

## **PURCHASE ORDER - TERMS AND CONDITIONS**

VenuesLive Management Services (WA) Pty Ltd provides catering services for the Venue as agent for and on behalf of The Western Australian Sports Centre Trust trading as VenuesWest (**Caterer**). The Supplier agrees to supply the Services, Products and/or Equipment (as applicable) on the terms and conditions set out herein.

### **1. Definitions and interpretation**

#### **1.1 Definitions**

In this Agreement:

**Agreement** means the terms and conditions set out herein, and any Supplier Appointment, Purchase Order or Order Amendment attached hereto.

**Ambush Marketing** means any unauthorised marketing, promotion or advertising relating to the Venue, an Event or the Event Parties, including any activity or circumstance where a party attempts to associate, market or display that party's name, logo, brand, products or services without the express written authorisation of the Caterer or Event Parties (as applicable).

**Approvals** means all approvals, authorisations, permissions, permits, consents, licences, exemptions and the like which are required to be issued by or obtained from any government, statutory, or other authority in connection with the supply of the Services, Products and/or Equipment, or the performance of the obligations by the Supplier under this Agreement.

**Business Day** means a day on which trading banks are open for business in Western Australia, except a Saturday, Sunday or public holiday.

**Caterer Agreement** means the agreement dated 27 June 2024 entitled "HBF Park Catering Services Agreement" entered into between VenuesWest and VenuesLive Management Services (WA) Pty Ltd.

**Caterer Personnel** means each of the officers, employees, agents, customers, suppliers, workers, volunteers, work experience students, advisors, contractors and consultants of the Caterer.

**Conditions of Entry** mean the conditions of entry to the Venue, as amended from time to time, which are available at <https://www.hbfpark.com.au/conditions-of-entry>, or such other website URL as advised by the Caterer.

**Confidential Information** means any information (which is not public information) in relation to the Venue and/or concerning the Caterer's business, including, but not limited to, the Caterer's work procedures, processes, employees, customers, services, affairs or businesses, handbooks, standards, technical knowledge, concepts, ideas, designs, programs, data or application systems codes and associated documents or information and whether owned by, licensed to, or otherwise in the power, possession or control of the Caterer, but excluding any information which is generally available in the public domain through no fault of the Supplier.

**CPI** means the Consumer Price Index for Perth (All Groups) as published by the Australian Bureau of Statistics.

**CPI Review Date** means 1 January in each Year of the Term.

**Delivery Address** means 310 Pier Street Perth, or the place(s) as otherwise specified in a Purchase Order or Order Amendments.

**Delivery Date** means the date for the delivery as stipulated in the Purchase Order or Order Amendment, or as otherwise mutually agreed with the Caterer

**Environmental Laws** means all Laws concerning the

environment including the *Environmental Protection Act 1986* (WA), the *Contaminated Sites Act 2003* (WA), the *Dangerous Goods Safety Act 2004* (WA) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Equipment** has the meaning as set out in a Supplier Appointment, Purchase Order or Order Amendment.

**Event** means any sporting match, concert, performance, cultural or community gathering, assembly, function, conference, exhibition, trade show, convention, meeting, seminar, banquet, private party, or other use of the Venue, which is organised by the Caterer or a Hirer (other than the Major Events).

**Event Parties** means any third party officially associated with an Event, including Hirers, Performers, Media Personnel, Sponsors, and Officials.

**Existing Materials** has the meaning as set out in clause 13.4.

**Force Majeure Event** means any event which is beyond the control of a party, including one or more, or a combination, of the following:

- (a) lightning, natural disasters, cyclones, earthquakes and tsunamis;
- (b) civil riots (other than immediately before, during or after an Event which involve attendees in connection with their attendance at the Venue), rebellions, revolutions, insurrections, military and usurped power, act of sabotage, act of public enemy and war (declared or undeclared), civil war or terrorism (or proximate threat thereof);
- (c) nuclear or biological contamination, ionising radiation or contamination by radioactivity;
- (d) epidemic or pandemic;
- (e) fire or explosion;
- (f) interruption of any Utility;
- (g) a direction from the State Entities (other than VenuesWest in its capacity as principal under the Caterer Agreement); or
- (h) a requirement of Law,, which (either separately or together) directly causes the Caterer or the Supplier to be unable to comply with all or a material part of its obligations in accordance with this Agreement, to the extent the event or its consequence was not caused or contributed to by party claiming the Force Majeure Event.

**Good Industry Practice** means in accordance with all Laws, Approvals and Quality Standards and the exercise of the degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent supplier providing services, products or equipment similar to the applicable Services, Products and/or Equipment.

**Government Agency** means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department.

**GST** means the tax payable on taxable supplies under GST Legislation.

**GST Legislation** is the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Hirer** means a third-party who has entered into a hirer agreement for the presentation or hosting of an Event at the Venue.

**Indemnified Persons** means the Caterer, Caterer Personnel, VenuesWest, and VenuesWest Personnel.

**Indirect or Consequential Loss** means any indirect or

consequential loss or damage, including loss of opportunity, profit, anticipated profit, business, business or revenue opportunities, including any failure to realise anticipated savings; penalties, including penalties payable under contracts other than this Agreement; or damage to reputation.

**Insurances** means public and products liability for not less than \$20 million, workers compensation insurance in accordance with the provisions of the *Workers Compensation and Injury Management Act 1981 (WA)*, including common law liability for an amount of at least \$50 million for any one occurrence, compulsory third party motor vehicle insurance relating to motor vehicles used in connection with the supply of the Services, Products, and/or Equipment, motor vehicle third party liability insurance covering legal liability for property loss or damage and bodily injury to or death of persons (other than compulsory third-party motor vehicle insurance) arising out of or in connection with motor vehicles used in connection with the supply of the Services, Products and/or Equipment, any other insurance required by Laws, and any other insurance required by the Caterer to be taken out by the Supplier as may be applicable to the provision of the Services, Products and/or Equipment.

