

STANDING OFFER ARRANGEMENT CONDITIONS

MAJOR DIFFERENCES BETWEEN VERSION 002 DATED 1 JULY 2009 AND VERSION 003 DATED 1 JULY 2011

The most significant differences between Version 002 and Version 003 of the Standing Offer Arrangement Conditions are outlined below. *[This document does not represent a comprehensive list of every amendment incorporated in the new Version dated 1 July 2011.](#)*

CLAUSE TITLE	CLAUSE NUMBER	SIGNIFICANT DIFFERENCES BETWEEN VERSIONS
Definitions and Interpretation	1	
Definitions	1.1	<p><u>New definition:</u></p> <ul style="list-style-type: none"> • Standing Offer. <p><u>Existing definitions with significant changes:</u></p> <ul style="list-style-type: none"> • Additional Provisions; • Business Day; • Conditions of Contract; • Confidential Information; • Contract; • Deed of Agreement; • Financial Security; • Non-Government Organisation or NGO; • Notice; • Occurrence; • Order; • Performance Guarantee; • Specification; • Standing Offer Arrangement; and • Standing Offer Arrangement Conditions.

CLAUSE TITLE	CLAUSE NUMBER	SIGNIFICANT DIFFERENCES BETWEEN VERSIONS
DIVISION A – ARRANGEMENT		<ul style="list-style-type: none"> • <i>Section A</i> changed to <i>Division A</i>. • Parts 1 – 6 in the <i>Standing Offer Arrangement - Invitation to Offer</i> template have been changed to <i>Sections</i> making it necessary to change the terminology in the Standing Offer Conditions from <i>Section</i> to <i>Division</i>. • terminology change has been applied (where applicable) across all of the Government terms and conditions documents.
Nature of the Arrangement between the Principal and the Contractor	3.1	<ul style="list-style-type: none"> • new clause includes Customer accepting the Standing Offer by placing an Order with the Contractor.
	3.2	<ul style="list-style-type: none"> • previous clause 3.1 is now 3.2 with amendments.
	3.5	<ul style="list-style-type: none"> • new clause includes the right to enter into contracts with other Contractors for similar goods and/or services.
Formation of the Arrangement	5.1	<ul style="list-style-type: none"> • new clause includes the formation of the Arrangement.
	5.2	<ul style="list-style-type: none"> • previous clause 5.1 is now 5.2, with amendments to the hierarchy of documents.
	5.3	<ul style="list-style-type: none"> • previous clause 5.2 is now 5.3, with amendments.
	5.3 & 5.4	<ul style="list-style-type: none"> • clauses deleted.
	5.7 – 5.10	<ul style="list-style-type: none"> • clauses regarding formation of the Contract, have been deleted as these provisions are addressed in <i>Division B – Contract</i>.
Role of the Principal's Authorised Officer and Project Manager	8	<ul style="list-style-type: none"> • includes a new sub-clause 8.2 with amendments to 8.1, 8.3 and 8.4 to clarify the roles and responsibilities of the Principal's Authorised Officer and Project Manager under an Arrangement.
List of Goods and/or Services and Pricing under the Arrangement	9.4	<ul style="list-style-type: none"> • clause deleted.

CLAUSE TITLE	CLAUSE NUMBER	SIGNIFICANT DIFFERENCES BETWEEN VERSIONS
Payment	11.4 & 11.5	<ul style="list-style-type: none"> new clauses include payment of invoices by a credit card or electronic facility and any associated fees and charges.
GST	12.1 & 12.2	<ul style="list-style-type: none"> previous clause 12.1 and 12.2 deleted – removing the option for Pricing to be listed as GST exclusive. previous clauses 12.3 and 12.4 - renumbered to now be 12.1 and 12.2.
	12.5	<ul style="list-style-type: none"> clause deleted.
Requirement for Goods and/or Services	13.6-13.8	<ul style="list-style-type: none"> new clauses include the Customer's rights in respect of rejected Goods under a Contract.
Transacting with a Customer	15.3 (d)	<ul style="list-style-type: none"> clause amended to include when an email is deemed "to be received".
	15.6	<ul style="list-style-type: none"> clause deleted.
Confidentiality	23.2 (b) & (c)	<ul style="list-style-type: none"> new clauses include instances when the Contractor may disclose Confidential Information.
	23.6-23.8	<ul style="list-style-type: none"> new clauses include the terms of retention of Documents and/or Records by the Contractor.
Privacy and Personal Information	24.1	<ul style="list-style-type: none"> clause amended to address the differences under the <i>Information Privacy Act</i> in regard to the Health Department.
Liability	25	<ul style="list-style-type: none"> clause amended so the terms apply to a Contract, as well as the Arrangement.
	25.4	<ul style="list-style-type: none"> clause amended to clarify that where "no amount" or "nil" is inserted in item 18 of Schedule 1 as the liability cap, then the liability of the Party will be unlimited.
	25.6	<ul style="list-style-type: none"> new clause includes a Contractors limitation of liability and the Professional Standards Act.

