

Purchasing Terms & Conditions

1. Agreement

- 1.1 An **Agreement** will be formed between the Supplier and BCE on the terms of these Purchasing Terms and Conditions on the later of the following dates:
- when the Supplier accepts a Purchase Order; or
 - following receipt of a Purchase Order by the Supplier, when the Supplier provides the Deliverables set out in that Purchase Order.
- 1.2 This Agreement continues until the Deliverables are delivered or on the expiry date specified in the Purchase Order (if applicable), unless terminated earlier in accordance with this Agreement.
- 1.3 The Supplier acknowledges and agrees that this Agreement and the receipt of Deliverables is for the benefit of BCE and schools administered and managed by BCE.

2. Supply of the Deliverables

- 2.1 The Supplier must provide the Deliverables to BCE in accordance with this Agreement and at the relevant site(s), on or before the delivery date(s) (or if no delivery date(s) are specified in the Purchase Order, then at the Supplier's earliest convenience), in the volumes and in accordance with any required specifications contemplated by the Purchase Order.
- 2.2 Time is of the essence in relation to the performance of the Supplier's obligations under this Agreement, however the Supplier will not be in breach of this Agreement because of any failure or delay in the performance of the Supplier's obligations under this Agreement to the extent caused by BCE.

3. Supplier's Warranties

- 3.1 All warranties implied at law apply to the Deliverables, in addition to any express warranty, manufacturer's warranty, service guarantee or guarantee of performance. In the event of any inconsistency between any implied warranty or express warranty or guarantee, the most favourable to BCE prevails.
- 3.2 The Supplier warrants to BCE, and it is a condition of this Agreement, that:
- all Deliverables will be:
 - free and clear of any encumbrances;
 - new and conform in terms of quality, quantity, specification and description of the Deliverables provided for in this Agreement;
 - fit for their intended purpose;
 - of merchantable quality and free from Defects;
 - capable of safe and reliable operation and comply with all applicable laws, standards and warranties; and
 - supplied with any technical or other information required for the satisfactory use, maintenance, repair, installation or operation of the Deliverables;
 - the Supplier will:
 - carry out all obligations under this Agreement in a thorough, skilful and professional manner, and in accordance with all applicable laws and standards;
 - comply with all reasonable directions given by BCE in connection with the Supplier's performance of this Agreement;
 - conduct itself in an appropriate manner, behaving reasonably and respectfully;
 - not do anything in connection with this Agreement which does or may:
 - endanger the health or safety of any persons;
 - damage the reputation, viability or profitability of BCE; or
 - cause BCE to breach any applicable laws or infringe on any third party's rights;
 - the manufacture, supply and use of the Deliverables does not and will not infringe any third party Intellectual Property

Rights or any confidentiality agreement to which the Supplier is subject, and the Supplier indemnifies BCE against any third party claims suffered or incurred by BCE arising from breach of this warranty; and

- the Supplier and its Personnel will hold any licences, permits, registrations and insurances required by applicable laws or regulations to carry out their obligations under this Agreement.

4. Access to Site

- 4.1 BCE will provide the Supplier non-exclusive access to the relevant sites as is reasonably necessary for the Supplier to perform its obligations pursuant to this Agreement.
- 4.2 When on a BCE site, the Supplier must, and must ensure that its Personnel, at all times comply with BCE's reasonable directions, policies and procedures notified to the Supplier in relation to the safety, security and operational requirements for that BCE site.
- 4.3 BCE may at any time, provided it is acting reasonably, direct the removal of any of the Supplier's Personnel from any premises owned, occupied or controlled by BCE.

5. Delivery, Title and Care of Deliverables

- 5.1 Subject to clause 9 in relation to Intellectual Property Rights, all rights, title and ownership in the Deliverables passes to BCE upon the earlier of:
- delivery of the Deliverables to BCE and acceptance of the Deliverables by BCE (acting reasonably); or
 - payment for the Deliverables by BCE.
- 5.2 The Supplier is responsible for the care of the Deliverables until they are delivered to BCE. If the Deliverables are lost or damaged prior to delivery to and acceptance by BCE, then the Supplier must promptly repair or replace the Deliverables at the Supplier's cost. If the Supplier fails to rectify loss or damage to the Deliverables pursuant to this clause, then BCE may, acting reasonably, remedy the loss or damage at the Supplier's cost.
- 5.3 BCE may direct a change to the relevant site(s) and delivery date(s), where reasonable. Such a direction does not constitute a variation under this Agreement. If the Supplier considers that such a direction is not reasonable (including where the direction materially impacts the Supplier), the Supplier must promptly notify BCE in writing and the parties will work together to agree a way forward (which may include BCE withdrawing the direction or the parties varying the Agreement).

