Agreement, the Unit Price for the Goods includes all taxes, duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty

imposed in connection with them) that may be imposed or levied in Australia or overseas in connection with this Agreement, packaging, transport, insurance, loading, unloading, storage and other costs and expenses of the Supplier, up to the point of delivery of the Goods, including unloading of the Goods at the Delivery Point.

#### 4. Request for Goods

##### 4.1 Formation of Purchase Order Contract

- (a) During the Term, the School Council Representative may request the Supplier to supply Goods to the School Council by submitting a Purchase Order to the Supplier (such order to be submitted in accordance with the requirements of clause 21 or in such other manner as may be agreed from time to time).
- (b) Any Purchase Order submitted pursuant to clause 4.1 must, as a minimum, specify the following details:
  - (i) the identity of the School Council, the School Council Representative and the order number;
  - (ii) the Supplier's details;
  - (iii) the required Goods (including the quantity of each item required);
  - (iv) the Purchase Price;
  - (v) the Time for Delivery (where the required delivery time is not otherwise specified in the Specifications); and
  - (vi) the Delivery Point.
- (c) A Purchase Order Contract will be formed, and the Purchase Order will become binding on the Supplier and the School Council upon receipt of the Purchase Order by the Supplier.
- (d) A Purchase Order Contract will consist of:
  - (i) the terms of this Agreement (other than clauses 2, 3.1, 3.2, 4.1, 11, 13.1, 24.10(a) and 24.10(b), and items 1, 2 and 5 of Schedule 1), with such consequential changes as are necessary to reflect the formation of the relevant Purchase Order Contract in such manner;
  - (ii) the Purchase Order; and
  - (iii) any other document that is expressly incorporated as part of the Purchase Order Contract.

#### 4.2 Inconsistency

Where there is any inconsistency between the provisions of this Agreement and any Purchase Order Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

### 5. Delivery and Acceptance

#### 5.1 Delivery of Goods

- (a) The Supplier must deliver the Goods to the Delivery Point at the Time for Delivery, or by such other date and time as is agreed in writing between the School Council and the Supplier. Delivery will not be taken to have occurred unless and until the delivery is acknowledged in writing by the School Council Representative.
- (b) Where the Goods can be manually unloaded at the Delivery Point in accordance with applicable Laws (including all relevant occupational health and safety codes) the Supplier must manually unload the Goods. Where the Goods are unable to be manually unloaded, general arrangements for unloading the Goods will be made between the School Council and the Supplier.

#### 5.2 Late delivery

- (a) If the Supplier is aware of any delay or possible delay in the supply of Goods in accordance with this Agreement, including any failure to deliver the Goods to the Delivery Point by the Time for Delivery, the Supplier:
  - (i) must advise the School Council immediately upon becoming aware of such delay or possible delay (**Notice of Delay**); and
  - (ii) may make an application in writing to the School Council Representative requesting an extension of time.
- (b) The Notice of Delay must set out, in reasonable detail:
  - (i) the circumstances giving rise to such (possible) delay, including the cause of the (possible) delay;
  - (ii) the likely length of such (possible) delay;
  - (iii) the steps the Supplier intends to take to overcome or minimise the (possible) delay; and
  - (iv) such other information as the School Council Representative may reasonably request.

- (c) The School Council Representative may agree to extend the date for performance of Supplier's obligations (including the Time for Delivery) if, in the reasonable opinion of the School Council Representative, the circumstances giving rise to the delay are legitimate and may warrant an extension of time.
- (d) The School Council Representative will promptly notify the Supplier in writing of any revised date for performance agreed by the School Council under clause 5.2(c).
- (e) If the Supplier fails to deliver any Goods ordered in accordance with clause 4 by the Time for Delivery, such failure will constitute a breach by the Supplier of the relevant Purchase Order Contract and the School Council may terminate the relevant Purchase Order Contract by notice in writing to the Supplier.

### 5.3 Acceptance

- (a) After delivery of any Goods, the School Council will conduct a detailed inspection of the Goods to ensure that they conform with the requirements of this Agreement (including the Specifications).
- (b) If the School Council is satisfied that the Goods conform with the requirements of this Agreement (including the Specifications), the School Council will accept the Goods by giving notice to the Supplier.
- (c) If the School Council is not satisfied that the Goods conform with the requirements of this Agreement (including the Specifications), the School Council may by written notice either:
  - (i) require the Supplier, at its cost, to rectify the Goods within 5 Business Days of the School Council's notice so that the School Council is satisfied that the Goods conform with the requirements of this Agreement (including the Specifications); or
  - (ii) reject the Goods and require the Supplier, at its cost, to collect the Goods within 5 Business Days of the School Council's notice.
- (d) The Supplier must absorb or reimburse the School Council as a debt due and payable for all costs incurred to return, rectify and redeliver the Goods not accepted by the School Council.

