

Basic Purchasing Conditions

For General Goods and Services

These Basic Purchasing Conditions (version 3.0 – published December 2020) are designed for procurements that are Low Value and Low Risk.

1. The Contract

- (a) A Contract will be formed between the Customer and Supplier on the terms of these Basic Purchasing Conditions:
- (i) when the Supplier accepts a Basic Order, or,
 - (ii) following receipt of a Basic Order, provides the Goods or Services set out in a Basic Order.
- The Contract continues until the Goods are delivered or the Services are performed, or on the expiry date specified in the Basic Order (if applicable) unless terminated earlier in accordance with this Contract.
- (b) Except where a Contract is established under a SOA, the Contract is made up of these Basic Purchasing Conditions, the Basic Order and any other document expressly incorporated by reference in the Basic Order, in descending order of precedence if there is an inconsistency between the documents.
- (c) Where the Contract is established under a SOA, the Contract is made up of the documents specified in clause 1.3 of the SOA Conditions and the documents in clause 1(b) above, in descending order of precedence.

2. Interpretation

The definitions and rules of interpretation which apply to this Contract are those specified in the Definitions and Interpretation document (*version 3.0 – published December 2020*), available at www.forgov.qld.gov.au/general-goods-and-services-templates.

3. Supplier to provide Deliverables

The Customer appoints the Supplier to supply the Deliverables. The Supplier accepts the appointment. The Supplier must provide the Deliverables in accordance with this Contract and the Customer's delivery instructions including within the timeframes specified in the Basic Order or as otherwise agreed.

The Supplier will promptly notify the Customer if it believes it will not be able to meet any delivery date or other timeframes specified in the Basic Order. If the Supplier cannot meet the timeframes specified in the Basic Order, then the Customer may terminate the Contract at no cost to the Customer.

4. Requirements

- (a) The Supplier must ensure that the Goods satisfy the description in the Contract, are of a high quality, and fit for their usual purpose and any other purpose disclosed by the Customer before the Contract is formed.
- (b) The Supplier must ensure the highest quality of work, and provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.
- (c) The Supplier must comply with all policies, codes of conduct (including workplace health and safety policies, the Supplier Code of Conduct and the Ethical Supplier Threshold), rules, standards and procedures ('policies') which apply to the Deliverables and/or the Supplier's obligations under this Contract. If any new policies are introduced, or amendments made to any existing policies, which apply to the Deliverables and/or the Supplier's obligations under this Contract, the Supplier must comply with the new or amended policies. Access to the relevant policies will be provided on request.
- (d) The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.
- (e) The Supplier must comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), *Modern Slavery Act 2018* (Cth), (where applicable to the Supplier) and the *Human Rights Act 2019* (Qld) (where applicable to the Supplier).
- (f) The Supplier must maintain public liability and products insurance for a minimum amount of \$5 million per claim or such other amount as specified by the Customer in the Basic Order and workers' compensation insurance (if required by law), and any other insurance specified in writing by the Customer.
- (g) The Supplier must not use or disclose or otherwise make available any Confidential Information to any person except to its Personnel on a need to know basis to perform the Contract.
- (h) If the Supplier collects or has access to any Personal Information in order to perform the Contract, the Supplier must, when performing this Contract:
 - (i) comply with one of the following:
 - A. if the Customer is an 'agency' for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Customer, as if the Supplier were the Customer; or
 - B. otherwise – comply with the Australian Privacy Principles in the Privacy Act; and
 - (ii) immediately notify the Customer on becoming aware of a breach of this clause or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information.
- (i) The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements. The Supplier is not, and Supplier Personnel are not, employees of the Customer.

5. Warranties

5.1. Conflict of interest

The Supplier warrants that it and, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, do not have a Conflict of Interest in the performance of the Contract, except as previously disclosed in writing to the Customer and which has been and can continue to be appropriately resolved to the satisfaction of the Customer.

If a Conflict of Interest or risk of it arises during the Contract Term, the Supplier must notify the Customer immediately. Upon receipt of such a notice, or upon the Customer otherwise identifying a Conflict of Interest or a risk of it, the Customer may, without limiting its rights under clause 12, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

5.2. Anti-competitive conduct

The Supplier warrants that neither it, nor to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated Invitation Process or any actual or potential contract with any entity for goods and services similar to the Goods and Services. In addition to any other remedies available to it under Law or contract, the Customer may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in collusive or anti-competitive conduct.

