

Melbourne 2006 Commonwealth Games Corporation
Standard Terms for the Provision of Goods and Services
("Standard Terms")

1 DEFINITIONS AND INTERPRETATION

"Contract" means M2006's purchase order form bearing its authorised purchase order number together with these standard terms and all documents attached to them or incorporated by reference in M2006's purchase order form.

"Contract sum" means the consideration payable by M2006 to supplier for provision of the goods and services under the contract, being:

- (a) if M2006 accepted a lump sum, the lump sum;
- (b) if M2006 accepted rates, the sum ascertained by multiplying the applicable rate in the schedule of rates and the corresponding quantities supplied in accordance with the Contract;
- (c) if M2006 accepted a lump sum and rates, the combination of (a) and (b) as varied in accordance with the Contract.

"Due date" means the dates specified in the contract for supplying the goods and performing the services, as varied by any extension or reduction of time under the contract.

"Goods" means the goods specified in the contract to be supplied by supplier.

"M2006" means Melbourne 2006 Commonwealth Games Corporation.

"Services" means all of the work to be carried out by supplier under the contract, including without limitation the services described in clause 5 and any other document included in the contract.

"Venues" means the competition, non-competition or other venues or locations to be utilised in connection with the commonwealth games and related test events, and any changes to such venues as advised by M2006 from time to time.

The contract is governed by and is to be construed in accordance with the laws of Victoria.

2 PERFORMANCE AND PAYMENT

Supplier will provide the goods and services by the due dates and in accordance with the terms of the contract and M2006 will pay supplier the contract sum subject to the terms of the contract.

3 SUPPLIER'S RESPONSIBILITY

The parties acknowledge and agree that, despite any:

- (a) information provided to Supplier by M2006;
- (b) difficulties Supplier may have in supplying the Goods or performing the Services;
- (c) increase in costs of Supplier; or
- (d) difficulties with transport, accommodation, labour relations or unanticipated conditions or changes to or at the Venue,

Supplier will bear any cost, loss, damage, liability or risk connected with those matters and remain fully responsible for performing its obligations at its cost in accordance with the contract.

4 TITLE AND RISK

Title and risk in the goods will pass as follows:

- (a) If the goods are sold, title will pass upon delivery of the Goods and inspection and acceptance by M2006 in accordance with the Contract. Risk in the Goods will pass upon successful installation of the Goods and M2006 will be responsible for any loss or damage to the Goods after then, except during any time that Supplier has care or control of the Goods. Supplier will be responsible for any loss or damage to the Goods at any time before installation or when the Goods are in Supplier's care or control.
- (b) If the Goods are provided on a sale and buy-back basis, title and risk in the Goods will pass to M2006 upon delivery, inspection and acceptance by M2006 and revert to Supplier after removal of the Goods in accordance with clause 5(h). Risk in the Goods will revert to Supplier at any time that Supplier has custody or control of the Goods. If M2006 damages or loses the Goods whilst in M2006's possession (excluding reasonable wear and tear), M2006 will at its option pay for the costs of repair or reimburse Supplier for the cost of the Goods.
- (c) If the Goods are hired, title and risk in the Goods will remain with Supplier at all times, including during any time that the Goods are in M2006's or any other party's care or control. M2006 will not be responsible for any loss or damage to the Goods at any time, regardless of the condition of the Goods, and Supplier will be responsible for any damage arising from performing the Contract, including the cost of making good.