- (e) No act or omission of the School Council in respect of this clause 5.3 constitutes deemed acceptance of the Goods.

### 5.4 Time of the essence

Time will be of the essence in the performance of each Purchase Order Contract.

## 6. Invoicing and payment

### 6.1 Invoicing

- (a) The Supplier must submit to the School Council a Tax Invoice in respect of each Purchase Order Contract following acceptance of the Goods pursuant to clause 5.3 by the School Council or as otherwise agreed between the parties in a Purchase Order.
- (b) A Tax Invoice submitted for payment pursuant to clause 6.1(a) must be sent to the School Council Representative at the address specified in Item 3 of Schedule 1 (or such other address as specified in the Purchase Order).

### 6.2 Payment of invoice

- (a) Subject to the remainder of this clause 6.2, the School Council will pay the invoiced amount to the Supplier within 30 days of receipt of the invoice.
- (b) If the School Council receives an invoice from the Supplier outside a Victorian School Term, the School Council will pay the invoiced amount to the Supplier within 30 days of the commencement of the next Victorian School Term.
- (c) An invoice will not be paid until such time as the invoice is certified for payment by the School Council Representative. An invoice will not be certified for payment unless the School Council Representative is satisfied that it is correctly calculated with respect to the Goods that are the subject of the relevant Purchase Order Contract and the Supplier is entitled to claim payment.
- (d) If the School Council Representative disputes the invoiced amount (whether in whole or in part) the School Council must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the School Council believes is due for payment. If the School Council and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 16. If requested, the Supplier will

withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.

- (e) Payment of an invoice is not to be taken as:
- (i) evidence or an admission that the Goods have been supplied in accordance with the Specifications;
  - (ii) evidence of the value of the Goods supplied;
  - (iii) an admission that the Goods were satisfactorily supplied;
  - (iv) an admission of liability; or
  - (v) acceptance or approval of the Supplier's performance,
- but must be taken only as payment on account.

### 6.3 Fair payment

- (a) Where the value of this Agreement is less than \$3 million, the School Council will, on demand by the Supplier, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of clause 6.3(a), **overdue amount** means an amount (or part thereof) that:
  - (i) is not, or is no longer, disputed in accordance with this Agreement;
  - (ii) is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with this Agreement; and
  - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice (or, in accordance with clause 6.2(b), from the commencement of the next Victorian School Term) or the date that the amount ceased to be disputed, as the case may be.

### 7. Title in and risk to Goods

- (a) Title in the Goods will pass to the School Council upon payment for the Goods.
- (b) Risk in the Goods will pass to the School Council when the School Council accepts the Goods pursuant to clause 5.3.

## 8. Non-conforming Goods and Shortage of Goods

### 8.1 Non-conforming Goods

Without limiting any other clause of this Agreement or any other remedy that the School Council may have, if Goods supplied pursuant to this Agreement do not meet or exceed the standards required under this Agreement (including the Specifications), either upon delivery or at any time during their intended useful life (**Non-conforming Goods**), the School Council will not be required to pay for the Non-conforming Goods and the Supplier must, at the Supplier's cost, if the School Council requires it to do so, promptly remove those Non-conforming Goods from the School Council's premises, and at the election of the School Council, either:

- (a) replace the Non-conforming Goods with Goods that meet the relevant standards and Specifications and which are acceptable to the School Council; or
- (b) refund to the School Council all money paid in respect of the Non-Conforming Goods.

### 8.2 Shortage of Goods

Without limiting any other clause of this Agreement or any other remedy that the School Council may have, if there is a shortage of quantity in the Goods supplied pursuant to a Purchase Order Contract upon delivery, the School Council must notify the Supplier of this and, at the election of the School Council, the Supplier must either:

- (a) immediately deliver to the School Council, at the Supplier's cost, the quantity of Goods short under the Purchase Order Contract; or
- (b) refund to the School Council all money paid in respect of the shortage of quantity in the Goods.

## 9. Warranties

- (a) The Supplier warrants to the School Council that:
  - (i) the Supplier has the right to sell and transfer full and unencumbered title to, and property in, the Goods to the School Council;
  - (ii) it will comply with all Laws and applicable State government policies which are referred to in this Agreement or made known by the School Council to the Supplier;
  - (iii) whilst on premises owned or controlled by the School Council, the Supplier and

its Personnel will at all times comply with the School Council's lawful directions and policies of which the Supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;

