

Archived Terms and Conditions – Version Differences

Differences between terms and conditions versions (July 2012 to October 2014)

Difference	OLD Short Form Conditions	NEW General Contract Conditions and Comprehensive Contract Conditions	OLD Standing Offer Arrangement Conditions	NEW Standing Offer Arrangement Conditions	NEW Basic Purchasing Conditions - FEATURES
Contract formed when...	Contractor's offer is accepted under the Order.	Customer accepts Supplier's offer in writing OR parties sign Details OR formed under SOA conditions.	<p>Formed by execution of deed between Principal and Contractor.</p> <p>Customer accepts Standing Offer by placing Order with Contractor.</p> <p>List of eligible Customers who can enter contracts under SOA.</p>	<p>Formed as an agreement between Principal and Supplier, when:</p> <ul style="list-style-type: none"> -Principal accepts Supplier's offer in writing; or -parties have signed SOA Details, <p>whichever happens first.</p> <p>Contract formed under SOA when Supplier receives an SOA Order and:</p> <ul style="list-style-type: none"> -confirms it will supply the Customer; or -commences supply, <p>whichever happens first.</p> <p>List of eligible Customers – similar to old SOA Conditions.</p>	Supplier accepts Basic Order/provides the Goods or Services set out in a Basic Order.

Please note, this is intended as only a summary – for full details refer to the documents located on New Tender Templates and Terms and Conditions page on the Housing and Public Works website (<https://www.forgov.qld.gov.au/procurement>).

Difference	OLD Short Form Conditions	NEW General Contract Conditions and Comprehensive Contract Conditions	OLD Standing Offer Arrangement Conditions	NEW Standing Offer Arrangement Conditions	NEW Basic Purchasing Conditions - FEATURES
Security	No provision.	Contract Details may specify. Comprehensive Contract Conditions includes a clause dealing with security from the Supplier.	Principal can require Contractor to execute Performance Guarantee; can require Financial Security.	SOA Details may specify.	No provision.
Risk and title	Pass to Customer on delivery.	Risk passes on delivery. Title passes on earlier of delivery/payment.	Pass to Customer on delivery	Risk passes on delivery. Title passes on earlier of delivery/payment.	Risk passes on delivery. Title passes on earlier of delivery/payment.
GST	Price includes GST.	Price excludes GST.	Price includes GST.	Price excludes GST.	Price excludes GST.
Price review	No provision.	Contract Details may specify.	Customer may request Price change for CPI/other factors. Principal free to accept/reject.	SOA Details may specify.	No provision.
Payment	No right of set off.	Right of set off. Customer may withhold payment of amount disputed in good faith, pending resolution.	Payment by Customer to Contractor as specified in Schedule 2.	No payment due to Supplier under SOA.	Customer may withhold payment of amount disputed in good faith, pending resolution.
Liability - contribution	Liability reduced where other party contributed by negligence, unlawful act/omission or failure to comply with obligations.	Liability reduced to extent other party contributed to loss/damage.	Liability reduced where other party contributed by negligence, unlawful act/omission or failure to comply with obligations.	Liability reduced to extent other party contributed to loss/damage.	No provision.
Liability - cap	Cap on liability of either party at 3 times Contract Price (no cap for personal injury, loss/damage to tangible property, breach of IP rights or under Contractor indemnity)	Cap on liability if specified in Contract Details (no cap for personal injury, loss/damage to tangible property, IP/Moral Rights or an indemnity).	Cap on liability of the per Occurrence amount specified in Schedule 1 (not personal injury, loss/damage to tangible property, breach of IP rights or under Contractor indemnity).	Cap on liability if specified in SOA Details. (No exclusions from cap clause.)	Cap on liability is 1.5 x total of all Prices payable (no cap for personal injury, loss/damage to tangible property, Willful Default, Willful Misconduct, unlawful act/omission, failure to comply with applicable Law, or third party Claim).