**Intellectual Property Rights** means all intellectual and industrial property rights existing in Australia or throughout the world, including registered and unregistered trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts and database rights.

**Laws** means any Commonwealth, Western Australian and local government legislation, including Environmental Laws and Safety Laws, and all other statutes, ordinances, instruments, codes (but excluding any building codes or non-mandatory standards), requirements, regulations, by-laws and other subordinate legislation, common law and principles of equity.

**Liability** includes any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.

**Major Events** means (a) a major international sporting event, such as the Olympic Games, Commonwealth Games, FIFA World Cup, the ICC Cricket World Cup and T20 World Cup, the IRB Rugby World Cup, Rugby League World Cup or the World Athletics Championships, and all the respective equivalent disability sports, or any similar event which is introduced by any international sport governing body; (b) a major civic event that utilises the seating bowl or pitch which is, in VenuesWest's opinion (acting reasonably), of significant importance from an international, national or state perspective; or (c) any other event which is designated or identified as, or covered by the definition of, a major or similar event, under any applicable law relating to major events (or similar).

**Media Personnel** means members of the media and press attending at the Venue for the purpose of media coverage of an Event, including by means of radio, tv, print, and internet coverage.

**Moral Rights** has the meaning given to it in the *Copyright Act 1968 (Cth)*.

**New Materials** has the meaning as given in clause 13.1.

**Officials** means any third party required for the conduct of an Event, including coaches, referees, umpires, or other technical, management or support staff.

**Order Amendment** means each authorised amendment

to any Purchase Order, each such Order Amendment (where applicable) having precedence over any earlier Order Amendment.

**Performers** means those persons who participate in an Event, including any sports person, athlete, sporting team, performer, entertainer, musician or band.

**Price** means the price set out in the Supplier Appointment, Purchase Order or Order Amendment (as applicable).

**Privacy Policy** means the privacy policy of the Caterer, available at the Caterer's website, [www.venueslive.com.au](http://www.venueslive.com.au), as amended from time to time, or such other website URL as advised by the Caterer.

**Probity Event** includes any event or thing which (a) relates to the Supplier and has a material adverse effect on the public interest, or public confidence, in the Venue; (b) has a material adverse effect on, or on the perception of, the character, integrity of honesty of the Supplier; or (c) involves a material failure by the Supplier to achieve or maintain (i) good corporate citizenship; (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Supplier to perform and observe its obligations under this Agreement; or (iii) other standards of conduct that would be expected of a party involved in a State government project.

**Probity Investigation** means such probity and criminal investigations to report on the character, honesty and integrity of persons or standards of conduct of corporations or other entities as are required by Law or by VenuesWest from time to time, to ensure that a person or entity is fit and proper for its proposed or continued involvement with the Venue

**Products** means the goods, materials, articles, items or substances, and any ongoing support or service in relation to the said products (if applicable), as more particularly described in a Supplier Appointment, Purchase Order or Order Amendment.

**Purchase Order** means the purchase order issued by the Caterer to the Supplier confirming the supply of the Services, Products and/or Equipment.

**Quality Standards** means all standards, codes, specifications, guidelines, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement including:

- (a) all relevant standards, codes and guides of Standards Australia and Standards New Zealand and, where an Australian Standard or a New Zealand Standard does not exist, the relevant British standard or international standard;
- (b) all standards, codes and guides published by the Work Cover Corporation of Western Australia and WorkSafe WA;
- (c) the Guidelines for Concerts, Events and Organised Gatherings, published by the Government of Western Australia, December 2009; and
- (d) all other standards, codes, specifications, guidelines, policies and requirements relevant to the applicable Services, Products or Equipment, the Venue (or any of them), as amended, updated or replaced from time to time.

**Regulations** mean any rules, regulations, guidelines, terms and conditions, policies and procedures as developed and updated by or on behalf of the Caterer from time to time, including those relating to health and safety matters, quality, emergency evacuation and security procedures, environment matters, and times and places of access to the Venue.

**Safety Laws** means all occupational health and safety and public safety related:

- (a) Laws that are in, or come into, force during the Term in the State of Western Australia and the

Commonwealth in connection with:

- (i) occupational health and safety including the *Work Health & Safety Act 2020 (WA)*, the *Work Health & Safety Regulations 2022 (WA)* and any Laws made to modernise or replace those Laws;
  - (ii) food safety including the *Food Act 2008 (WA)* and the *Food Regulations 2009 (WA)*;
  - (iii) public safety including the Public Health Act 2016, the Health (Miscellaneous Provisions) Act 1911 (WA) and the Health (Public Buildings) Regulations 1992 (WA); and
  - (iv) public security and crowd control including the Security and Related Activities (Control) Act 1996 (WA) and the Security and Related Activities Control Regulations 1997 (WA);
- (b) Australian Standards;
  - (c) codes of practice and guidance materials issued by any Government Agency or Utility company;
  - (d) directions on safety or notices issued by any relevant Government Agency or utility company (including any commissioners and inspectors appointed or employed in respect of the agency or company) in accordance with any Laws referred to in (a) above; and
  - (e) directions, instructions, requests or requirements from any Government Agency or utility company or VenuesWest relevant to or associated with or necessary for compliance by the Supplier with any of the instruments identified in paragraphs (a) to (d) and including any such matters of which the Supplier has been informed by the Caterer orally or in writing,

in respect of the location where any supply of the Services, Products and/or Equipment are being performed.

**Services** has the meaning as set out in a Supplier Appointment, Purchase Order or Order Amendment.

**Sponsors** means any person granted sponsorship, marketing, promotion or similar rights in relation to the Venue or an Event.

