



**1. GENERAL**

- 1.1. The parties to this Contract are the Commonwealth of Australia represented by the agency named in the Purchase Order ("We", "Us", "Our") and the person or organisation named as supplier in the Purchase Order ("You", "Your").
- 1.2. Subject to clause 3, these Conditions prevail in any conflict between them and the Purchase Order or any authorised contract with Us.
- 1.3. No variation of this Contract is legally binding upon either party unless in writing and signed by both parties.

**2. ACCEPTANCE**

- 2.1. You are taken to have accepted the terms and conditions of this Contract by indicating Your acceptance by oral or written communication to Our nominated contact officer, or by Your conduct that is consistent with the existence of a contract. For example, where You start to perform Your obligations under the contract even though You have not expressly advised Us of Your acceptance.
- 2.2. "Contract" means an authorised contract with the agency, created by the Purchase Order and these Standard Terms and Conditions.

**3. SPECIAL CONDITIONS**

- 3.1 The conditions of the Contract include any Special Conditions referred to in the Purchase Order. If any such Special Conditions are inconsistent with these standard conditions or any authorised contract, the Special Conditions will, to the extent of the inconsistency, prevail.

**4. SERVICES**

- 4.1. You must perform any services specified in the Purchase Order ('Services') to a high standard in accordance with relevant best practice.
- 4.2. You must perform the Services in accordance with the specifications, including any timeframe, set out in the Purchase Order.
- 4.3. The Services must be free from defects in performance and be complete according to specifications.
- 4.4. If the Services are not provided according to specifications, We may, by notice, require You to remedy any default in the performance of the Services, redo the Services or complete the Services, at no additional cost to Us, or We may terminate the Contract as provided in clause 17 below.
- 4.5. Where You fail to remedy Your default in performance, complete the Services, or redo the Services within 30 days after notification by Us under subclause 4.3 We may perform the work or have it performed, the cost of which will be offset against any fees payable to You under the Contract, but where the costs exceed any remaining payments under the Contract, We may recover the cost from You.

**5. GOODS**

- 5.1. Any goods specified in the Purchase Order ('Goods') must be free from defects in performance, meet their purpose and be complete.
- 5.2. The Goods must be delivered in accordance with any specifications, including any timeframe, set out in the Purchase Order.
- 5.3. We may inspect the Goods at any time.
- 5.4. If there is a defect in the Goods or the Goods are not delivered in accordance with the specifications, We may by notice require You to remedy the defect, or complete the Goods, at no additional cost to Us.
- 5.5. If the Goods do not meet their purpose or are not in accordance with the Contract, We may by notice require You to replace the Goods at no additional cost to Us.
- 5.6. Where You fail to:
  - (a) remedy a defect in the Goods;
  - (b) complete the Goods, or
  - (c) replace the Goods;within 30 days after notification by Us under subclauses 5.4 and 5.5, We may perform or have performed the necessary work and recover the cost from You.
- 5.7 Without additional cost to Us, You must provide reasonable access to Your premises and all other necessary assistance for Our representatives to inspect any manufacture or assembly of Goods.
- 5.8 If We require, You are to submit samples of Goods, and You must not proceed to bulk manufacture until We have approved the samples.

**6. PASSING OF PROPERTY**

- 6.1. Property in, and risk of loss or damage to, the Goods passes to Us when the Goods are delivered to Us.

**7. WARRANTY**

- 7.1. The warranty period commences on the date of delivery or acceptance of the Goods, whichever is the later, and shall be valid for 90 days, or the length of Your or the manufacturer's standard warranty period, whichever is longer ('Warranty Period').
- 7.2. You warrant that You are the legal and beneficial owner of the Goods, free from any third party interests; and for the Warranty Period, the Goods are free from defects in design, materials and workmanship.
- 7.3. If We, within a reasonable time after acceptance, give You notice of any defect or omission discovered in the Goods during any warranty period, You must, during the Warranty Period, remedy defects in warranted Goods by repair, replacement or modification. You must meet all costs incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 7.4. Where You fail to rectify a defect covered by warranty within 30 days after notification by Us, We may perform, or have performed, the necessary remedial work, and all costs and outgoings incurred will be reimbursed to Us by You.
- 7.5. You warrant that We are free to use the Goods or any product of the Services once delivered to Us.

**8. CONTRACT PRICE**

- 8.1. The contract price for the Goods or Services specified in the Purchase Order includes GST.
- 8.2. Subject to 8.1 You will be liable for all taxes, duties or government charges relating to the delivery of the Goods or performance of the services.

**9. INTELLECTUAL PROPERTY**

- 9.1. Intellectual property includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include moral rights (being the rights of attribution and integrity of authorship and the right not to have authorship falsely attributed) or the rights of performers.
- 9.2. Unless otherwise agreed or notified between the parties all intellectual property created under the Contract and relating to the Goods or Services is, from the time of creation of the right, owned by Us.