- (iv) the Goods:
  - (A) (except as otherwise provided in the Specifications) are new when delivered to the School Council;
  - (B) notwithstanding any approval of an Approved Sample (as that term is defined in Schedule 4), are fit for the purpose for which the Goods would ordinarily be used;
  - (C) conform in all other respects with the requirements of this Agreement (including the Specifications);
  - (D) are free from defects (including defects in installation);
  - (E) are of merchantable quality and comply with all applicable Laws and standards; and
  - (F) have been manufactured, constructed or assembled at the location and in the facility disclosed by the Supplier in the Tender Documentation (if applicable, or as otherwise advised to the School Council) as the place of manufacture, construction or assembly of the Goods;
- (v) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the delivery of the Goods and to grant to the School Council the licences contemplated by this Agreement;
- (vi) the possession or use of any Goods will not infringe any right of any third party (including any Intellectual Property Right) or any Laws;
- (vii) all representations made by the Supplier in or in connection with the Tender Documentation (if applicable) were and remain accurate and the Supplier has and will maintain during the Term the quality assurance arrangements set out in the Specifications; and
- (viii) the Supplier will not vary the specification, design, shape, configuration or characteristics of the

Goods during the Term without first obtaining the written consent of the School Council Representative.

- (b) The Supplier must, to the extent that it is possible to do so, obtain for the School Council the benefit of any manufacturer's warranty applicable to any Goods supplied under this Agreement.

## 10. Liability

- (a) The Supplier at all times indemnifies and will continue to indemnify, hold harmless and defend, to the fullest extent permitted by law, the Department, the School Council and their respective Personnel (in this clause, each an **Indemnified Party**) against any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) (**Losses**) which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
  - (i) a breach of this Agreement by the Supplier, including any failure to deliver the Goods in accordance with this Agreement;
  - (ii) any warranty given by the Supplier under this Agreement being incorrect or misleading in any way;
  - (iii) personal injury, including sickness and death;
  - (iv) any loss or damage to property;
  - (v) loss or corruption of Data;
  - (vi) any claim by any person for loss or damage in respect of the recordkeeping requirements specified in clause 11;
  - (vii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
  - (viii) fraudulent acts or omissions of the Supplier or its Personnel;
  - (ix) any wilful misconduct or unlawful act or negligent act or omission by the Supplier or its Personnel;
  - (x) any third party claim arising out of a breach of this Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent



act or omission of the Supplier or its Personnel; or

- (xi) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party,

except to the extent that any such Loss is caused by the negligence or other wrongful act or omission of the Indemnified Party.

- (b) It is not necessary for the School Council to incur expenses or make a payment before enforcing a right of indemnity conferred by this Agreement.
- (c) The Supplier acknowledges and agrees that any indemnity under this Agreement in favour of an Indemnified Party other than the School Council is held on trust by the School Council and may be enforced or recovered by an Indemnified Party in any manner acceptable to the School Council and the Indemnified Party.
- (d) If any indemnity payment is made by the Supplier under this clause 10, the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

## 11. Contract management

### 11.1 School Council Representative and Supplier Representative

- (a) For the purposes of ensuring a productive and efficient relationship between the School Council and the Supplier under this Agreement:
  - (i) the School Council nominates the person or persons specified as such in Item 3 of Schedule 1 as its School Council Representative; and
  - (ii) the Supplier nominates the person or persons specified as such in Item 3 of Schedule 1 as its Supplier Representative.
- (b) The School Council Representative and the Supplier Representative have authority to:
  - (i) exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and

- (ii) bind his or her party in relation to any matter arising out of or in connection with this Agreement.

- (c) The Supplier must comply with all reasonable instructions given by the School Council Representative.
- (d) Either party may change its then current representative by giving written notice to the other.

### 11.2 Reports

The Supplier must provide the School Council Representative with all reports, data or other information that the School Council Representative may request to enable it to adequately assess the performance of the Supplier.

### 11.3 Price review

- (a) If the Supplier wishes to propose any change in the Unit Prices, it must, by no later than three months prior to the next anniversary of the Commencement Date, provide to the School Council Representative a detailed report substantiating any such proposed change.
- (b) The School Council and the Supplier will discuss in good faith any changes to the Unit Prices proposed in accordance with clause 11.3(a), however the School Council will be under no obligation to agree to any such proposed change. If the parties agree to a change in the Unit Prices of the Goods, such agreement must be in writing and will take effect from the next anniversary of the Commencement Date.

### 11.4 Competitive pricing

The Supplier must ensure the Unit Prices are (and will remain, for the Term) commercially competitive in terms of:

- (a) the price offered by the Supplier to other customers whose orders for goods are of a comparable volume to the orders for Goods placed by the School Council under this Agreement; and
- (b) prices, and terms and conditions, offered by other providers in the market for goods which are the same as or equivalent to the Goods.

### 11.5 Supplier to retain records

The Supplier must, during the Term and for a period of seven years after the Term keep true and particular accounts and records of:

- (a) all Goods supplied under this Agreement; and
- (b) all associated records including:
  - (i) records of purchase of Goods by the Supplier; and
  - (ii) all supporting materials used to generate and substantiate invoices submitted in respect of Goods supplied under this Agreement.