5 SERVICES IN RELATION TO GOODS

Supplier agrees to perform the following services at M2006's request:

- (a) manufacture and test the Goods in accordance with designs and testing procedures approved by M2006;
- (b) store the Goods in a safe, weather-proof and approved location at such time or times during performance of the Contract as required by M2006;
- (c) assemble and/or package the Goods in a manner which protects the Goods from damage and complies with M2006's procedures as amended or added to from time to time (including its environmental guidelines as amended);
- (d) label the packaged Goods to clearly identify contents, quantities, applicable purchase order number, delivery locations and any other information required by M2006;
- (e) deliver the Goods to the places, at the times and in the manner required by M2006 and in accordance with M2006's master delivery schedule, which Supplier acknowledges may require one or more deliveries by Supplier at any time on a 24 hours per day, 7 days per week basis;
- (f) if applicable, install the Goods and commission them ready for use by M2006 and make good at Supplier's cost any damage to the Venues arising from delivery and installation of the Goods;
- (g) maintain, provide technical on-site or off-site support as requested by M2006, and repair or, at M2006's opinion, replace any damaged, defective or unsuitable Goods to ensure that they are fit for M2006's purposes during the period or periods of use at the Venues; and
- (h) remove and dispose of the Goods after use at the Venues and, in respect of Goods which M2006 requires for use at a subsequent event or for re-use at the same or in different locations during the same event, move and/or store the Goods and perform such other on-site and off-site Services described in this clause 5 as M2006 requires for the event and any subsequent event.

6 PERFORMANCE OF SERVICES

Supplier must, in relation to provision of the Services to M2006:

- (a) perform the Services in a professional manner to the standard required by M2006, in accordance with industry standards (unless M2006 requires otherwise) and with all due care and skill;
- (b) comply with any reasonable directions given by M2006 from time to time in respect of the nature and scope of the Services;
- (c) assume responsibility for payment of all costs (including any levies, duties or taxes) associated with the manufacture, importation, packaging, storage, transportation, delivery and until delivery is effected, insurance, of goods supplied in accordance with the Contract; not apply any Commonwealth Games-themed labels or logos to the Goods and supply the Goods and Services free of all forms of advertising, promotional material and commercial identification, including any name, logo, designation, trademark or other distinctive sign of Supplier or any third party;
- (e) ensure that each packing slip, bill of lading and invoice bears the applicable Contract purchase order number issued by M2006, the location to which the Goods are to be delivered or Services provided and (if applicable) the M2006 identification number provided by M2006;
- (f) ensure that bills of lading are marked "subject to inspection at destination", the original is mailed and marked for the attention of the Procurement Coordinator, M2006 at the point of destination and a duplicate is attached to the original invoice;
- (g) observe all applicable M2006 policies and procedures, including without limitation site procedures, security and access requirements, safety, transport, labour practices, logistics and all other procedures advised by M2006 from time to time;
- (h) act in good faith in all dealings with M2006 and any of the entities with whom M2006 deals;
- (i) ensure that employees, agents and contractors engaged to provide Services (collectively, the "Delegates") are competent and have the skills, qualifications and experience required to perform the Services to the standard required by M2006;
- (j) where directed by M2006, remove from performance of the Services any Delegate who in M2006's opinion is not suitable to provide the Services and replace such Delegate with a person acceptable to M2006;
- (k) assume responsibility for the acts or omissions of the Delegates as if they were acts or omission of Supplier and ensure that the Delegates observe the terms of the Contract and do all things necessary for Supplier to comply with the Contract; and
- (l) assume responsibility for payment of all group tax, payroll tax, goods and services tax, PAYG, prescribed payments, superannuation, workers compensation and other taxes, levies, deductions, charges, duties, penalties or withholdings arising from provision of the Goods and Services by Supplier or Delegates.
- (m) ensure that any Delegates specified in Schedule 2 of this Contract as Key Personnel ("Key Personnel") are the principal Delegates to undertake work in under this Contract;
- (n) where Key Personnel are unable to undertake the work assigned to them in respect of this Contract or do not perform the Services to the satisfaction of M2006 then Supplier must, if requested by M2006, provide replacement Delegates acceptable to M2006 as soon as possible and at no additional charge to M2006;
- (o) the costs incurred by Supplier in providing temporary or substitute personnel due to the absence of Key Personnel must be borne by the Supplier; and
- (p) supplier is not relieved of its obligations under this Contract because:
 - (i) Key Personnel are unavailable or unwilling to work under this Contract;
 - (ii) Key Personnel are replaced; or
 - (iii) of the acceptance or rejection of Key Personnel by M2006.