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Resolution of Disputes	30.2	<ul style="list-style-type: none"> clause amended so the terms apply to the mediator's fees and rules and not just the mediator.
	30.3 & 30.4	<ul style="list-style-type: none"> new clauses include details regarding costs and the continuation of the obligations under the Arrangement and/or Contract where a dispute exists.
Variation to the Arrangement	31.6 & 31.7	<ul style="list-style-type: none"> clauses deleted - Price variations under the Arrangement are addressed under clause 9.
Termination of the Arrangement	34.5 (b)	<ul style="list-style-type: none"> new clause includes termination when a Contractor breaches provisions of clause 37.1.
	34.6	<ul style="list-style-type: none"> clause amended to specify the Principals right to claim damages for breach of the Arrangement.
Commissions, Incentives and Collusion	37	<ul style="list-style-type: none"> clause 37.1.1 deleted and replaced with new clauses 37.1.1 – 37.1.5. These new clauses represent a significant strengthening of the provisions under the Government terms and conditions regarding collusion and anti-competitive behaviour of Contractors.
Disclosure by Principal	37.10	<ul style="list-style-type: none"> clause amended to include disclosure of information provided by the Contractor about the Contractor, the Arrangement or the Goods and/or Services.
Right to Information and Disclosure	37.11	<ul style="list-style-type: none"> clause amended to include new disclosure and publication of procurement results for contracts over \$10 million requirements (as per clause 9.2 of the State Procurement Policy).
Clauses to Survive Termination of the Arrangement	38	<ul style="list-style-type: none"> clause amended to include the following clauses which will survive termination or expiration of the Arrangement: <ul style="list-style-type: none"> – clause 1 Definitions and Interpretation; and – clause 22 Intellectual Property Rights.

CLAUSE TITLE	CLAUSE NUMBER	SIGNIFICANT DIFFERENCES BETWEEN VERSIONS
DIVISION B – CONTRACT		<ul style="list-style-type: none"> • <i>Section B</i> changed to <i>Division B</i>. • Parts 1 – 6 in the <i>Standing Offer Arrangement - Invitation to Offer template</i> have been changed to Sections making it necessary to change the terminology in the Standing Offer Conditions from <i>Section</i> to <i>Division</i>. • terminology change has been applied (where applicable) across all of the Government terms and conditions documents.
Contractor’s Supply of Goods and/or Services	39	<ul style="list-style-type: none"> • clause previously titled <i>Nature of this Contract Between the Customer and Contractor</i>.
Formation of Contract	41.1	<ul style="list-style-type: none"> • previous clause 41.1 is now 41.2, with amendments to the hierarchy of documents. • new clause 41.1 - when the Contract comes into force under the Standing Offer.
	41.8	<ul style="list-style-type: none"> • new clause includes the Contract superseding all prior representations, agreement, statements and understandings between the Principal and Contractor.
General Right of Set-Off by the Customer	50.1 & 50.2	<ul style="list-style-type: none"> • clauses deleted.
Commissions, Incentives and Collusion	53.1	<ul style="list-style-type: none"> • clause 53.1 deleted and replaced with new clauses 53.1 – 53.5. These new clauses represent a significant strengthening of the provisions under the Government terms and conditions regarding collusion and anti-competitive behaviour of the Contractor.
Confidentiality	55.2 (b) & (c)	<ul style="list-style-type: none"> • new clauses include instances when the Contractor may disclose Confidential Information.
	55.6 – 55.8	<ul style="list-style-type: none"> • new clauses include the terms of retention of Documents and/or Records by the Contractor.

CLAUSE TITLE	CLAUSE NUMBER	SIGNIFICANT DIFFERENCES BETWEEN VERSIONS
Privacy and Personal Information	56	<ul style="list-style-type: none"> clause has been amended to address the differences under the <i>Information Privacy Act</i> in regard to the Health Department.
Liability	57	<ul style="list-style-type: none"> clause 57 has been deleted and clause 25 under Division A has been amended so the terms apply to both Arrangement and a Contract.
Indemnity	58	<ul style="list-style-type: none"> clause 58 has been deleted and clause 26 under Division A has been amended so the terms apply to both the Arrangement a Contract.
Variation to the Contract	58.9 <i>(previously clause 60)</i>	<ul style="list-style-type: none"> clause deleted - Price variations under the Arrangement are addressed under clause 9.
Disclosure by Customer	63.6 <i>(previously clause 65.6)</i>	<ul style="list-style-type: none"> clause amended to include disclosure of information provided by the Contractor about the Contractor, the Contract or the Goods and/or Services.
Right to Information and Disclosure	63.7 <i>(previously clause 65.7)</i>	<ul style="list-style-type: none"> clause amended to include the new disclosure and publication of procurement results for contracts over \$10 million requirements (as per clause 9.2 of the State Procurement Policy).
No Advertising	63.8	<ul style="list-style-type: none"> new clause - public announcements or advertisement in relation to the Contract by the Contractor.
Clauses to Survive Termination of the Contract	64 <i>(previously clause 66)</i>	<ul style="list-style-type: none"> clause amended to include the following clauses which will survive termination or expiration of the Contract: <ul style="list-style-type: none"> – clause 1 - Definitions and Interpretation; and – clause 63.8 - No Advertising. clause amended to delete the following clauses: <ul style="list-style-type: none"> – clause 57 - Liability; and – clause 58 - Indemnity.