6. Inspection and Testing

- 6.1 Prior to the delivery of any Deliverables, the Supplier must conduct inspections and testing to verify that the Deliverables have no apparent Defects.
- 6.2 Following delivery of the Deliverables, BCE reserves the right to inspect and conduct testing of the Deliverables to satisfy itself that the Deliverables have no apparent Defects. Where specified in the Purchase Order or otherwise agreed between the parties, the Supplier must conduct, or assist in the conduct of, such testing.
- 6.3 If the inspection and testing under clause 6.2 demonstrates that any Deliverable has any Defects, then BCE may, on written notice to the Supplier:
- require the Supplier to modify the relevant Deliverable or supply a replacement Deliverable, so that it meets the requirements of this Agreement, in which case BCE may require further inspection and testing under clause 6.2;
 - withhold payment under this Agreement until the relevant Deliverable meets the requirements of this Agreement, in which case BCE may require further inspection and testing under clause 6.2;
 - conditionally accept the relevant Deliverable on such terms and conditions as BCE considers appropriate, including a reasonable reduction of the applicable Fees; or
 - where a Deliverable has failed inspection and testing under clause 6.2 more than two times, reject the relevant

Deliverable and terminate this Agreement, in which case BCE will be entitled to:

- (1) obtain a refund from the Supplier of any applicable Fees paid in relation to the relevant Deliverable within 30 days of the effective date of termination; and
 - (2) pursue any remedy available to BCE under this Agreement or at law.
- (e) Where BCE is satisfied after inspecting and testing that a Deliverable has no apparent Defects, BCE will promptly notify the Supplier that it accepts the relevant Deliverable. Any inspection, testing or notification by BCE does not constitute any waiver of rights, or give rise to any estoppel, if the relevant Deliverable is later found not to comply with the requirements of this Agreement.

"Statement by a Supplier" which specifies the reason that it does not quote an ABN.

7. Payment

- 7.1 Unless expressly stated otherwise, the Fees are in Australian dollars and is inclusive of all costs.
- 7.2 BCE will pay the Supplier the Fees claimed in a tax invoice submitted to BCE provided the Supplier has delivered the Deliverables in accordance with this Agreement.
- 7.3 All valid tax invoices will be paid within 30 days of the end of the month that BCE receives the Supplier's tax invoice, except where BCE disputes the invoice, in which case BCE will pay the undisputed part of an invoice within 30 days of the end of the month that BCE receives the Supplier's tax invoice. BCE will pay any disputed amounts that are subsequently found to be correctly payable within 30 days.

8. GST

- 8.1 In this clause, capitalised expressions have the same meaning as they have in the GST Law.
- 8.2 All sums expressed in, or in connection with, this Agreement are GST-exclusive sums unless expressly stated otherwise.
- 8.3 If a party makes a Taxable Supply under or in connection with this Agreement, the Recipient must pay to the Supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that Taxable Supply provided the Supplier making the Taxable Supply has given the Recipient a Tax Invoice.
- 8.4 For clarity, the GST payable under clause 7.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply which the Supplier is liable, however caused.
- 8.5 If an Adjustment Event arises in connection with a Taxable Supply made under this Agreement, the person making the Taxable Supply must give the other party an Adjustment Note in accordance with the GST Law, and within 14 calendar days after that party gives an Adjustment Note:
 - (a) the Recipient must pay the person making the Taxable Supply any increase in the GST Amount; or
 - (b) the person making the Taxable Supply must pay the Recipient any decrease in the GST Amount.
- 8.6 The Supplier warrants that, if legally required, it will be registered for GST during the term of this Agreement.
- 8.7 If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 8.8 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 8.9 If the Supplier does not have an Australian Business Number (ABN) and is not Registered or Required To Be Registered for GST, then the Supplier must provide BCE with a completed ATO form