7 SITE DIRECTIONS AND SUSPENSION

M2006 may give site instructions in respect of Supplier's activities at a Venue and make changes at any time to the procedures, transportation or delivery instructions contained in the Contract. M2006 may direct temporary suspension of deliveries or performance of the Services. Supplier agrees to comply with M2006's site instructions and will not suspend performance unless requested by M2006 in writing.

8 VARIATIONS

Supplier agrees that it will not vary the goods or services, unless M2006 requests it to. Upon such a request, supplier will advise M2006 within 5 business days (or, during Games-time, 24 hours) of the effect of the proposed variation on the contract sum under the contract. If the parties cannot agree on the value of the variation, M2006 will determine it based on the relevant rates provided by the contract for the variation or, if there are none, reasonable rates.

9 EXTENSION OF TIME

Supplier will only be entitled to extension of time for achieving a due date if there is a delay caused by:

- (a) a variation to the Goods or Services requested by M2006; or
- (b) breach by M2006 of a provision of the Contract and Supplier notifies M2006 in writing within 7 days (or, during Games-time, 24 hours) following occurrence of the delay. Within a reasonable time after notification, M2006 will advise Supplier of any extension of time granted and, if none, the reasons for its decision. If Supplier does not comply with the requirements of this clause, it will not be entitled to an extension of time and must perform the Services and supply the Goods by the Due Dates. Despite this provision, M2006 may at any time by notice to Supplier extend the time for achieving any Due Date.

10 PAYMENT

- (a) Except as expressly provided in the Contract, Supplier will not be entitled to payment for or reimbursement of any cost, loss, expense or damage;
- (b) M2006 will pay Supplier within 30 days from the end of the month in which M2006 receives a written invoice from Supplier provided that:
 - i) the Goods and Services are supplied in accordance with the Contract;