**Supplier** means the party identified in the Supplier Appointment, Purchase Order and/or Order Amendment.

**Supplier Appointment** means the written confirmation of the Supplier's appointment to supply the Services, Products or Equipment (as applicable).

**Supplier Associate** means any officer, agent, adviser, consultant, contractor and employee of the Supplier, any subcontractor and their officers, agents, advisers, consultants, contractors and employees, and any visitor to the Venue invited by the Supplier or any of the persons set out in this definition.

**Term** means where applicable the term identified in the Supplier Appointment unless terminated earlier in accordance with this Agreement.

**Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater and communications services, but not including communications systems provided as part of the Venue.

**Venue** means HBF Park.

**Venue Identity** means the trademarks and any other names (including business names) logos, symbols, emblems, designs, likenesses, visual representations, service marks or trademarks, drawings, artistic works, colour palette, naming conventions and other identifiers of the Venue as advised by the Caterer from time to time.

**VenuesWest** means the Western Australian Sports Centre Trust (ABN 47 894 195 015), trading as VenuesWest.

**VenuesWest Personnel** means each of the officers, employees, agents, customers, suppliers, workers,

volunteers, work experience students, advisors, contractors and consultants of VenuesWest.

**Year** means a calendar year, 1 January – 31 December.

1.2 In this Agreement headings are only for convenience and do not affect interpretation and, unless the context requires otherwise, a reference to:

- (a) a person includes an individual, a firm or a corporation;
- (b) a clause, party, schedule or annexure is a reference to a clause of, and a party, schedule and annexure to, this Agreement;
- (c) a party includes that party's legal personal representatives, successors, directors, officers, employees and agents;
- (d) "includes" means includes without limitation and "include" and "including" have corresponding meanings;
- (e) all dollar amounts are exclusive of GST unless otherwise stated; and
- (f) any reference to \$ or 'dollars' is to Australian dollars.

1.3 If there is any inconsistency between a term of the main body of this Agreement and a term or terms of a Supplier Appointment, Purchase Order, or Order Amendment, the Supplier Appointment, Purchase Order or Order Amendment prevails to the extent of any inconsistency.

1.4 Unless otherwise provided in this Agreement where the Supplier is required to obtain an approval or consent from the Caterer, the Caterer may give or withhold an approval in its reasonable discretion or give an approval subject to such conditions (including the payment of further fees or costs) as it sees fit. Any approval must be in writing. Where the Caterer's approval is subject to the consent or approval of VenuesWest, VenuesWest may direct that an approval be denied or withheld, at its absolute discretion

## 2. Appointment of Supplier

2.1 The Caterer appoints the Supplier on a non-exclusive basis (save where otherwise set out in a Supplier Appointment, Purchase Order or Order Amendment) to supply the Services, Products and/or Equipment (as applicable) and the Supplier accepts the engagement, on the terms set out herein, the Supplier Appointment, Purchase Order or Order Amendment (as applicable).

2.2 The Supplier acknowledges there is no obligation on the Caterer to acquire any minimum level of the Services, Products and/or Equipment in any Year of the Term, save where otherwise set out in a Supplier Appointment, Purchase Order or Order Amendment.

2.3 The Caterer reserves the right to seek an alternative supplier of the Services, Products and/or Equipment if the Supplier is unable to comply with the requirements of a Purchase Order or Order Amendment at any time prior to the Delivery Date.

2.4 The Supplier acknowledges and agrees it has relied on its own enquiries, investigations, interpretations and determinations and has satisfied itself as to the Services, Products and/or Equipment it is being asked to supply, further to the provisions of this Agreement.

## 3. Supplier Obligations

### 3.1 General

The Supplier must:

- (a) provide the Services, Products and/or Equipment in accordance with Good Industry Practice;
- (b) obtain and maintain all applicable Approvals in

- relation to its supply of the Services, Products and/or Equipment;
- (c) ensure its personnel are properly qualified under any applicable Law or Approval (or relevant professional body) and have obtained the relevant authorisations and permits to supply the Services, Products and/or Equipment;
- (d) disclose to the Caterer any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Supplier's provision of the Services, Products and/or Equipment or performance of this Agreement; and
- (e) not engage in any Ambush Marketing of the Venue, Events or Event Parties, in its supply of the Services, Products and/or Equipment;

### 3.2 VenuesWest Requirements

The Supplier acknowledges and agrees:

- (a) VenuesWest may require the Venue for a Major Event and may require that (i) the provision of the Services, Products and/or Equipment and rights and obligations of the Supplier be suspended for the Major Event step-in period; and / or (ii) all branding (if any) of the Supplier associated with its supply of the Services, Products and/or Equipment, or of the Services, Products and/or Equipment themselves, be removed or covered up for the Major Event step-in period;
- (b) VenuesWest may temporarily or permanently assume total or partial management and control of the Venue, where the Services, Products and/or Equipment would continue to be supplied for the benefit of VenuesWest;
- (c) if VenuesWest establishes an online contract administration system for the Venue project, the Supplier will be required to submit all documentation created in accordance with this Agreement in accordance with such system;
- (d) it must give the Caterer notice immediately upon the Supplier's becoming aware that a Probity Event has occurred or is likely to occur, and will work with the Caterer and VenuesWest to develop a strategy to protect the reputation of the Venue and VenuesWest, which may include suspending the Supplier's provision of the Services, Products and/or Equipment for so long as the Probity Event subsists, without compensation to the Supplier; and
- (e) VenuesWest may require a Probity Investigation to be carried out on the Supplier, and if the results of that Probity Investigation are not satisfactory to VenuesWest the Caterer may suspend or terminate the Supplier's supply of the Services, Products and/or Equipment without compensation to the Supplier.