#### **11.6 Right to access and audit**

- (a) The School Council or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the Supplier relating to the supply of Goods, and of all other matters relevant to the calculation of the Unit Price and the Purchase Price. Such representatives will be entitled (at the expense of the School Council) to take copies of or extracts from any such records.
- (b) The right of access and audit granted under clause 11.6(a) may be exercised by the School Council at any time during the Term or in the seven year period following the expiry of the Term.
- (c) For the avoidance of doubt, the School Council will be solely responsible for the costs of conducting any audit under clause 11.6(a).

### **12. Intellectual Property Rights**

#### **12.1 Licence to the School Council**

The Supplier grants to (or must obtain for) the School Council a non-exclusive, perpetual, irrevocable, world-wide and royalty-free licence (including the right to sub-license) to use copy, modify, reproduce, publish, adapt, distribute, communicate and create derivative works from any Intellectual Property Rights supplied as part of or in relation to any Goods or other items supplied, to the extent necessary to allow the School Council the full use and enjoyment of those Goods or other items in accordance with this Agreement and the Supplier must, upon request by the School Council, do all things as may be necessary (including executing any documents) to give full effect to this clause.

#### **12.2 No assignment**

Nothing in this clause affects any assignment of Intellectual Property Rights in any Goods or other items supplied under this Agreement unless the parties expressly agree in writing to the contrary.

### **13. Termination**

#### **13.1 General**

Termination of this Agreement also terminates all Purchase Order Contracts entered into under this Agreement. Termination of any Purchase Order Contract will not terminate this Agreement.

#### **13.2 Termination by the School Council**

The School Council may terminate this Agreement by notice in writing to the Supplier if the Supplier:

- (a) in the opinion of the School Council, consistently fails to supply the Goods in accordance with the Specifications or otherwise in accordance with the requirements of this Agreement;
- (b) fails to remedy, to the satisfaction of the School Council, any breach of this Agreement (which, in the reasonable opinion of the School Council, is able to be remedied) within 14 days after the date on which the School Council issues the Supplier a written notice requiring the Supplier to remedy the breach;
- (c) breaches any material provision of this Agreement and, in the reasonable opinion of the School Council, such breach cannot be remedied;
- (d) or any of its Personnel are guilty of fraud, dishonesty or any other serious misconduct;
- (e) commits any act or does any thing that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Supplier into disrepute and as a consequence the School Council believes that its continued association with the Supplier will be prejudicial or otherwise detrimental to the reputation of the School Council or the State;
- (f) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
- (g) has been engaged under a Panel and the Department suspends or revokes the Supplier's membership of the Panel.

### 13.3 Termination without cause

- (a) The School Council may terminate this Agreement without cause on notice to the Supplier (such termination to take effect upon receipt of the notice or such later date as specified in the notice).
- (b) Where this Agreement is terminated by the School Council pursuant to clause 13.3(a), the School Council will pay to the Supplier:
  - (i) for the Goods provided in accordance with the Agreement up to the date of the termination; and
  - (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and the School Council has no other liability to the Supplier in relation to that termination.
- (c) When the School Council issues a notice under clause 13.3(a), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

### 13.4 Termination by the Supplier

- (a) The Supplier may terminate a Purchase Order Contract by giving at least 30 Business Days written notice to the School Council if the School Council fails to pay amounts due under this Agreement which have the following characteristics:
  - (i) are the subject of Tax Invoices complying with this Agreement;
  - (ii) are due and payable in accordance with this Agreement;
  - (iii) are not the subject of a good faith dispute;
  - (iv) are overdue for a period of at least 60 Business Days; and
  - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Supplier will have the right to terminate the Purchase Order Contract on 30 Business Days' notice after the expiration of 5 Business Days following service of the demand if the demand is not met within that 5 Business Day period.

- (b) Clause 13.4(a) constitutes the Supplier's sole and exclusive right to terminate a Purchase Order Contract or this Agreement.

### 13.5 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (b) On termination or expiration of this Agreement, the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information and, at the election of the School Council:
  - (i) delete or destroy the materials, as applicable; or
  - (ii) return the materials to the School Council in the format in which they were first provided by the School Council and, in addition, if required by the School Council, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by the School Council, at no additional cost to the School Council.

### 13.6 Survival

Clauses 1, 9, 10, 12, 13.5, 15, 20, 21 and 23 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.

### 14. Insurance

- (a) The Supplier must (and must ensure that any sub-suppliers appointed by it under clause 18) obtain and maintain for Term, the insurances specified in Item 4 of Schedule 1 with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia that is acceptable to the School Council.
- (b) Unless otherwise agreed in writing, the Supplier must provide the School Council with copies of certificates of currency of any insurance it is required to obtain to the School Council:
  - (i) on or before the Commencement Date and annually as at each anniversary of the Commencement Date;
  - (ii) renewed certificates of currency provided no less than five Business Days prior to the expiry of the certificates they replace; and

- (iii) as otherwise requested by the School Council.