- ii) such invoice is issued after delivery of the Goods (or, if applicable, installation) or after provision of the Services;
 - iii) delivery of the Goods, provision of the Services and the amounts invoiced are in accordance with the Contract or other written instructions issued by an authorised representative of M2006; and
 - iv) such invoice quotes the applicable Contract purchase order number issued by M2006.
- (c) Payments will be made on original invoices only and no faxes or copies will be accepted.
- (d) Payments may be made by direct deposit and Supplier will provide M2006 with full details of its bank account for this purpose.
- (e) The Contract Sum is exclusive of a goods and services tax ("GST") and the parties agree that:
- i) if Supplier is liable to pay GST in respect of supplies made to M2006, Supplier may invoice M2006 for that amount of GST;
 - ii) Supplier must ensure that each invoice complies with the form of "tax invoice" as required by the Regulations to A New Tax System (Goods and Services Tax) Act 1999; and
 - iii) if the cost of providing goods or services is reduced directly or indirectly as a result of the abolition of any taxes in accordance with the government's tax reform proposals, the sum payable for the goods or services will be commensurately reduced.
- (f) Payment of monies by M2006 to Supplier is a payment on account only, and is not evidence of the value of Goods or Services supplied, or an admission of liability, or evidence that the Goods or Services have been satisfactorily provided under the Contract.
- (g) M2006 may set-off or deduct from any monies owing to Supplier, any monies owing by Supplier to M2006 under the Contract or any other agreement with M2006.
- 11 OVERSUPPLY**
M2006 bears no responsibility for goods delivered or services provided in excess of written instructions by M2006 or otherwise not in accordance with the Contract. Deliveries in excess of those authorised by M2006 may be returned to Supplier and Supplier must pay M2006 for all packing, removing, handling, sorting and transportation expenses incurred in connection with such deliveries.
- 12 WARRANTY AND INSPECTION**
Supplier warrants that the Goods and Services:
- (a) conform to the specifications, drawings, samples or other description furnished or approved by M2006;
 - (b) will be provided in accordance with M2006's directions;
 - (c) are fit and sufficient for the purpose intended;
 - (d) are new, unless expressly stated otherwise;
 - (e) will not infringe any intellectual property rights of others;
 - (f) are of good material and workmanship;
 - (g) are free from defect or fault of any kind; and
 - (h) are free from any charge or other encumbrance.
- 13 ACCEPTANCE OR REJECTION**
- (a) All Goods will be subject to inspection upon delivery and Supplier agrees to comply at its cost with all M2006 inspection requirements. If M2006 is satisfied that the Goods and Services are substantially in accordance with the Contract, the Goods will be deemed to be accepted by M2006 upon delivery, inspection and (if applicable) installation.
 - (b) If M2006 reasonably determines that the Goods are defective in material or workmanship or otherwise fail to meet the requirements of the Contract, M2006 may at its discretion:
 - i) reject those Goods and Supplier must repay on demand all moneys paid by M2006 to Supplier for those Goods; or
 - ii) elect to accept those Goods and recover from Supplier damages suffered by reason of Supplier's failure to deliver goods or provide services in accordance with the Contract.
 - (c) Without limiting clause 13(b) Supplier will be liable for all costs, losses, expenses and damage incurred by M2006 in returning, correcting, or replacing Goods which are defective or faulty or otherwise don't meet the requirements of the Contract.
- 14 INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**
- (a) Supplier warrants that it owns copyright in all sketches, designs, reports, plans, drawings, methodologies, analysis frameworks, leading practices, specifications, other documents, models and materials prepared by or for Supplier for the performance of its obligations under the Contract or in connection with the activities of M2006 or the Commonwealth Games ("design and documentation"). Supplier will not acquire any ownership rights over any information provided to it by M2006 or M2006's representatives or advisors. When M2006 has paid all amounts owing to Supplier, in relation to the Services, Supplier assigns to M2006 all copyright (and other intellectual property rights) to all reports, written advice and other deliverables they have provided. Supplier retains all copyright and other intellectual property rights in the "design and documentation" which were owned or developed by Supplier before or independently from the Services to M2006.
 - (b) Supplier warrants that the Goods or Services provided under the contract will not infringe any patent, trade mark, copyright, industrial design, process of manufacture or other intellectual property right of any person. Supplier indemnifies M2006, the Commonwealth Games Federation ("CGF"), the Australian Commonwealth Games Association Incorporated ("ACGA") and the State of Victoria ("State") against all such loss, damage, costs or expense which result from infringement of such intellectual property.
 - (c) Supplier must, at its own expense and upon the request of M2006, investigate and deal with every claim which may be made and defend or assist in the defence of every suit of action which may be brought against M2006, the CGF, the ACGA, or the State for any infringement or alleged infringement of any patent, trade mark, copyright, industrial design, process of manufacture or other intellectual property right, by reason of the provision of the Goods and Services.
 - (d) Any Goods bearing the trade marks, logos or branding of M2006, which are returned or rejected or otherwise not accepted by M2006 must not be sold or otherwise disposed of by Supplier while still bearing the trade marks, logos or branding of M2006.