### 3.3 Purchase of Products and/or Equipment

Where the Supplier has been engaged to supply Products and/or Equipment the Supplier must:

- (a) ensure the Products and/or Equipment (where applicable) are fully assembled prior to delivery at the Delivery Address, save where otherwise agreed by the Caterer;
- (b) remove all packing materials, associated with the Products and/or Equipment, from the Delivery Address, immediately on completion of delivery of the Products and/or Equipment at the Delivery Address;

- (c) ensure that all warranties for the Products and/or Equipment (including where applicable, third party manufacturer warranties) are in the name of VenuesWest;
- (d) repair or replace the Products and/or Equipment (if applicable) if any of the Products and/or Equipment are found to be faulty, for any reason, at any time, including during the period of the third-party manufacturer warranties. The Supplier agrees to provide all reasonable assistance to the Caterer in its enforcement of any third-party manufacturer warranties.

### 3.4 Hired Products and/or Equipment

- (a) Where the Supplier has hired the Products and/or Equipment to the Caterer the Supplier must:
  - (i) ensure the Products and/or Equipment are fully assembled prior to delivery at the Delivery Address, save where otherwise agreed by the Caterer;
  - (ii) set up, install, commission, decommission, and remove the Products and/or Equipment (as applicable);
  - (iii) remove all packing materials associated with the Products and/or Equipment, from the Delivery Address, immediately on completion of delivery, installation, commissioning, decommissioning and removal of the Products and/or Equipment from the Delivery Address;
  - (iv) supply personnel, who are properly qualified under any applicable Law or Approval (or relevant professional body) to operate the Products and/or Equipment, if requested to do so further to the provisions of the Supplier Appointment or Purchase Order;
  - (v) repair or replace the Products and/or Equipment if any of the Products and/or Equipment are found to be faulty, for any reason, at any time, during the period of use by the Caterer; and
  - (vi) provide ongoing maintenance of the Products and/or Equipment (where applicable), to ensure the Products and/or Equipment are supplied and available for use by the Caterer in accordance with Good Industry Practice.
- (b) Where the Supplier has hired the Products and/or Equipment to the Caterer the Caterer agrees:
  - (i) it must use and operate the Products and/or Equipment in accordance with the Supplier's guidelines and instructions, where provided by the Supplier.
  - (ii) it will notify the Supplier of any damage to (fair wear and tear excepted) or faults with any of the Products and/or Equipment, and agrees it will not attempt to repair the Products and/or Equipment without the prior written consent of the Supplier.
  - (iii) it will be responsible for the reasonable cost of repairs where any material damage (fair wear and tear excepted) to the Products and/or Equipment is caused by the Caterer.
  - (iv) if any of the Products and/or Equipment are lost or stolen, whilst in the custody and control of the Caterer, the Caterer will be responsible for the replacement cost of

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the Products and/or Equipment, at the Supplier's list price at the time of replacement.

### 3.5 Food & Beverage Products

Where the Supplier has been engaged to supply food and beverages, the Supplier must:

- (a) ensure it abides by all statutory requirements of having the correct "use-by" and "best-by" markings on the Products and their outer packaging;
- (b) ensure all Products are properly and securely packaged and accurately labelled for identification and safety for delivery to the Caterer. The Supplier must provide the Caterer with copies of all accreditations it holds and notify the Caterer immediately of any accreditation it acquires or is cancelled, in relation to its Products, during the Term. This includes any third-party certification such as:
  - (i) nutrition (e.g. National Heart Foundation tick of approval);
  - (ii) product origin (e.g. 'Australian Made Australian Grown');
  - (iii) environmental sustainability;
  - (iv) animal welfare;
  - (v) compatibility with religious belief systems;
  - (vi) dietary choice; and
  - (vii) ethical sourcing (e.g. fair trade);
- (c) maintain third party certification by a JAS-ANZ accredited certification body for ISO 22000 or HACCP;
- (d) allow the Caterer to conduct an annual safety audit of its premises where the Products are prepared and/or stored;
- (e) immediately notify the Caterer of any Product that is subject to recall or potential food contamination, including the reasons for recall, such as contamination by pathogenic bacteria or the presence of chemicals or foreign matter (e.g. pieces of glass, metal or plastic), that could cause physical harm to a person consuming the Products;
- (f) immediately notify the Caterer of any other issues that may pose a potential health risk to consumers of the Products, such as incorrect labelling (e.g. allergens such as peanuts, milk or milk products not being declared on the label), incorrect processing, cooking or storage;
- (g) ensure that Product packaging incorporates ingredients which correspond to those contained in the Products, incorporates and declares information about any potential allergen or potential food contaminant. A food contaminant is any food item that is not an intentional ingredient, but through shared spaces within a manufacturing facility may be present in the Product. A food contaminant may be an allergen, or other substance that may cause an adverse reaction when consumed, including nuts, dairy, egg, gluten, seafood, soy, sulphates;
- (h) transport and deliver the Products using best practice technology and processes, to ensure that the Products are received by the Caterer in optimal condition; and
- (i) fully co-operate with the Caterer if the Caterer has reasonable grounds to suspect that a food related incident has resulted from the Supplier's provision of the Products, including in relation to any investigation and/or publicity that may

result from the incident. A Product may be suspected of being responsible for an incident if a report is received by the Caterer in relation to any of the following:

- (i) a food complaint from a guest;
- (ii) a medical incident relating to food quality;
- (iii) a food safety concern raised by a staff member or guest (e.g. contaminated food for example foreign objects/ material); or
- (iv) any other report that suggests that the quality or safety of the Product has been compromised.