## 15. Confidentiality, privacy and data protection

### 15.1 Use of Confidential Information

- (a) The Supplier must (and must ensure that its Personnel and advisers must) keep the Confidential Information confidential and secure and:
  - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement;
  - (ii) not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement;
  - (iii) ensure that Confidential Information is stored in a safe and secure manner, and protect it against unauthorised copy, use, disclosure, access and damage or destruction, at all times; and
  - (iv) comply with all applicable Laws and the School Council's policies in relation to the Confidential Information (and take all necessary precautions to prevent any unauthorised access to the School Council's Confidential Information).
- (b) All Confidential Information will remain the property of the School Council.
- (c) The Supplier acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 15 and without the need on the part of the School Council to prove any special damage.
- (d) Notwithstanding anything in this clause **Error! Reference source not found.**, the Supplier may disclose Confidential Information:
  - (i) if required by Law; or
  - (ii) to the Supplier's financial or legal advisers for the purposes of obtaining professional advice or assistance.
- (e) The Supplier must immediately notify the School Council in writing in the event of any suspected, threatened or actual unauthorised

use of disclosure of any of the Confidential Information and must include in the notice:

- (i) the content of the Confidential Information; and
  - (ii) the person to whom the Confidential Information has been (or may be) disclosed to.
- (f) If requested by the School Council, the Supplier must ensure that all of its Personnel involved in providing the Goods who may have access to the Confidential Information, execute a deed of confidentiality in a form acceptable to the School Council prior to providing the Goods under or in connection with this Agreement.
  - (g) Except as otherwise permitted by this Agreement, the Supplier agrees not to publish, advertise, promote or acknowledge activities relating to this Agreement or use any logo or trademark or any other Intellectual Property Rights of the School Council without the prior written consent of the School Council.

### 15.2 Disclosure of Supplier's information

- (a) Subject to clause 15.2(b), the School Council agrees to treat as confidential all information of or relating to the Supplier that is provided to it, whether under this Agreement or the Tender Documentation, by or on behalf of the Supplier and which is identified in writing by the Supplier as confidential.
- (b) The Supplier consents to the School Council publishing or otherwise making available information in relation to the Supplier and the provision of the Goods as may be required:
  - (i) in order to comply with the requirements of the Contract Publishing System;
  - (ii) to other Victorian Government departments and agencies or Ministers of the State of Victoria in connection with the use of the Goods;
  - (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
  - (iv) by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975 (Vic)* (**Auditor-General**) or the ombudsman

appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);

- (v) to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
- (vi) to the IBAC.

### 15.3 Privacy

- (a) The Supplier agrees to be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier in connection with this Agreement in the same way and to the same extent as the School Council would have been bound had it been directly done or engaged in by the School Council.
- (b) The Supplier must:
  - (i) assist the School Council to comply with its obligations set out in the Privacy Obligations;
  - (ii) immediately notify the School Council upon becoming aware of any suspected, threatened or actual breach of the Privacy Obligations and comply with all directions of the School Council in respect of the suspected, threatened or actual breach;
  - (iii) provide all necessary assistance and cooperation required by the School Council to respond to and resolve any complaint concerning privacy; and
  - (iv) provide access to or amend any records governed by the Privacy Obligations as directed by the School Council.
- (c) The Supplier must comply with any directions made by the Office of the Victorian Information Commissioner, the Victorian Health Complaints Commissioner or the Office of the Australian Information Commissioner relevant to this Agreement.

### 15.4 Evidence of compliance

If requested by the School Council, the Supplier must provide to the School Council within 5 Business Days, evidence of its compliance with the obligations in relation to privacy under clause 15.3.

### 15.5 Data Protection

- (a) The Supplier agrees to be bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a contravention by the School Council in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier on behalf of the School Council under or in connection with this Agreement.
- (b) The Supplier must:
  - (i) only use the Data to the extent necessary to perform its obligations under this Agreement;
  - (ii) not disclose or transfer the Data outside Victoria unless approved by the School Council in writing;
  - (iii) not do anything that would place the School Council in breach of the Privacy Obligations;
  - (iv) prohibit and prevent access by any person who does not have the appropriate level of security clearance from gaining access to the Data;
  - (v) comply with any of the School Council's or the State's policies in relation to the secure retention and destruction of Data; and
  - (vi) immediately notify the School Council if the Supplier suspects that any Data has been (or may be) lost or corrupted or that there is unauthorised access to the Data, proposing remedial action it will take and specifying the actions that will be taken to prevent recurrences.