- (e) Supplier must not, without the prior written consent of M2006, represent, hold out, promote or advertise in any way that Supplier has any connection or association with M2006, the ACGA, the CGF, the State and/or the Melbourne 2006 Commonwealth Games (collectively, the "Games"), the Commonwealth Games movement or that at any time Supplier has supplied goods or services to these bodies or for such events.
 - (f) Supplier must not use the Games logo, the words "Melbourne 2006", any reference to the 2002 or 2006 Australian Commonwealth Games Teams or any other logo, mark, design, description or words which suggest a connection with M2006, the ACGA, the CGF, the State, the Games or the Commonwealth Games movements.
 - (g) Supplier acknowledges that one of M2006's key objectives is to prevent Ambush Marketing in relation to the Commonwealth Games. "Ambush Marketing" means any advertising, communications or other activity undertaken by a person which is an attempt to imply or may reasonably imply that the person is associated or affiliated with any Commonwealth Games Body, the Teams, the Commonwealth Games or any event organised by a Commonwealth Games Body in a manner that the person is not so associated or affiliated. Accordingly, the Supplier must not engage in any form of Ambush Marketing in relation to the Commonwealth Games.
 - (h) Supplier must not give any interviews or assist a media entity in relation to the writing or broadcasting of any story concerning the affairs of M2006, the ACGA, the CGF, the State or otherwise concerning the Games.
 - (i) Supplier must ensure that:
 - i) it keeps confidential all information of M2006 that it receives which it knows or ought reasonably know is confidential including the fact that Supplier has provided M2006 with the Goods or Services and has entered into the Contract;
 - ii) it does not use or disclose such confidential information to any person without M2006's prior written consent other than:
 - (a) disclosure which is required by law or by an order of a court or tribunal of competent jurisdiction; or
 - (b) disclosure to the Supplier's legal advisers for the purposes of the Supplier obtaining advice in relation to the Contract or any matter arising from this Contract; and
 - iii) the Delegates acknowledge and comply with Supplier's obligations under this clause 14.
- 15 TERMINATION**
- (a) M2006 may terminate the Contract at any time without cause by giving 10 business days written notice to Supplier.
 - (b) Without limiting clause 15(a), if Supplier fails to provide the Goods or Services in accordance with the Contract, or if Supplier or its Delegates are negligent or engage in unlawful conduct or wilful misconduct, M2006 may terminate the Contract in whole or in part by written notice, without obligation or liability to Supplier.
 - (c) Upon receiving notice of termination, Supplier will immediately cease providing the Goods or Services (as applicable) and comply with M2006's directions including without limitation, any direction to protect M2006's property in Supplier's possession, remove from any Venue any people or things of Supplier nominated by M2006, assign to M2006 the benefit of any contracts with third parties connected with the Contract, and provide M2006 with possession of equipment, materials or other things required to provide the Goods or Services.
 - (d) If M2006 terminates the Contract under clause 15(a) (but not otherwise), subject to M2006's other rights under this Contract (including the right to withhold or set-off payment and recovery of damages), M2006 will pay Supplier for Goods and Services provided prior to the date of termination which have not been paid for, an amount representing the Contract Sum reduced pro rata by the value of the Goods and Services which had not been provided by the date of termination, and M2006 will not be liable for any other cost, loss, expense or damage suffered by Supplier as a consequence of or in connection with the Contract, the Goods and Services or the termination.
 - (e) The insolvency of a party will give to the other party the right to terminate the Contract.
- 16 INDEMNITY AND INSURANCE**
- (a) Supplier indemnifies M2006, the CGF, the ACGA and the State including their respective directors, officers, employees, volunteers, agents and contractors from and against all claims, damages, fines, penalties, costs (including legal costs and expenses on a solicitor/client basis) or liability arising out of or incidental to a breach of the Contract by Supplier or any act or omission (including without limitation negligence or unlawful conduct or wilful misconduct) by Supplier or any of its officers, employees, contractors, agents or advisors relating to the provision of the Goods or Services.
 - (b) During the Contract Term and for a minimum period of 6 months after the expiration of this Contract:
 - i) the Supplier must at its own cost and risk effect and maintain, with an insurer with an A.M. Best Rating of "AX" or better; public and products liability insurance with a minimum insuring limit of \$10 million (with no deductible) for each occurrence of bodily injury or damage to property and \$10 million for each occurrence and in the aggregate for products liability; and
 - ii) the Supplier will provide M2006 with a certificate of insurance verifying placement and maintenance of public and products liability insurance, which certificate shall note the interests of M2006, the ACGA, the State of Victoria and the CGF and their respective directors, executive members, officers and Employees as principal.
 - (c) During the Contract Term, Supplier must at its own cost and risk effect and maintain, with an Insurer with an A.M. Best Rating of "AX" or better; workers compensation insurance, employers liability insurance and comprehensive motor vehicle third party liability insurance in respect of all vehicles used by the Supplier or