### 3.6 Other Products

Where the Supplier has been engaged to supply other Products the Supplier must:

- (a) ensure it abides by all statutory requirements of having the correct markings on the Products and their outer packaging;
- (b) ensure all Products are properly and securely packaged and accurately labelled for identification and safety for delivery to the Caterer;
- (c) maintain third party certification by a JAS-ANZ accredited certification body;
- (d) allow the Caterer to conduct an annual safety audit of its premises where the Products are prepared and/or stored;
- (e) fully co-operate with the Caterer if a report is received by the Caterer in relation to any of the following:
  - (i) a safety concern raised by a staff member or guest; or
  - (ii) any other report that suggests that the quality or safety of the Product has been compromised.

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## 4. Access to the Venue

The Supplier is entitled to access the Venue, to supply the Services, Products and/or Equipment, and must:

- (a) comply with all Regulations;
- (b) comply with all reasonable directions of the Caterer as to access, including using only entrances and exits during such access periods as determined by the Caterer;
- (c) provide the Caterer with details of the Supplier Associates who will deliver the Services, Products and/or Equipment at the Venue. All Supplier Associates delivering to the Venue may be required to complete a site induction and receive security clearance prior to any deliveries at the Venue. The Caterer will have no Liability to the Supplier if the Supplier fails to notify the Caterer of a Supplier Associate and the Supplier Associate is prevented from accessing the Venue; and
- (d) ensure that all Supplier Associates make themselves familiar with and observe all health (including no-smoking), safety, security and emergency procedures of the Venue, and if directed to do so by the Caterer (at its sole discretion if there is a risk to the health, safety or wellbeing of persons attending the Event), immediately leave the Venue.

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## 5. Supply of Services, Products and/or Equipment

### 5.1 Purchase Order and Order Amendment

- (a) The Caterer will order the Services, Products and/or Equipment to be provided pursuant to a Purchase Order and the Supplier will supply the Services, Products and/or Equipment pursuant to the Purchase Order.

- (b) The Caterer has the right to seek a suitable alternative supplier of the Services, Products and/or Equipment if the Supplier is unable to comply with the requirements of a Purchase Order.
- (c) The Supplier agrees to notify the Caterer as soon as practical of any anticipated delay of a Purchase Order as soon as the Supplier becomes aware of it, and the Caterer has the right to cancel the Purchase Order and seek a suitable alternative supplier of the Services, Products and/or Equipment.

#### **5.2 Acceptance of Services, Products and/or Equipment**

- (a) Delivery of the Services, Products and/or Equipment will be supplied with the Supplier's delivery docket, identifying the Caterer's Purchase Order number.
- (b) If there is a discrepancy between the Purchase Order and the Services, Products and/or Equipment provided the Caterer will inform the Supplier and the Supplier will rectify the discrepancy within 48 hours, or as otherwise mutually agreed, of being informed by the Caterer.
- (c) If the Caterer determines the Services, Products and/or Equipment does not meet applicable Quality Standards the Caterer may reject the Services, Products and/or Equipment (Rejected Services, Products and/or Equipment) and will be entitled, at the Caterer's option, to require the Rejected Services, Products and/or Equipment be re-supplied at the Supplier's cost.
- (d) If the Supplier fails to re-supply the Rejected Services, Products and/or Equipment the Caterer may purchase substitute equipment and or services from an alternative supplier and:
  - (i) the Caterer does not have to pay for the Rejected Services, Products and/or Equipment; or
  - (ii) the Supplier must reimburse the Caterer for any payments by which the substitute services, products and/or equipment exceed the price of the Rejected Services, Products and/or Equipment; and the Caterer's reasonable costs and expenses in obtaining the Rejected Services, Products and/or Equipment from another supplier.

#### **5.3 Title & Risk – Purchased Products and/or Equipment**

- (a) Until full payment for Products and/or Equipment which is the subject of a Purchase Order is received by the Supplier, the Supplier retains title to the Products and/or Equipment.
- (b) The Supplier bears all risk of loss or damage to the Products and/or Equipment until they have been delivered at the Delivery Address, and where applicable installed, and the Caterer has inspected and confirmed the Products and/or Equipment is in accordance with the Purchase Order.
- (c) If the Caterer makes an advance payment or payment by instalment prior to delivery at the Delivery Address, the Supplier must keep the Products and/or Equipment separate from all other goods in the Supplier's possession and mark the Products and/or Equipment as the

Caterer's property.

- (d) The Supplier must not create, or allow to exist any security interest over, any of the Products and/or Equipment at the time risk in the Products and/or Equipment passes to the Caterer.

#### **5.4 Title & Risk – Hired Products and/or Equipment**

- (a) The Supplier retains title in and to the Products and/or Equipment at all times.
- (b) The Supplier bears all risk of loss or damage to the Equipment until delivered at the Delivery Address, and the Caterer has inspected and confirmed the Products and/or Equipment is in accordance with the Purchase Order. At collection of the Products and/or Equipment from the Delivery Address the Supplier again bears all risk of loss or damage to the Products and/or Equipment. Insurance of the Products and/or Equipment in transit, and whilst at the Delivery Address, remains the responsibility of the Supplier.
- (c) The Caterer must not sell, assign, sub-let, lend, let on hire or otherwise part with possession of the Products and/or Equipment, and must not create, or allow to exist, any security interest over, any of the Products and/or Equipment.

#### **6. Supplier Warranties**

The Supplier represents and warrants that:

- (a) it is an experienced, creditworthy, reputable and competent supplier, and it has sufficient resources to supply the Services, Products and/or Equipment in accordance with the terms of this Agreement;
- (b) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against it which could have a materially adverse effect on its ability to provide the Services, Products and/or Equipment in accordance with this Agreement
- (c) it has the right to grant the Caterer the licences of Intellectual Property Rights granted under this Agreement (if any) and it has obtained or will obtain a licence, consent or waiver from any third-party owner of any Intellectual Property Rights or Moral Rights in any materials licensed under this Agreement, to enable the Caterer or VenuesWest to use the materials without regard to any such third-party rights; and
- (d) it is not aware of any claim that the Caterer's use of any third-party Intellectual Property Rights in the Services, Products and/or Equipment infringes or would infringe the rights of any third-party.

