

Definitions and Interpretations

For General Goods and/or Services

These definitions and rules of interpretation (version 3.0 – published December 2020) are designed to be used with the Queensland Government standard contractual terms for the procurement of general goods and services, available via www.forgov.qld.gov.au/general-goods-and-services-templates

A. Definitions

Aboriginal business and/or Torres Strait Islander business refers to a commercial entity that is at least 50 percent owned by Aboriginal peoples or Torres Strait Islander peoples.

Basic Order means any form of order from the Customer for the provision of the Deliverables which incorporates or refers to the Basic Purchasing Conditions.

Basic Purchasing Conditions means the document titled '*Basic Purchasing Conditions*' (version 3.0 – published December 2020) available at www.forgov.qld.gov.au/general-goods-and-services-templates

Best Practice Principles means the best practice principles with respect to quality, safe workplaces in the Queensland Procurement Policy and any associated guidance mentioned in the Queensland Procurement Policy to support the application of the Best Practice Principles.

Business Day means a day other than a Saturday, Sunday or public holiday at the address of the Customer or Principal as applicable.

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those from third parties, those arising out of the terms of any settlement, and any kind of investigation and includes the allegation of a claim.

Closing Date and Time means the date and time stated in the Invitation to Offer or Request for Quote, or such later time as may be notified by the Customer or Principal.

Comprehensive Contract Conditions means the document titled '*Comprehensive Contract Conditions*', (version 3.0 – published December 2020), available at www.forgov.qld.gov.au/general-goods-and-services-templates

Confidential Information means all information disclosed by or on behalf of the Customer, Principal or the Supplier ("**Discloser**") to the other party ("**Recipient**") in connection with an Invitation to Offer, Request for Quote, Contract or SOA or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Principal or Customer) all Customer Data.

Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis except through a breach of a confidentiality obligation.

Conflict of Interest means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflicts, may reasonably have the potential to conflict, or may reasonably be perceived as conflicting, with the ability of the Supplier or its Personnel to perform its obligations under the Contract or SOA fairly and objectively.

Conforming Offer means an offer by the Supplier to enter into a SOA or Contract, which includes all

the information requested, is received by the Closing Date and Time, and meets all other requirements for offers/quotes set out in the Invitation to Offer or Request for Quote.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party; and
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of goodwill, damage to reputation, loss of anticipated profit or damages for lost opportunity; and
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under a Contract with respect to the hosting, storage, migration, conversion, cleansing or backup of data for the Customer in providing the Goods or Services.

Contract means an agreement between the Customer and the Supplier, made up of the documents listed in the applicable contract conditions as forming part of the Contract.

Contract Details means a document titled '*Contract Details*' or Short Form Contract Details that contains information about a specific contract between the Customer and Supplier, which may be in a similar format to the '*Contract Details*' (*version 3.0 – published December 2020*) template available at www.forgov.qld.gov.au/general-goods-and-services-templates

Contract Term means the period of the Contract (including any extensions).

Correctly Rendered Tax Invoice means a tax invoice as intended by the GST Law:

- (a) in which the amount claimed is due for payment and correctly calculated either in Australian dollars or in the currency specified in the Details;
- (b) which is set out as an itemised account, identifying the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) Which includes an ABN or ACN number; and
- (d) which includes adequate information for the Customer to verify that the invoice is accurate, and which is accompanied by supporting documentation reasonably requested by the Customer.

Customer means the State of Queensland or the entity listed in the Details or Basic Order (as applicable) or for an ITO/RFQ, the entity issuing the ITO/RFQ seeking to enter into a Contract.

Customer Data means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Principal or Customer to the Supplier for use, processing, storing or hosting by the Supplier in performing the SOA and/or the Contract; and
- (b) created, processed, produced or derived from using, processing, storing or hosting that information, material, data, dataset or database in the Supplier's performance of the SOA or Contract or the use by the Principal or Customer of the Goods or Services or Deliverables the subject of the SOA or Contract,

and includes Metadata but does not include any pre-existing material or new material owned by the Supplier.

Customer Inputs means the Customer's Personnel, equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Deliverables means the Goods, Services and documentation to be provided to the Customer including as described in the Requirements, and all incidental and ancillary goods, services and documentation.

Details means:

- (a) for purchases under a SOA, the SOA Details and the SOA Order; or
- (b) otherwise, the Contract Details.

Discloser has the meaning given in the definition of Confidential Information.