9. Intellectual Property

- 9.1 Each party retains ownership of all Intellectual Property Rights in any Pre-Existing IP (even if incorporated into a good), and no Intellectual Property Rights are assigned or transferred to the other party by way of this Agreement.
- 9.2 BCE grants to the Supplier a non-exclusive, non-transferrable, non-sublicensable, licence to use the BCE Material for the term of this Agreement, strictly as necessary to enable the Supplier to perform its obligations under this Agreement.
- 9.3 Subject to clause 9.1 and the Supplier complying with its obligations under this Agreement, the parties agree that Intellectual Property Rights (including future Intellectual Property Rights) in all Material created by the Supplier for the purpose of providing the Deliverables (**Contract Material**) will be owned by the Supplier on creation.
- 9.4 The Supplier grants BCE a worldwide, non-exclusive, perpetual, transferable, sublicensable, royalty free licence to use, copy, modify, and exploit the Contract Material in any way BCE sees fit. BCE is not required to account to the Supplier for any revenue or returns BCE receives as a result of its use, copying, modification or exploitation of the Contract Material.
- 9.5 If the Contract Material contains Pre-Existing IP of the Supplier or third parties, this Agreement does not affect those rights but the Supplier grants and must ensure that relevant third parties grant to BCE a non-exclusive, perpetual, irrevocable, royalty-free licence to use, reproduce and adapt the Pre-Existing IP to the extent incorporated in the Contract Material.
- 9.6 The Supplier must ensure that the Contract Material, and any use of the Contract Materials as contemplated by the Agreement by BCE or anyone authorised by BCE, does not infringe the Intellectual Property Rights of any person.
- 9.7 The Supplier must not, and must ensure that its Personnel do not, use the names, trade marks, or logos of BCE except with BCE's prior written consent.

10. Confidentiality

- 10.1 The Supplier must keep confidential and not use or disclose Confidential Information of BCE, except:
 - (a) with the prior written consent of BCE; or
 - (b) if required by law, court order, or government agency.
- 10.2 The restrictions imposed by this clause 10.1 do not apply to any disclosure of information which at the time of the disclosure was in the public domain other than by a breach of the Agreement.

11. Privacy

- 11.1 To the extent the Supplier uses, stores or processes any Personal Information provided or made available to it by BCE, the Supplier:
 - (a) will use, store and process such Personal Information in accordance with the applicable Privacy Laws, even if it is an entity which is not otherwise required to comply with the Privacy Laws, and only for the purposes of this Agreement; and
 - (b) must immediately notify BCE of any actual or suspected 'eligible data breach' (as that term is defined in the Privacy Act) or any breach of the Privacy Laws affecting such Personal Information.

12. Working with Children and Safeguarding

- 12.1 This clause 12 applies where the Supplier or its Personnel:
 - (a) are required to provide the Deliverables at a location where children are present and/or directly interact with children; or
 - (b) have access to Personal Information of children in connection with the provision of the Deliverables.

Working with Children

12.2 The Supplier must ensure that the Supplier, each executive officer of the Supplier and the Supplier's Personnel involved in delivering the Deliverables hold a current Working with Children Card as required by the Working with Children Act and have not been convicted of:

- (a) a 'serious offence' as defined in the Working with Children Act; or
- (b) a 'disqualifying offence' as defined in the Working with Children Act.

12.3 The Supplier represents, warrants and must ensure that at all times during the term of this Agreement, the Supplier is not aware of any matter which may render the Supplier or any Personnel unsuitable to hold a Working with Children Card or which would render the Supplier or any Personnel unable to continue in regulated or exempted employment under the Working with Children Act.

12.4 The Supplier must:

- (a) comply with any directions, manuals, policies or procedures notified by BCE to the Supplier in relation to working with children;
- (b) ensure that it and all Personnel involving in performing its obligations under this Agreement comply with the BCE Volunteer and Other Personnel Code of Conduct and complete the Volunteer and Other Personnel Training; and
- (c) ensure that each executive officer of the Supplier has undertaken the Volunteer and Other Personnel Training and any other working with children training as notified by BCE.

12.5 The Supplier and each of its Personnel required to hold a Working with Children Card under this clause 12 or by law must ensure that they have the Working with Children Card with them at all times when they attend a BCE school site or are able to produce evidence of their Working with Children Card to BCE when they attend the site or when reasonably requested by BCE.

12.6 BCE may require the Supplier to provide to BCE an up to date National Police Certificate in regards to the Personnel who will be involved in delivering the Deliverables. The National Police Certificate(s) must be obtained at the Supplier's cost.

Safeguarding

12.7 Where required by law, subject to clause 12.10, the Supplier must effect, maintain, and comply, and ensure it and its Personnel comply, with its own safeguarding policies and procedures relating to working with children (**Safeguarding Policies and Procedures**).

12.8 The Supplier's Safeguarding Policies and Procedures must, at a minimum, address the following:

- (a) an emphasis on safeguarding in the Supplier's recruitment and screening of Personnel;
- (b) reasonable and appropriate safeguarding training for it and all Personnel; and
- (c) a code of conduct that outlines clear behavioural requirements regarding interactions between the Supplier/its Personnel and children.

12.9 Upon request by BCE, the Supplier must promptly provide information relating to its Safeguarding Policies and Procedures. Such information may include the Suppliers Working with Children Card register, training records and code of conduct.