## 16. Disputes

### 16.1 Parties to meet

If any dispute arises under or in connection with this Agreement or any Purchase Order Contract (**Dispute**) which Dispute is not able to be resolved by the School Council Representative and the Supplier Representative within 14 days, the nominated senior executive officer (or equivalent) of each of the School Council (on the one hand) and the Supplier (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

### 16.2 Mediation

If any Dispute is unable to be resolved in accordance with clause 16.1 within 14 days, the

parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines before having recourse to arbitration or litigation.

### 16.3 Litigation

If the parties fail to settle any Dispute in accordance with clause 16.2 either party may pursue its rights at Law.

### 16.4 Performance during Dispute resolution

The parties will continue to perform their respective obligations under this Agreement, and under any Purchase Order Contract, pending the resolution of a Dispute under this clause 16.

### 16.5 Interlocutory relief

Nothing in this clause 16 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such dispute.

## 17. Compliance by Supplier

The Supplier must, in performing its obligations under this Agreement, comply with all Laws and Victorian Government policies and procedures affecting or applicable to the provision of Goods by the Supplier.

## 18. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the School Council, which consent may be given or withheld by the School Council in its absolute discretion.
- (b) The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 19. Access and safety

### 19.1 Access to premises

If the Supplier requires access to the premises of the School Council in connection with the delivery of the Goods, the School Council will, subject to its usual security requirements, permit the Supplier reasonable access to the premises at such times as may be reasonably necessary to enable the Supplier to deliver the Goods.

## 19.2 Obligations

When the Supplier enters the premises of the School Council, the Supplier must (and must ensure that its Personnel will):

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance; and
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the School Council (as notified to the Supplier); and
- (d) comply with *the Occupational Health and Safety Act 2004* (Vic) and any applicable regulations made under that Act.

## 20. GST

### 20.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 20.2 Consideration is inclusive of GST

If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

### 20.3 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

### 20.4 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 20.2 to take account of the adjustment event. The Supplier must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment

must be made by the Supplier to the School Council, or by the School Council to the Supplier, as the case may be.

## 21. Notices

### 21.1 Giving a communication

A Purchase Order, notice, demand, certification, process or other communication relating to this Agreement must be in writing, and may be sent by post, courier or by electronic mail as follows:

- (a) to the School Council: to the School Council Representative, at the address which is set out in Item 3 of Schedule 1; and
- (b) to the Supplier: to the Supplier Representative, at the address which is set out in Item 3 of Schedule 1.

### 21.2 Time of delivery

A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two (seven if posted to or from a place outside Australia) Business Days after the date of posting; and
- (c) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement, and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when receipt of the message is recorded on the sender's computer.

### 21.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

## 22. Requirement for Working with Children and Police Checks

- (a) If the Supplier enters at the premises of the School Council, the Supplier must (and must ensure that all persons engaged or used by it to enter the School Council's premises, including its Personnel):
  - (i) have undertaken a satisfactory working with children check if required pursuant to the *Worker Screening Act 2020* (Vic)

or as otherwise requested by the School Council;

- (ii) have undertaken a satisfactory police records check, if requested by the School Council; and
- (iii) have met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability of persons to work with school children or within the precinct of the School as advised by the School Council.

- (b) The Supplier must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of entering the School Council's premises under this Agreement are consistent with the above obligations.

## 23. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian government schools are committed to:
  - (i) creating child safe environments;
  - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Supplier (and its Personnel) are engaged in Child-connected work.
- (c) The Supplier acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Supplier is an Applicable Entity, it warrants to the School Council that it:
  - (i) is compliant and will continue to comply with Child Safety Laws; and
  - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Supplier (or its Personnel).

- (e) The Supplier (and its Personnel) must:
- (i) if applicable (whether or not Supplier must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
  - (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Supplier with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:
- (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Supplier or its Personnel; or
  - (ii) the Supplier or any of its Personnel are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

## 24. General

### 24.1 Costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

### 24.2 Amendment

This Agreement may only be varied or replaced by a document executed by the School Council and the Supplier.

### 24.3 Waiver and exercise of rights

A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

### 24.4 Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

### 24.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### 24.6 Set off

The School Council may set off against any sum owing to the Supplier under this Agreement any amount then owing by the Supplier to the School Council.

### 24.7 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

### 24.8 Assignment of rights

The Supplier must not assign any right under this Agreement without the prior written consent of the School Council.

### 24.9 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### 24.10 Entire understanding

- (a) This Agreement is comprised of the following documents:
  - (i) the Special Conditions (if any);
  - (ii) clauses 1 to 24 (inclusive);
  - (iii) the Schedules to this Agreement;
  - (iv) the Tender Documentation (if specified or included in Item 5 of Schedule 1); and
  - (v) any other documents or representations referred to in this Agreement or incorporated by reference.
- (b) In the event and to the extent of any inconsistency between the documents listed in clause 24.10(a), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- (c) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or



done by or on behalf of another party before this Agreement was executed.