Eligible Customer means an entity which is entitled to enter into a Contract under a SOA or other Supply Arrangement, being:

- (a) a Queensland Government department or agency;
- (b) a Queensland Government Body;
- (c) an entity which is directly or indirectly, partially or entirely funded by the State of Queensland, and/or a community based, non-profit making organisation performing community services, and/or another entity, from time to time approved by the State of Queensland acting through the Department of Energy and Public Works - Office of the Chief Advisor – Procurement (or successor entity), as an Eligible Customer; and
- (d) the Commonwealth, another State or a Territory Government.

Ethical Supplier Threshold means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

Expression of Interest (EOI) (or Request for Information (RFI)) means a request issued to the marketplace to gather information, usually of a high level and broad in nature, as to what is available in relation to the requirements of a Customer or a Principal. These are forms of early market engagements and are non-binding requests to gather information.

General Contract Conditions means the document titled '*General Contract Conditions*' (version 3.0, published December 2020) available at www.forgov.qld.gov.au/general-goods-and-services-templates

Goods means the goods the Supplier will provide, described in the Details or Basic Order.

Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

Insolvent- A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth));
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably

deduces it is so subject); or

- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Invitation to Offer, Request for Quote, Contract or SOA (as applicable), but excludes Moral Rights.

Invitation Process means the process commenced by the issuing of a Request for Quote, Invitation to Offer or any other communication between the Customer/Principal and Supplier in relation to the potential supply of goods, services and deliverables, including the preparation and submission of any offer, the evaluation of offers, any negotiations and the acceptance or rejection of offers, and concluding upon entering into the SOA or Contract with the Supplier or upon the termination of the process.

Invitation to Offer (ITO) means an invitation to offer issued by a Customer or Principal seeking offers for the provision of goods, services and/or deliverables.

Key Personnel means the people identified in Requirements, Details or otherwise in a Contract as 'key personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
- (b) certificates, licenses, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

Local Benefits Test refers to weighted evaluation criterion used to determine the benefit a Supplier will bring to the local area as referred to in the Queensland Procurement Policy.

Local Supplier is as defined in the Queensland Procurement Policy.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Metadata means any system-generated data that is created or generated in connection with the Customer's use of the Goods or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Goods or Services and includes any descriptive, structural and administrative metadata.

Modern Slavery is as defined under the *Modern Slavery Act 2018* (Cth).

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Invitation to Offer, Request for Quote, Contract or SOA (as applicable).

Offer Validity Period means the period stated in the Invitation to Offer or Request for Quote (as applicable) in which the offer is open for acceptance by the Customer or Principal.

Panel means one or more suppliers each of which have entered into a SOA or other Supply Arrangement with the Principal to provide the same or similar goods and/or services to Eligible Customers.

Personal Information has the meaning given:

- (a) for the purpose of the *Information Privacy Act* – in that Act; or
- (b) for the purposes of the *Privacy Act* – in that Act.

Personnel means:

- (a) officers, directors, employees, agents, temporary contractors, and
- (b) in the case of the Supplier includes:
 - (i) any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors and
 - (ii) any other person employed or engaged in the performance of the Contract/SOA.

Preferred Supplier Panel (PSP) means a form of Supply Arrangement established by the Principal of suppliers of particular goods and/or services which satisfy the Principal's predetermined criteria, from which Eligible Customers may invite suppliers to submit offers to provide goods and or services. It may also be referred to as a pre-qualified panel.

Price means the price or prices described in a Contract or SOA, or calculated using a calculation method in the Details (for a Contract), or SOA Details (for a SOA).

Principal is the party described in:

- (a) the SOA Details, responsible for administering the SOA;
- (b) for any other Supply Arrangement, the entity responsible for administering that arrangement; or
- (c) for an ITO, the entity seeking to establish a Supply Arrangement.

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

Queensland Government Body means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Queensland Procurement Policy means the Queensland Procurement Policy as published from time to time.

Recipient has the meaning given in the definition of Confidential Information.

Reliable Information means information and documents provided by or on behalf of the Customer or the Principal, to the extent that the Customer or Principal (as applicable) has expressly agreed in writing that the Supplier may rely on such information or documents, but only in respect of the purpose and validity period nominated by the Customer or the Principal.

Request for Quote (RFQ) means a document issued by a Customer seeking quotes or offers for the supply of Deliverables.

Request for Information (RFI) – see definition of Expression of Interest (EOI).