#### **7. Damage**

**7.1** If the Supplier causes any loss of or damage to:

- (a) the Venue (including its facilities and equipment, and the replacement of lost or stolen items) it must pay the Caterer the cost it incurs in replacing, repairing or making good any damage (including excessive cleaning) to the Venue; or
- (b) any third-party property, the Supplier must promptly repair such loss or damage and compensate the affected person for that loss or damage at its own cost (where the Supplier has a legal liability, and has agreed with the affected person, to do so).

**7.2** the Venue. The Supplier must deal with the Caterer in relation to any facility management services to be provided at the Venue, that may be required further



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to the Supplier's provision of the Services, Products and/or Equipment.

- 7.3 The Supplier bears the risk of loss or damage to any property, goods, equipment or any other facilities that are made available to the Supplier by or on behalf of the Caterer in the performance of this Agreement, or property of the Supplier and Supplier Associates brought into the Venue by the Supplier and Supplier Associates (including personal items). The Caterer will be entitled to remove any items of property left at the Venue by the Supplier or Supplier Associates, without the prior approval of the Caterer, and any property so removed will be retained by the Caterer for a period of 30 days and thereafter will be deemed abandoned and may be disposed of by the Caterer at its absolute discretion without incurring any liability to the Supplier or any Supplier Associates.

- 7.4 The Caterer will be entitled to set off any amount owing pursuant to clause 7.1, as a debt due by the Supplier, against any monies the Caterer owes to the Supplier under this Agreement.

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## **8. Insurance**

- 8.1 The Supplier must have and maintain the Insurance for the duration of the Term and provide the Caterer with a certificate of currency of the required Insurance prior to its supply of the Services, Products and/or Equipment.
- 8.2 The Supplier must notify the Caterer immediately upon becoming aware of any incident causing damage or loss to the Venue or any injury to, sickness or death of any person at the Venue and associated with the supply of the Services, Products and/or Equipment. Within one (1) Business Day of any incident causing damage, loss, injury or death, the Supplier must prepare and submit to the Caterer a detailed report of the incident.

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## **9. Price and Payment**

### **9.1 Price**

- (a) In consideration of its supply of the Services, Products and/or Equipment the Caterer will pay the Supplier the Price on receipt of an invoice identifying the Caterer generated Purchase Order number.
- (b) The Price includes all costs which may be incurred by the Supplier in the supply of the Services, Products and/or Equipment, including disbursements, insurance, freight, delivery, collection, unpacking, installation, removal, commissioning, decommissioning, ongoing maintenance and repairs, and all costs associated with the provision of personnel and/or labour.
- (c) The Price may be adjusted for CPI on the CPI Review Date (where applicable), save where otherwise provided in a Supplier Appointment or Purchase Order.
- (d) If a dispute arises in relation to payment of any invoice the Caterer agrees to pay any undisputed amount of the invoice and give notice providing particulars of the disputed items to the Supplier.
- (e) If the dispute is not resolved within five (5) Business Days the dispute will be resolved in accordance with the provisions of clause 17 (**Dispute Resolution**).
- (f) The Supplier acknowledges and agrees the payment of any invoice or Purchase Order is a matter between the Supplier and the Caterer and the Supplier must, in the first instance, seek payment of any invoice or Purchase Order from

the Caterer and that VenuesWest cannot make payment of any invoice or Purchase Order directly without the Supplier having sought payment from the Caterer and confirmation from the Caterer that an invoice or Purchase Order is valid, due and payable to the Supplier.

### **9.2 Payment**

- (a) The Supplier is required to submit a compliant tax invoice at the end of each month of the Term for the Services, Products and/or Equipment provided for that month.
- (b) All invoices are to be sent to [accounts@wa.venueslive.com.au](mailto:accounts@wa.venueslive.com.au).
- (c) Invoices that refer to Services, Products and/or Equipment that have not been supplied as at the date of the invoice, will not be authorised for payment.
- (d) Invoices will be paid within thirty days of the end of the month in which the invoice is received.

### **9.3 VenuesWest**

The Supplier acknowledges and agrees:

- (a) the payment of any invoice or Purchase Order is a matter between the Supplier and the Caterer; and
- (b) the Supplier must, in the first instance, seek payment of any invoice or Purchase Order from the Caterer; and
- (c) VenuesWest cannot make payment of any invoice or Purchase Order directly without the Supplier having first sought payment from the Caterer, and confirmation from the Caterer that an invoice or Purchase Order is valid, due and payable to the Supplier.

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## **10. Taxes**

- 10.1 Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.
- 10.2 If a party is required to indemnify or reimburse another party (Payee) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the Payee for GST Purposes) is entitled to an input tax credit but will be increased if the amount payable is consideration for a taxable supply.
- 10.3 Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement to claim an input tax credit arises.

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## **11. Confidentiality & Privacy**

- 11.1 No Confidential Information may be disclosed by the Supplier to any person, except:
- (a) a Supplier Associate, and then only to the extent they need the information for the purposes of supplying the Services, Products and/or Equipment;
- (b) as authorised in writing by the Caterer; or
- (c) in accordance with any Laws or the requirements of any Government Agency, administrative or judicial body or tribunal.
- 11.2 The Supplier acknowledges the Caterer may disclose Confidential Information to VenuesWest, and VenuesWest may disclose such Confidential Information for the purpose of satisfying any statutory duties or requirements of any Government Agency, or by or to the Premier, a Minister of State, or other representative of any government authority, in the performance of their functions or discharge of duties, including in responding to any questions, making any

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public statement or releasing information in relation to a matter of public interest.