5.3. Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

5.4. Supplier information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Contract or the associated Invitation Process are complete, accurate, up to date and not misleading in any way.

5.5. Modern Slavery

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain, have not been convicted of any offence involving Modern Slavery.

The Supplier must immediately notify the Customer if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain.

The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

5.6. Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way.

6. Invoicing, price and payment

- (a) The Supplier may invoice the Customer after delivery of Goods or Services that comply with the Requirements.
- (b) The Supplier must include adequate information for the Customer to verify that the invoice is accurate and must provide supporting documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause.
- (c) The Customer will pay each Correctly Rendered Tax Invoice within 30 days of receipt, except where a government policy applies which prescribes a different payment period (such as the Queensland Government On-time Payment Policy, which requires payment of eligible invoices to small business suppliers within 20 days).
- (d) The Customer may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.
- (e) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

7. GST

Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.

If GST is payable on a supply under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meanings as in the GST Law.

8. Liability

The maximum liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is an amount equal to the total of all Prices (including additional expenses and charges) payable under the Contract, multiplied by 1.5. The cap on liability does not apply to liability in relation to:

- (a) personal injury, including sickness, injury or death;
- (b) loss of, or damage to, tangible property;
- (c) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel;
- (d) a breach by the Supplier or its Personnel of any obligation under clause 4(g) (confidentiality) or clause 4(h) (privacy) or
- (e) any Claim by a third party:
 - (i) arising out of any negligent act or omission of the Supplier or its Personnel or
 - (ii) relating to breach of a third party's Intellectual Property Rights or Moral Rights.

9. Intellectual Property Rights

The Supplier grants (and must ensure that relevant third parties grant) the Customer an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferable and sub-licensable licence to exercise all Intellectual Property Rights in the Deliverables, for any purpose of the Customer, the State of Queensland or other Queensland Government Body. The Supplier warrants that it is authorised to grant the rights in this clause and that the Deliverables and their use as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

10. Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, will vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel or to others as specified in the Contract on a need to know basis to perform the Contract. The Supplier must comply with clauses 4(g) and (h) and all applicable Laws in relation to Customer Data which is Personal Information or Confidential Information, and must provide reasonable assistance to the Customer on request to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data including (without limitation) identifying, labelling, searching, reporting, copying, retrieving and modifying Customer Data in relation to Personal Information, Confidential Information, public records, right to information and information standards.

11. Where Requirements are not met

If any Requirements for the Deliverables are not met, the Supplier must promptly (at the Customer's option):

- (a) refund to the Customer any monies paid for the Deliverables; or
- (b) resupply the relevant Goods or re-perform the relevant Services so that the Deliverables comply with the Requirements,

and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.

If the Supplier fails to comply with its obligations under this clause, the Customer may have the Deliverables re-supplied or re-performed by others, and the Supplier must pay the Customer on demand any costs incurred by the Customer in doing so.

Acceptance of the Deliverables by the Customer does not relieve the Supplier of any of its obligations under the Contract.

12. Termination

12.1 For cause

The Customer may terminate the Contract immediately on written notice if:

- (a) the Customer is satisfied that the Supplier has breached any warranty in this Contract;
- (b) a Conflict of Interest exists or arises and has not been, or in the Customer's view cannot be, appropriately resolved to the Customer's satisfaction;
- (c) the Supplier ceases business or indicates that it is unwilling or unable to complete the Contract;

- (d) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Customer; or
- (e) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the Corporations Act 2001 (Cth) applies.

Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 12.1, the Supplier must pay or reimburse the Customer's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

12.2 Show cause – Supplier Code of Conduct and Ethical Supplier Threshold

Where the Customer reasonably suspects that the Supplier is not complying with the Supplier Code of Conduct or Ethical Supplier Threshold, the Customer may by written notice require the Supplier to show cause, by the date specified in the notice (which must not be less than 5 Business Days), why the Customer should not terminate the Contract. If the Supplier fails to show reasonable cause by the date specified by the Customer, then the Customer may, by notice in writing to the Supplier, terminate the Contract.