- (d) Except as otherwise provided in clause 24.10(a):
- (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - (A) affects the meaning or interpretation of this Agreement; or
    - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

#### **24.11 Electronic Execution**

- (a) Each party acknowledges and agrees to the signing of this Agreement by electronic means. The parties agree to be legally bound by the Agreement signed this way.
- (b) This Agreement constitutes an original document in an electronic formation and will have the same legal effect, validity and enforceability as a document signed with a signature affixed by hand.

#### **24.12 Publicity**

The Supplier must not make any public announcement or media release in respect of any aspect of this Agreement or the Goods without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant to this clause 24.112 the Supplier must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

#### **24.13 Relationship of parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

#### **24.14 School Council's discretion**

Unless expressed otherwise within this Agreement, any decision, discretion or opinion of the School Council under this Agreement will be at the sole and absolute discretion of the School Council.

#### **24.15 No inducements**

- (a) The Supplier will not, and will ensure that its Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of its obligations under this Agreement.
- (b) The School Council may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under clause 24.15(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

#### **24.16 Conflict of interest**

- (a) The Supplier warrants that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Agreement.
- (b) The Supplier must promptly inform the School Council of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the School Council in terms of dealing with that conflict.
- (c) The Supplier acknowledges and agrees that failure to comply with this clause 24.16 will constitute a breach of a fundamental term of this Agreement.

## Signing page

### Executed as an agreement

#### School Council

**Signed** by a duly authorised officer of the **School Council** who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the School Council which will be bound by the Agreement:

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of authorised officer (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of authorised officer

#### Supplier

**[Option 1: use this signing clause when the Supplier is a company incorporated in Australia with more than one director and is signing through directors, or a director and company secretary. Delete if not used]**

**Signed** by [**Supplier name**], ACN [**insert ACN**] in accordance with s127(1) of the *Corporations Act 2001* (Cth).

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Company Secretary/Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Company Secretary/Director  
(print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**[Option 2: use this signing clause when the Supplier is an incorporated association. Delete if not used]**

**Signed** by [**Supplier name**], Registered Association Number [**insert Number**] in accordance with the *Associations Incorporation Reform Act 2012* by its duly authorised officer who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the Supplier which will be bound by the Agreement.

\_\_\_\_\_  
Signature of Authorised person

\_\_\_\_\_  
Signature of Authorised person

\_\_\_\_\_  
Name of Authorised person (print)

\_\_\_\_\_  
Name of Authorised person (print)

\_\_\_\_\_  
Position of authority (print)

\_\_\_\_\_  
Position of authority (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

[Option 3: use this signing clause when the Supplier is a **company** incorporated in Australia with a sole director. Delete if not used]

**Signed** by [Supplier name], ACN [insert ACN]

\_\_\_\_\_  
Signature of Sole Director and Company Secretary

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of Sole Director and Company Secretary print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

[Option 4: use this signing clause when the Supplier is an **individual** signing electronically. Delete if not used]

**Signed** by [Supplier name] who consents to entering into the Agreement using an electronic signature and acknowledges that, on signing using that method, they are bound by the Agreement.

\_\_\_\_\_  
Signature of Supplier

\_\_\_\_\_  
Date

## Schedule 1 Agreement Variables

### Item 1: Parties to Agreement

#### (a) School Council

Name:	[insert full name of School Council]
ABN:	
Address:	

#### (b) Supplier

[insert details]

Name:	[insert registered name of Supplier]
ABN:	
Address:	

### Item 2: Term (Clause 2)

[insert details]

Commencement Date:	
Expiry Date:	
Further term(s):	

### Item 3: Parties' representatives (Clause 11)

#### (a) School Council Representative

[insert School Council details]

Name:	
Title:	
Telephone:	
Mobile:	
Email:	
Address:	

#### (b) Supplier Representative

[insert supplier details]

Name:	
-------	--

Title:	
Telephone:	
Mobile:	
Email:	
Address:	

#### **Item 4: Insurance (Clause 14)**

[amend as necessary]

The Supplier is required to obtain and maintain during the Term:

<b>Type of coverage</b>	<b>Amount (AUD)</b>
Public liability insurance	\$20 million [per event / in the aggregate]
Product liability insurance	\$5 million [per event / in the aggregate]

#### **Item 5: Tender Documentation (Clause 1.1)**

[insert details of tender documentation provided by the Supplier]

#### **Item 6: Commission (Special Condition 1.1)**

[insert commission rate payable by Supplier to School Council]

## **Schedule 2 Goods and Specifications**

[\[Insert or attach details of Goods and Specifications\]](#)

**Schedule 3      Unit Prices**

[\[Insert or attach details of Unit Prices\]](#)

## Schedule 4 Special Conditions

[If additional special conditions are required, insert details]