- 11.3 The Supplier must not issue any statement, announcement, information, media release, document or article in connection with the Venue and this Agreement without the prior approval of the Caterer, which approval is subject to approval by VenuesWest, and only then in the manner so approved. All media enquiries concerning the Venue, and in relation thereto this Agreement, must be referred to the Caterer, for the Caterer's referral of such enquiries to VenuesWest.
- 11.4 On termination of this Agreement, each party must return to the other party (or if acceptable, verify the destruction of) all Confidential Information of the other party in material form (e.g. on paper or disk) and all property of the other party (e.g. software, manuals, documents, keys, security pass).
- 11.5 If the Supplier collects or handles personal information under this Agreement the Supplier agrees to comply with all applicable laws relating to privacy and the processing of Personal Information, including without limitation the *Privacy Act 1988* (Cth) and the Privacy Policy and any directions given by the Caterer regarding the handling of Personal Information.

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## 12. Venue Identity

- 12.1 The Supplier acknowledges and agrees the Venue Identity is and remains the property of VenuesWest.
- 12.2 The Supplier is not authorised or permitted to use the Venue Identity without the express prior written approval of the Caterer, which approval will be subject to the approval of VenuesWest.
- 12.3 The Supplier:
- (a) must give the Caterer prompt notice of any unauthorised use by third parties of the Venue Identity;
  - (b) acknowledges that the Caterer retains the sole right, but not the obligation, to take action in respect of any unauthorised use, infringement or imitation of, or challenge to, the Venue Identity, and will, at the Caterer's request and reasonable cost, provide all necessary co-operation, documentation and access to people to assist the Caterer in any action (if applicable);
  - (c) must not take any action in respect of any third party unauthorised use, infringement or imitation of the Venue Identity without the Caterer's prior written approval.

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## 13. Intellectual Property

- 13.1 If the Supplier or any Supplier Associate develops, creates, invents, conceives or otherwise devises any Intellectual Property Rights in performing this Agreement, including enhancements, improvements, new features, new programs and/or new functions with respect to the Services, Products and/or Equipment (**New Materials**) further to its performance of this Agreement, the parties acknowledge and agree that save where otherwise agreed all Intellectual Property Rights in the New Materials will belong to the Supplier or Supplier Associate (as applicable).
- 13.2 To the extent the Supplier or a Supplier Associate has or acquires any Intellectual Property Rights in the New Materials, and where ownership does not transfer to the Caterer, the Supplier grants to the Caterer an irrevocable, perpetual, royalty-free, non-exclusive, worldwide license, sub-licensable to VenuesWest, in, to and under the said Intellectual

Property Rights to the New Materials for the remainder of the duration of the Intellectual Property Rights in the New Materials.

- 13.3 The Supplier must, if a third party owns any Moral Rights in any New Materials, use its best endeavours to obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Caterer or VenuesWest to use the New Materials without regard to the third party's Moral Rights.
- 13.4 Nothing in clause 13.1 or clause 13.2 above affects the ownership by the Caterer, Supplier or Supplier Associates of any Intellectual Property Rights in any work, product or other material created prior to commencement of the Term of this Agreement, or created during the Term outside the scope of this Agreement (**Existing Materials**).

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## 14. Liability and Indemnity

- 14.1 Save for any Liability which cannot be limited by any Laws, the Caterer's liability to the Supplier under and in relation to this Agreement, whether in contract or tort (including negligence), is limited in aggregate to a sum equal to the Price paid during the Year in which the liability arose.
- 14.2 To the maximum extent permitted by and Laws and notwithstanding any other provision of this Agreement, the Caterer, Caterer Personnel, VenuesWest and the VenuesWest Personnel will not be liable to the Supplier or any Supplier Associates for any Indirect or Consequential Loss, whether arising from any act or omission of the Caterer, Caterer Personnel, VenuesWest and/or VenuesWest Personnel, whether negligent or otherwise, arising out of or related in any way to this Agreement.
- 14.3 The Supplier is liable for and indemnifies, defends and holds harmless the Indemnified Persons from and against all liabilities, losses, damages, charges, claims, costs, penalties, fines, demands and expenses (on a full indemnity basis), including without limitation legal and other professional fees, that the Indemnified Persons may incur whether directly or indirectly, that are made by any person (including the Supplier or any Supplier Associates), in connection with, arising or alleged to arise from, wholly or in part (i) any breach of this Agreement by the Supplier or any Supplier Associate; (ii) any wilful, tortious or unlawful act or omission of the Supplier or any Supplier Associate; (iii) any damage (other than fair wear and tear) to any part of the Venue, caused directly or indirectly by any act or omission of the Supplier or any Supplier Associate; or (iv) any breach of any Law by the Supplier or any Supplier Associate relevant to performance of this Agreement. The provisions of this clause 14 shall survive expiry or termination of this Agreement. The Supplier's liability to indemnify the Indemnified Persons will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from a negligent act or omission, of the Indemnified Persons.
- 14.4 Neither party will be liable to the other party for any delay or failure to perform its obligations if such failure or delay is due to a Force Majeure Event, and each party agrees to notify the other party as soon as practical of any anticipated delay due to a Force Majeure Event.

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## 15. Assignment and Subcontracting

- 15.1 The Supplier may assign or sub-contract its rights and obligations under this Agreement to a party capable of performing all of its rights and obligations



in accordance with the provisions of this Agreement if it has obtained the Caterer's prior written consent.