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract or SOA, which are set out in the Contract, SOA, the Invitation to Offer or Request for Quote (if any), or otherwise agreed by the parties

in writing.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Schedule means the schedules set out in the Contract Details or the SOA Details (whichever is applicable).

Services means the services the Supplier will perform under the Contract, described in the Details or Basic Order (as applicable).

Site means the site or premises at which the Deliverables are to be provided as specified in the Details or Basic Order (as applicable).

Small Business means a legal entity where the total number of employees and contractors which are employed/engaged by:

- (a) that entity; and
- (b) all of its related bodies corporate and associated entities, as those terms are defined in the *Corporations Act 2001* (Cth),

is less than 20.

SOA means a standing offer arrangement entered into between the Principal and the Supplier, made up of the documents described in the SOA Conditions.

SOA Conditions means the document titled '*SOA Conditions*' (version 3.0 – published December 2020), available at www.forgov.qld.gov.au/general-goods-and-services-templates

SOA Details means the deed executed by the Principal and the Supplier under which the SOA is established, that contains information about the specific SOA, which may be in a similar format to the '*Standing Offer Arrangement (SOA) Details*' deed template available at www.forgov.qld.gov.au/general-goods-and-services-templates

SOA Order means any order or acknowledgment from the Customer for the provision of Deliverables that are the subject of a SOA (and may also be regarded as a Basic Order if the Basic Purchasing Conditions apply to the Contract established under the SOA).

SOA Term means the period of the SOA (including any extensions).

Social Enterprise means a trading organisation led by an economic, social, cultural or environmental purpose consistent with a public or community benefit, which reinvests the majority of its profits/surplus in the fulfilment of that purpose.

Social Procurement refers to using the government's purchasing power to generate social benefits, adding value to procurement outcomes and supporting supplier and workforce diversity.

Supplier:

- (a) for a Contract: is described in the Basic Order or Details (as applicable);
- (b) for a SOA: is described in the SOA Details; and
- (c) for an Invitation Process: is a potential supplier invited to participate in the Invitation Process.

Supplier Code of Conduct means the supplier code of conduct available at www.forgov.qld.gov.au/supplier-code-conduct and as updated and amended from time to time.

Supply Arrangement means any form of supply arrangement established by the Principal under which Eligible Customers can engage suppliers including but not limited to Standing Offer Arrangements, pre-qualified supplier arrangements, pre-qualified panels, Preferred Supplier Panels or preferred supplier arrangements.

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract or SOA by the Supplier or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract, SOA or of a Law in respect of the Supplier's obligations under the Contract or SOA, committed with reckless disregard for the consequences and in circumstances where the Supplier or its Personnel know or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

B. Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(consistency)** where an Invitation to Offer, Request for Quote, EOI/RFI, Contract or SOA is made up of more than one document, the Invitation to Offer, Request for Quote, EOI/RFI, Contract or SOA must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) **(plural)** words in the singular include the plural and vice versa;
- (e) **(grammatical forms)** if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (f) **(contract departures)** the contract departures section of the Details will take precedence over all other documents;
- (g) **(currency)** all currency amounts are in Australian dollars unless otherwise expressly stated;
- (h) **(headings)** headings are provided for convenience and do not affect the interpretation of the Invitation to Offer (ITO), Request for Quote (RFQ), Expression of Interest (EOI) / Request for Information (RFI) or documents making up a Contract or Standing Offer Arrangement (SOA);
- (i) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (j) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (k) **(governing law)** the laws of Queensland apply to a Contract, SOA and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
- (l) **(law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
- (m) **(party)** a reference to 'party' means:
 - (i) in a SOA – the Principal and/or the Supplier
 - (ii) in a Contract – the Customer and/or the Supplier;
- (n) **(person)** a person includes the person's executors, administrators, novatees and assignees;
- (o) **(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (p) **(severability)** if any part of a Contract or SOA is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract or SOA will not apply but the other parts of the Contract or SOA will not be affected;
- (q) **(consent)** any reference to the Customer's or Principal's consent is a reference to the prior

written consent of the Customer or Principal.

C. Notices

A notice will be deemed to be given:

- (i) if posted within Australia to an Australian postal address 5 Business Days after the date of posting;
- (ii) if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia – 10 Business Days after posting;
- (iii) if delivered by hand during a Business Day – on the date of delivery;
- (iv) if emailed – on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered;

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.