12.3 For convenience

The Customer may terminate this Contract at any time in its absolute discretion without giving reasons by written notice to the Supplier. The Customer will pay the Supplier for work performed and Deliverables supplied but not yet invoiced on a pro rata basis and the Supplier's reasonable and documented expenses directly relating to the termination. The Customer will have no other liability to the Supplier relating to the termination under this clause.

In no case will the compensation payable as a consequence of termination exceed the Price that would have been payable if the Contract had not been terminated. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination and take all reasonable steps to minimise its expenses relating to the termination.

12.4 If Contract is under a SOA

If this Contract is entered pursuant to a SOA the Customer may terminate the Contract for cause immediately on written notice to the Supplier:

- (a) if the Principal is entitled to terminate the SOA or
- (b) if any customer (including the Customer) is entitled to terminate for cause any other contract entered under the SOA.

Unless otherwise specified in the Basic Order, this Contract (including this clause) will survive termination or expiry of the SOA, for any reason.

13. General

The parties agree that:

- (a) (**notices**) they will send all notices relating to the Contract to the other party at the address listed in the Basic Order, with a copy to the nominated contact person in the Basic Order (or as updated by the parties). Notices will be deemed to be given in

accordance with Part C of the Definitions and Interpretations (*version 3.0 – published December 2020*), which is available via www.forgov.qld.gov.au/general-goods-and-services-templates;

- (b) (**communication**) they will direct all other communications relating to the Contract to the other party's nominated contact person, or to another person if the other party directs;
- (c) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (d) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;
- (e) (**relationship**) their relationship is of Customer and Supplier. This Contract does not create any partnership, joint venture, agency or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, agent, joint venturer, officer or employee of the Customer;
- (f) (**manufacturer warranties**) the Supplier assigns any manufacturer's warranty to the Customer, where possible to do so, and must inform the Customer where it is not possible to do so;
- (g) (**delivery**) the Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with the Customer's instructions. If the Supplier asks, the Customer will confirm in writing that the Deliverables have been received;
- (h) (**packaging**) the Supplier must adequately pack and protect Goods to withstand transit and storage;
- (i) (**rejected Goods**) if the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost;
- (j) (**risk**) risk will transfer to the Customer when the Goods are delivered to the delivery address specified in writing by the Customer, in accordance with the delivery instructions;
- (k) (**title**) title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price;
- (l) (**no encumbrance**) the Supplier warrants that the Goods are not (and when title passes, will not be) subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract;
- (m) (**financial viability**) the Customer at its absolute discretion may conduct financial viability assessments on the Supplier. The Supplier must cooperate with any financial viability assessments;
- (n) (**industrial relations**) the Supplier must comply with all Laws, applicable awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions;
- (o) (**survival**) clauses 4(f), 4(g), 4(h), 7, 8, 9, 10 and 13(d),(e),(i),(j),(k),(l),(o),(r) and (s) and any other clauses which are expressed to survive or by their nature survive, will survive termination or expiry of the Contract for any reason;

- (p) **(access and inspection)** the Supplier must, on reasonable prior written notice from the Customer, give the Customer or its nominated agent reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Customer or a third party engaged by the Customer to verify:
- (i) the completeness and accuracy of information provided by the Supplier in connection with the Contract or the associated Invitation Process, and
 - (ii) the Supplier's compliance with its obligations under the Contract
- and must, without limiting the Customer's other rights, promptly address any non-compliances notified by the Customer to the Supplier to rectify;
- (q) **(subcontract)** the Supplier may only subcontract any part of its obligation under this Contract to subcontractors with the Customer's prior written consent. The Customer will not unreasonably withhold consent but may give consent subject to reasonable conditions. The Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier from its liabilities and obligations under the Contract;
- (r) **(disputes)** they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation;
- (s) **(right to disclose)** the Customer may disclose information about the Contract:
- (i) on the Government's contract directory, where required or recommended by Government procurement policy, or
 - (ii) as required by Law, including under the Right to Information Act and/or the Information Privacy Act.