- 15.2 The Caterer may transfer, assign or otherwise dispose of its rights and obligations under this Agreement to VenuesWest, or any other person acting as agent of, or the obligations of which are supported by, VenuesWest, and which is able to perform the Caterer's obligations under this Agreement if required by VenuesWest to do so, without the Supplier's prior consent and the Supplier agrees to do all things and execute any document which may be necessary to give effect to any such transfer and/or disposal of rights or obligations.

## **16. Breach & Termination**

- 16.1 The Caterer may terminate this Agreement with immediate effect by written notice to the Supplier if the Supplier:
- (a) breaches a material term or condition of this Agreement, including clause 3.1 (Supplier Obligations) clause 5 (Supply of Services, Products and/or Equipment), clause 6 (Supplier Warranties), clause 7 (Damage), clause 11 (Confidentiality and Privacy), clause 12 (Venue Identity) and clause 13 (Intellectual Property) which are essential terms, and the breach cannot be remedied, or if it can be remedied the Supplier fails to remedy the breach with ten (10) Business Days (or sooner, if the circumstances of the breach so require) of notice issued by the Caterer;
  - (b) is insolvent or an administrator or receiver is appointed over the whole or any part of the Supplier's assets, or it enters into an arrangement with creditors generally or any judgment is made against the Supplier; or
  - (c) cease or threatens to cease to carry on business or is removed from the relevant register of companies.
- 16.2 The Caterer may terminate this Agreement by written notice to the Supplier with immediate effect if:
- (a) the Caterer Agreement is terminated by VenuesWest, and VenuesWest does not require that the Agreement be performed by VenuesWest or novated to any other party authorised by VenuesWest); or
  - (b) a Force Majeure Event occurs, which prevents the parties from performing all or substantially all of its obligations under this Agreement for a continuous period exceeding three (3) months.
- 16.3 If this Agreement is terminated further to clause 16.2(a) the Supplier will be paid:
- (a) all outstanding invoices by their respective due dates; and
  - (b) within 30 days of receipt of an invoice issued by the Supplier, all reasonable amounts incurred by the Supplier in its supply of the Services, Products and/or Equipment as at the date of termination.
- 16.4 Further to clause 16.2(a), if this Agreement is to be performed by VenuesWest or VenuesWest requires that this Agreement be novated to any other party authorised by VenuesWest (with any novation at the sole discretion of VenuesWest), the Supplier will continue to perform this Agreement for the benefit of VenuesWest (or such other party authorised by VenuesWest) on the same terms and conditions as set out herein, without any compensation being payable to the Supplier.
- 16.5 If this Agreement is terminated further to clause 16.2(b) neither party shall be liable to the other for

any loss, damage, costs, expenses of other claims for compensation arising as a direct or indirect result of breach or non-performance due to an event of Force Majeure.

- 16.6 Termination of this Agreement does not affect any accrued right or liability of either party.
- 16.7 Clause 8 (Insurance), clause 11 (Confidentiality and Privacy), clause 14 (Liability & Indemnity), and any other clause required to make these clauses effective continue to bind the parties following termination of this Agreement for any reason.

## **17. Dispute Resolution**

- 17.1 Neither party may commence arbitration or court proceedings (except proceedings seeking injunctive relief) in respect of a dispute unless it has first complied with this clause 17 (Dispute Resolution).
- 17.2 A party claiming that a Dispute has arisen must notify the other party. Each party will negotiate in good faith and use its best efforts to resolve such Dispute within thirty (30) Business Days after such notice is given.
- 17.3 If the Dispute is not resolved within thirty (30) Business Days the parties agree to submit the Dispute to the exclusive jurisdiction of the courts of Western Australia.

## **18. General**

- 18.1 Any notices must be given in writing and may be given in an email where an email address is provided.
- 18.2 The Caterer may set off or deduct any amount claimed by the Caterer from any amount owing by the Caterer to the Supplier. Unless compelled by Law, all payments shall be made without deduction or withholding for or on account of any present or future tax.
- 18.3 Each party must do or cause to be done all acts and things necessary or desirable to give effect to, and refrain from doing all acts and things that could hinder performance by any party of, this Agreement
- 18.4 To the extent that a Force Majeure Event prevents a party from performing its obligations under this Agreement the performance of such obligations will be suspended for the period of the delay due to the Force Majeure Event. Nothing in this clause 18.4 entitles a party to any relief from its obligations which are not affected by the Force Majeure Event.
- 18.5 This Agreement is not intended to create, and will not be construed as creating, any partnership or joint venture as between the parties. Neither the Supplier nor Supplier Associate is to be deemed an employee, agent or partner of the Caterer
- 18.6 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, understandings, negotiations and communications on the subject matter. Any conflicting term or condition included in any Supplier invoice, purchase order or other document rendered pursuant to the Caterer's purchase of the Services, Products and/or Equipment is of no force or effect..
- 18.7 A variation to this Agreement must be in writing and signed by all parties.
- 18.8 If a provision of this Agreement is invalid, illegal or unenforceable it must, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this Agreement, without affecting the validity and enforceability of the remaining provisions.
- 18.9 The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement.

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- 18.10 This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument. In the event that any signature is delivered by facsimile or e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.
- 18.11 Application of the *Civil Liability Act 2002* (WA):
- (a) In this clause 18.11 only, ‘Legislation’ means Part 1F of the Civil Liability Act 2002 (WA) and any equivalent statutory provision in any other state or territory.
  - (b) The operation of the Legislation is excluded in relation to all and any rights, obligations and Liabilities arising out of or in connection with this Agreement whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity or otherwise at Law.
  - (c) Without limiting the generality of clause 18.11(b), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as stated in this Agreement and not otherwise, whether such rights, obligations and Liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity or otherwise at Law.
- 18.12 This Agreement is governed by the laws of Western Australia.