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- Delegate in connection with the performance of the Supplier's services;
- (d) During the Contract Term, Supplier of Services must at its own cost and risk effect and maintain, with an Insurer with an A.M. Best Rating of "AX" or better; professional indemnity insurance to cover a breach of professional duty caused by an act, error or omission of the Supplier, with a minimum insuring limit of \$5 million per claim and in the aggregate (with a deductible of not more than \$5,000, unless otherwise agreed) and otherwise on terms acceptable to M2006. It is further agreed that where the insurance is on a claims made basis, that it remains current for the duration of this Contract and that run off cover is arranged for a minimum period of 7 years after the expiration of this Contract.
- (e) In the event that Supplier fails to effect the insurances required under this clause, M2006 may do so itself (without prejudice to its other rights and remedies in respect of such breach) and may deduct the premiums reasonably incurred from any amounts payable to the Supplier by M2006.
- (f) Prior to the exercise of Supplier's rights under this Contract, and on request by M2006, Supplier must provide M2006 with a Certificate of Insurance verifying placement and maintenance of all required insurances. Supplier must ensure that the policy requires the insurer(s) to provide 30 days' written notice to M2006 of cancellation of insurance, intent not to renew or any material change in coverage, which cancellation, intent or material change will be subject to the provisions of the *Insurance Contracts Act (Cth) 1984* or other similar legislation or legislation amending or in substitution of the same.
- (g) Supplier must promptly notify M2006 of any claims made under any of the policies of insurance required to be held by Supplier under this clause 16 which materially reduce the amount of coverage available under those policies.
- 17 RISK MANAGEMENT SYSTEMS**
Supplier must:
- (a) have a risk management strategy in place utilising AS4360 as a guideline for their risk management program. In addition, each Supplier must:
- act in accordance with generally recognised best practice risk management standards in its industry;
 - maintain regular back up copies of all software and databases provided to M2006;
 - protect against the introduction of any computer virus and against effects of any such virus;
 - maintain and upgrade business continuity and disaster recovery procedures; and
- v) maintain risk register and risk treatment schedule (in line with example in AS4360).
- (b) where requested by M2006, provide details of Supplier's risk management strategy and other requirements referred to in clause 17(a) above;
- (c) ensure that the Supplier maintains and upgrades any equipment or other hardware used in the production of Goods or delivery of Services which are supplied by the Supplier to M2006; and
- (d) permit M2006 to carry out an audit of their risk management program from time to time to ensure compliance with standards required referred to in clause 17(a) above.
- 18 DISPUTES**
If any dispute or difference arises under the contract, a party will provide written notice to the other of the matters in dispute and the parties will meet for the purpose of resolving the dispute. Supplier agrees that it will continue to perform its obligations under the contract notwithstanding any dispute.
- 19 REMEDIES**
Unless stated otherwise, the individual remedies reserved in the Contract are cumulative and additional to any other or further remedies provided in law or equity. None of the provisions of the Contract may be varied, waived, discharged or released except with M2006's prior written consent. No waiver of any breach of any provision of the Contract will constitute a waiver of any other breach, or of such provision.
- 20 ENTIRE AGREEMENT**
The Contract contains the entire agreement between the parties and supersedes all prior negotiations, representations, agreements and understandings, written or oral concerning the subject matter of the Contract. Where terms and conditions offered in either the Supplier's quotation, in Supplier's acknowledgment of the Contract or the Supplier's invoice conflict with the terms and conditions of the Contract, the Contract will prevail.
- 21 ASSIGNMENT AND SUBCONTRACTING**
Unless express written consent is given by M2006, Supplier will not assign, mortgage, encumber, subcontract or charge the Contract or any interest or part of it.
- 22 COMPLIANCE WITH LAWS**
The Supplier must at all times strictly observe and comply with the legislative requirements of the Commonwealth of Australia or any State or Territory relating to the Goods and Services and the Contract.
- 23 GOVERNING LAWS**
The Contract shall be governed and interpreted in accordance with the laws in force from time to time in the State of Victoria and the parties unconditionally submit to the jurisdiction of Victorian Courts.