**10. INDEMNITY AND INSURANCE**

- 10.1. You indemnify Us, Our officers, employees and agents against all loss, damage, injury or expense We may sustain or incur as a result, whether directly or indirectly:
  - (a) of any breach of this Contract including any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other intellectual property rights, by reason of Our receipt or use of the Goods or Services; or
  - (b) of any act or omission involving fault on Your part in relation to the provision of Goods or services under this Contract.
- 10.2. You will, for so long as any obligations remain in connection with this Contract, effect and maintain appropriate insurance policies. Upon Our request, You will provide Us with proof of insurance acceptable to Us.

**11. DISCLOSURE OF INFORMATION**

- 11.1 You, Your employees or agents, must not disclose or make public any information or material acquired or produced in connection with the Contract without Our prior written approval.

**12. CONFLICT OF INTEREST**

- 12.1 You warrant that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, You undertake to notify Us immediately in writing of that conflict or risk.

**13. SECURITY**

- 13.1 You must, when using Our premises or facilities, comply with all security and office regulations in effect at those premises or in regard to those facilities, as notified by Us.

#### **14. PAYMENT**

- 14.1. We will pay for the Goods or Services no later than 30 days after Our acceptance of the Goods or the satisfactory provision of the Services and receipt of a correctly rendered invoice.
- 14.2. An invoice is correctly rendered if it is complete, it contains Your bank account details (if these have not previously been provided to Us), the amount has been calculated in accordance with prices set out in the Purchase Order and, where explanation is necessary, accompanied by documentation substantiating the amount claimed, and is sent to the address for payment of invoices shown in the Purchase Order.
- 14.3. If GST applies, You must give Us a tax invoice to enable Us to claim an input tax credit for the GST.

#### **15. INTEREST**

- 15.1. Clause 15 applies if at the date of entering into this Contract:
- (a) You are a "small business" as defined in Finance Circular 2008/10 Procurement 30 Day Payment Policy for Small Business;
  - (b) the value of this Contract is \$1 million (GST inclusive) or less;
  - (c) the Services do not relate to a procurement of real property (including leases and licences); and
  - (d) the procurement is for a departmental item, not an administered item (refer to Purchase Order details).
- 15.2. Unless otherwise specified in the Purchase Order and subject to clause 15.3, if We fail to pay You an amount under this Contract by the due date for payment, We will pay simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the due date up to and including the day that payment is made in accordance with the formula specified in the Purchase Order set out below:
- $$SI = UA \times GIC \times D$$
- where:
- SI = simple interest amount  
UA = the unpaid amount  
GIC = General Interest Charge Daily rate; and  
D = the number of days from the day after payment was due up to and including the day payment is made.
- 15.3. Interest will not be payable under clause 15.2 unless:
- (a) the amount of interest exceeds A\$10; and
  - (b) You have issued a correctly rendered invoice to Us in relation to the interest.
- 15.4. For the purposes of this clause 15:
- (a) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day; and
  - (b) 'the day that payment is made' is the day when the Agency's system generates a payment request into the banking system for payment to the Service Provider.

#### **16. SUBCONTRACTING AND ASSIGNMENT**

- 16.1. You must not, without Our prior consent in writing, subcontract the whole or any part of the work under this Contract. Despite any approval to sub-contract, You remain fully responsible for the performance of Your obligations under the Contract.
- 16.2. You agree to make available to Us, if We request, details of all subcontractors engaged by You in the performance of this Contract, and You acknowledge (and agree to inform subcontractors) that we may publicly disclose the names of all subcontractors engaged.
- 16.3. You must not, without Our consent in writing, assign Your rights under this Contract.

#### **17. TERMINATION**

- 17.1. The Department may immediately terminate this Contract or reduce the scope of the Goods or Services by giving written notice to You.
- 17.2. On such termination We can:
- (a) cease payments under the Contract;
  - (b) recover from You all sums paid for Goods or Services not provided; and
  - (c) purchase similar services from alternative suppliers and claim by way of indemnity from You any loss it may incur in doing so.

#### **18. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 18.1. You are not by virtue of this Contract, and must not represent Yourself to be, and must ensure that none of Your employees or agents represent himself or herself to be, Our employee, partner or agent or otherwise able to bind or represent Us in performing Your obligations under the Contract.

#### **19. COMPLIANCE WITH LEGISLATION**

- 19.1. You must comply with all applicable laws of the Commonwealth, of any State, Territory or local authority.
- 19.2. You agree to comply with the Information Privacy Principles contained in the *Privacy Act 1988* (Cth) to the extent that the content of those principles apply as if You were an agency as defined in that Act and You agree to comply with any reasonable demand or inquiries of Ours on the basis of the exercise of the functions of the Privacy Commissioner under that Act.