12.10 If the Supplier does not have Safeguarding Policies and Procedures as required by law, the Supplier must notify BCE and comply, and ensure its Personnel comply, with BCE's reasonable safeguarding policies and procedures notified to the Supplier by BCE from time to time.

General

12.11 Without limiting its rights, BCE may refuse to allow the Supplier or its Personnel to enter a BCE school site and may refuse to accept the provision of the Deliverables, where the Supplier has not complied, or BCE reasonably considers that the Supplier will not comply with this clause 12 until the Supplier complies or BCE is reasonably satisfied that it will comply with clause 12.

13. Liabilities and indemnity

13.1 Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with this Agreement, for any loss or damage to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.

13.2 Subject to clause 13.5, each party's aggregate liability for any loss or damage, however caused (including by the negligence of that party), suffered by the other party in connection with this Agreement is limited to the Fees paid or payable by BCE to the Supplier under this Agreement.

13.3 A party who suffers any loss or damage in connection with this Agreement must take reasonable steps to mitigate its loss or damage. The other party will not be responsible for any loss or damage to the extent that the injured party could have avoided or reduced the amount of the loss or damage by taking reasonable steps to mitigate it.

13.4 Subject to clause 13.5, neither party is liable for any Consequential Loss suffered by the other party that is caused by a breach of this Agreement.

13.5 The limitations and exclusions of liability in clauses 13.2 and 13.4 do not apply to liability the subject of an indemnity under this Agreement.

13.6 The Supplier is liable for and indemnifies BCE and its related entities from and against all loss or damage (including reasonable legal costs), suffered or incurred by BCE and its related entities, however caused, in connection with:

- (a) any breach of clauses 9, 10, 11 or 12 by the Supplier or its Personnel;
- (b) any unlawful act or omission of the Supplier or its Personnel in connection with this Agreement;
- (c) any injury, illness, or death of any person, caused by the Supplier or its Personnel, or arising in connection with the Deliverables;
- (d) any damage to property (whether real, tangible, or intangible), caused by the Supplier or its Personnel;
- (e) any claim or allegation that the Deliverables, the exercise of the rights contemplated by clauses 9.3 and 9.4, or the provision of the Deliverables infringes the Intellectual Property Rights or other rights of any third party.

14. Insurances

14.1 The Supplier must effect and maintain the following insurances:

- (a) insurance covering the Deliverables against all physical loss or damage (including loss or damage in transit) resulting from any cause except any loss or damage caused by BCE, until the Supplier ceases to be responsible for their care;
- (b) public and products liability insurance for a sum insured of not less than \$20 million in respect of any one occurrence and unlimited in the aggregate; and
- (c) workers' compensation insurance as required by law.

15. Termination

15.1 BCE may terminate this Agreement at any time without penalty or further fees payable:

- (a) if the Supplier varies the terms of the Purchase Order (including the fees payable) without BCE's written agreement; or
- (b) if the Supplier varies the Deliverables to be provided under the Purchase Order without BCE's written agreement.

15.2 BCE may terminate this Agreement at any time by 10 days' written notice to the Supplier, in which case this Agreement terminates on the date specified in the notice. Where BCE terminates this Agreement under this clause, BCE will pay the Supplier for all Deliverables provided in accordance with this Agreement up to the effective date of termination.

15.3 BCE may terminate this Agreement immediately by written notice to the Supplier if:

- (a) the Supplier breaches its obligations under clause 12; or
 - (b) the Supplier or its Personnel use or disclose any Personal Information of BCE's Personnel, students or parents other than as permitted by and in accordance with this Agreement.
- 15.4 Either party may terminate this Agreement by written notice to the other if the other party:
- (a) breaches this agreement and does not remedy that breach within 10 days of receipt of notice requiring it to be remedied; or
 - (b) suffers an Insolvency Event.
- 15.5 Termination or expiry of the Agreement does not affect each party's accrued remedies and rights.