### 1. Commission

- (a) The Supplier agrees to pay the School Council a commission (**Commission**) on the value of Goods the School Council sells in each Commission Period. Commission will be payable by the Supplier at the rate specified in Item 6 of Schedule 1.
- (b) The Supplier agrees to deduct any Commission owed to the School Council for a Commission Period from the Purchase Price owing to the Supplier under the next Purchase Order Contract entered into by the parties. If this Agreement is terminated, any Commission still owing by the Supplier to the School Council for sales it has made up to the date of termination will be paid by the Supplier to the School Council as a debt due.
- (c) In this clause, **Commission Period** means the period from 1 January to 30 June in a calendar year or the period from 1 July to 31 December in a calendar year.
- (d) The School Council agrees to maintain records of its sales of Goods for each Commission Period (or part thereof). Such records must be adequate to enable the Supplier to determine the amount of Commission owed to the School Council in respect of that period (or part). The School Council further agrees to make these records available to the Supplier on reasonable notice.

### 2. Design

- (a) Before commencing the supply of Goods under this Agreement, the Supplier must provide the School Council with two complete sets of samples of each item of Goods to be supplied under this Agreement, for approval by the School Council. Each sample will be manufactured in accordance with the Specifications. If the School Council approves a sample of Goods in writing (**Approved Sample**), the School Council will retain one sample and return the other sample to the Supplier. The School Council will pay the Supplier a reasonable sum for the sample which it retains.
- (b) The Supplier must ensure that each item of Goods supplied by it pursuant to this Agreement is the same as the Approved Sample. In the event of any conflict between the Specifications and the Approved Sample, the Approved Sample will take precedence over the Specifications to the extent of the inconsistency.

### 3. Design Change

The School Council may vary the Specifications by giving the Supplier at least 18 months' notice of the variation (or such lesser period as is agreed between the parties).

### 4. Labelling

The Supplier must ensure that each item of Goods supplied by it has affixed to it:

- (a) fabric care and size labels that conform to all relevant Australian Standards; and
- (b) any other distinctive labels as required under the Specifications.

### 5. Intellectual Property

- (a) The Supplier acknowledges that:
  - (i) it acquires no right, title or interest in (or to) any Intellectual Property Rights associated with the Goods (whether owned by the School Council or a third party) by virtue of this Agreement; and
  - (ii) information concerning Specifications (including drawings, patterns and fabric specifications) which is provided to the Supplier by the School Council is Confidential Information.
- (b) The School Council agrees that it will not provide any samples made up by the Supplier to any competitor of the Supplier during the Term without the prior written approval of the Supplier.



**6. Number of Students**

- (a) To enable the Supplier to establish production schedules and to place orders with its suppliers, the School Council will, on the Commencement Date and at least 3 months prior to the end of each academic year (or within such lesser period as may be agreed between the parties), provide the Supplier with an estimate of:
- (i) the number of students likely to be attending the School during the next academic year;
  - (ii) the number of male and female students; and
  - (iii) the likely distribution of those students into form classes.
- (b) The Supplier acknowledges and agrees that:
- (i) the number of students attending the School may fluctuate from time to time;
  - (ii) the advice as to student numbers provided in accordance with this clause 6 is subject to change at any time;
  - (iii) the School Council does not guarantee the number of Students will remain stable; and
  - (iv) the School Council does not guarantee the number of students who will purchase the Goods.

**7. Sale of Second Hand Uniforms**

Notwithstanding anything else in this Agreement, the School Council may:

- (a) sell or otherwise dispose of; or
- (b) authorise or assist any person or organisation, including the School parents' club, to sell or otherwise dispose of,

second hand Goods on the school premises or at any other venue and no commission is payable in respect of such sale or disposal.

## Annexure A Form of Purchase Order

### SCHOOL COUNCIL STANDING OFFER PURCHASE ORDER FOR THE PROVISION OF GOODS

The parties acknowledge that the issuing of this Purchase Order results in the formation of a Purchase Order Contract pursuant to the Standing Offer agreement referred to below

<b>School Council</b>	
<b>Supplier</b> [Company Name]	
<b>Date</b>	
<b>School Council Identifier</b> [eg File Number]	
<b>Supplier Identifier</b> [eg File Number]	
<b>School Council Purchase Order No</b>	
<b>Particulars of standing offer</b>	Agreement for the Supply of Goods Date:

The School Council will allocate to the Purchase Order the next sequential number from its purchase order register

#### 1. Goods

#### 2. Delivery Point

#### 3. Delivery Date & Time for Delivery

#### 4. Purchase Price

#### 5. Supplier's Details

Name (and ACN if applicable):	
Address:	
Telephone:	

Email:	
Contact Person:	

**Signed** by a duly authorised officer of the **School Council** who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the School Council which will be bound by the Agreement:

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of authorised officer (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of authorised officer