16. Miscellaneous

- 16.1 **Severability:** If a provision of this Agreement is illegal, void or unenforceable, that provision will be severed from this Agreement to the extent and in the manner that best gives effect to the remaining provisions.
- 16.2 **Survival:** Termination or expiry of this Agreement will not affect clauses 3, 5.1, 5.2, 9, 10, 11, 13, 16 and all other provisions which expressly or by implication from their nature are intended to survive termination of this Agreement.
- 16.3 **Governing Law:** Queensland law governs this Agreement. The parties irrevocably submit to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.
- 16.4 **Amendment and Waiver:** A provision of this Agreement or a right created under this Agreement may not be varied or waived except by agreement in writing between the parties.
- 16.5 **Entire Agreement:** This Agreement supersedes all previous agreements, proposals, representations, correspondence and discussion in connection with the Deliverables. Without limiting the generality of the foregoing, both parties agree that the Supplier's trading terms, credit terms or any other terms and conditions annexed to or otherwise incorporated into any invoice, delivery document or other document (including email) exchanged between the parties in connection with the Deliverables do not apply to the supply of Deliverables and are not legally binding on the parties.
- 16.6 **Liability of the Supplier:** Any terms and conditions seeking to limit the liability of the Supplier which may be contained in material provided by the Supplier are excluded.
- 16.7 **Order of precedence:** If another separate formal agreement has been signed by both parties, then that separate agreement will take precedence over this Agreement.
- 16.8 **No Subcontracting:** The Supplier must not subcontract the whole or part of any of its obligations under the Agreement without the prior written consent of BCE, not to be withheld unreasonably. The Supplier remains entirely responsible for the performance of its obligations under this Agreement notwithstanding any subcontracting of those obligations. BCE may require, as a condition of granting its consent to any subcontracting, that the subcontractor enter into a subcontract agreement on terms equivalent to those set out in this Agreement.

17. Definitions and Interpretation

- 17.1 In this Agreement:

Agreement has the meaning in clause 1.1.

BCE means The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane through its agency Brisbane Catholic Education (ABN 49 991 006 857) of 2A Burke Street, Woolloongabba Queensland.

BCE Material means Material provided by BCE to the Supplier in connection with this Agreement.

BCE Volunteer or other Personnel Code of Conduct means the code of conduct applicable to volunteers and other personnel as provided by BCE to the Supplier in writing from time to time.

Confidential Information of a party includes Personal Information and all information (regardless of the form or manner of disclosure) of a confidential nature, including information about its business, affairs,

finances, tenders, strategies, plans, suppliers, employees, stakeholders (including students and their families), industrial relations, systems, technology, intellectual property owned or used by a party, trade secrets, know how, and other commercially valuable information.

Consequential Loss includes loss of bargain; loss of revenues; loss of reputation; indirect loss; loss of profits; loss of actual or anticipated savings; lost opportunities, including opportunities to enter into arrangements with third parties; and loss or damage in connection with claims against BCE by third parties.

Contract Material has the meaning given in clause 9.3.

Defect means any defect, error, or omission in the Deliverables (including any part of the Deliverables) or any failure of the Deliverables to comply with the terms of this Agreement, or any scope or specification notified in writing to the Supplier by BCE prior to delivery of the relevant Deliverables.

Deliverables means the goods and/or services to be supplied under this Agreement as described in the Purchase Order.

Fees means the amount payable by BCE for the Deliverables under this Agreement as described in the Purchase Order.

GST means a tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any other act imposing a goods and services tax in Australia.

Insolvency Event means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above

Intellectual Property Rights means all intellectual property and proprietary rights (whether registrable or unregistrable), including rights in copyright, trade marks, designs, design rights, patents, patent applications, trade secrets, know-how, trade or business or company name, other proprietary right, or right of registration of those rights.

Material includes software, source code, object code, designs, test cases, documents, equipment, reports, technical information, customer lists, studies, plans, charts, drawings, calculations, tables, trade marks, logos, schedules and data stored by any means.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel of a party includes an employee, agent, officer (including executive officer), director, auditor, advisor, partner, consultant, contractor, sub-contractor of that party.

Pre-Existing IP means Material created, developed, and owned by a party prior to or independently of this Agreement (except in relation to Deliverables which the Supplier commenced performing prior to formation of this Agreement), and all improvements, modifications, or enhancements to such Material developed in the course of providing the Deliverables.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Law means:

- (a) the Privacy Act;
- (b) the Australian Privacy Principles (or APPs) contained in schedule 1 Privacy Act; and
- (c) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

Purchase Order means a document containing details of the Deliverables to be supplied by (or on behalf of) the Supplier to BCE in accordance with the terms of this Agreement.

Related Persons means, in relation to the Supplier, its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) and suppliers,

and any of the respective employees, agents, contractors or officers of the Supplier, its related bodies corporate and its suppliers.

Safeguarding Policies and Procedures has the meaning given in clause 12.7.

Supplier means the supplier specified in the Purchase Order.

Volunteer and other Personnel Training means the training provided by BCE in relation to working requirements where children are present or where a person is working directly with children.

Working with Children Act means the *Working with Children (Risk Management and Screening) Act 2000* (Qld).

Working with Children Card means a working with children card issued under the Working with Children Act.