Difference	OLD Short Form Conditions	NEW General Contract Conditions and Comprehensive Contract Conditions	OLD Standing Offer Arrangement Conditions	NEW Standing Offer Arrangement Conditions	NEW Basic Purchasing Conditions - FEATURES
Liability – consequential loss	Consequential loss excluded .	Consequential loss not excluded .	Consequential loss excluded .	Consequential loss not excluded .	Consequential loss not excluded .
Indemnity	Indemnity covers: -breach of contract by Contractor; -claim made by third party re IP rights; -negligent act or omission.	Indemnity: -does not cover breach of contract by Supplier but does cover breach of any warranty; -covers any claim made by a third party relating to the contract; -only covers Willful Default or Willful Misconduct.	Indemnity covers: -breach of contract by Contractor; -claim made by third party re IP rights; -negligent act or omission.	Indemnity: -does not cover breach of contract by Supplier but does cover breach of any warranty; -covers any claim made by a third party relating to the contract; -only covers Willful Default or Willful Misconduct.	No provision.
Information	No provision.	Supplier to be responsible for assessing all relevant matters including accuracy of all information provided by Customer.	No provision.	Supplier to be responsible for assessing all relevant matters including accuracy of all information provided by Customer.	No provision.
Intellectual Property	Default position is IP rights in Contract Material vest in Customer .	Each party retains its IP rights which existed at contract start date. Supplier grants Customer licence to exercise all IP rights which are incorporated into the deliverables. New IP rights created are owned by the Customer , with a broad licence to exercise all new IP Rights granted back to the Supplier (subject to obligations of confidentiality, privacy and Customer Data clause).	Default position is IP rights in Contract Material vest in Customer .	Each party retains its IP rights which existed at contract start date. Supplier grants Principal a licence to exercise all IP rights which are incorporated into the deliverables provided to the Principal under the SOA, or to a Customer under a contract. New IP rights created in performing the SOA are owned by the Principal , with a broad licence to exercise all new IP Rights granted back to the Supplier (subject to obligations of confidentiality, privacy and Customer Data clause).	Supplier grants Customer licence to exercise all IP rights in Goods and Services.

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Records/Customer Data	Customer owns IP rights so no special provision for Customer Data. Records ¹ must be returned to Customer at end of Contract.	Customer owns Customer Data ² . Supplier must not use or disclose it except to extent needed to provide to its Personnel on need to know basis to perform obligations or comply with law.	Customer owns IP rights so no special provision for Customer Data. Records ³ must be returned to Customer at end of Contract.	Customer owns Customer Data ⁴ . Supplier must not use or disclose it except to extent needed to provide to its Personnel on need to know basis to perform obligations or comply with law.	Ownership of Customer Data vests in Customer on creation.
Confidentiality	Contractor must keep information confidential.	Each party must keep information confidential. Customer can require Supplier to obtain signed confidentiality deed and/or conflict of interest declaration from Personnel.	Contractor must keep information confidential.	Each party must keep information confidential. Customer can require Supplier to obtain signed confidentiality deed and/or conflict of interest declaration from Personnel.	Supplier must keep information confidential.
Privacy	Contractor must comply with <i>Information Privacy Act 2009 (Qld) (IPA)</i> .	If Customer is 'agency' under IPA, Supplier must comply with IPA as applicable to Customer. If Customer is not 'agency', Supplier must comply with Australian Privacy Principles in <i>Privacy Act 1988 (Cth)</i> .	Contractor must comply with IPA.	If Customer is 'agency' under IPA, Supplier must comply with IPA as applicable to Customer. If Customer is not 'agency', Supplier must comply with Australian Privacy Principles in <i>Privacy Act 1988 (Cth)</i> .	Supplier must comply with IPA as if it were the Customer.
Insurance	Contractor must have:	Insurances to be specified in	Principal must have:	Insurances to be specified in	If Supplier enters Customer's Site to deliver Goods/provide

¹ Material including documents, information and software made available by the Customer to the Contractor in connection with the performance of the contract.

² Any information, materials, data, datasets or databases which are provided by or on behalf of the Customer or Principal or which are created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

³ Material including documents, information, and software made available by the Customer to the Contractor in connection with the performance of the contract.

⁴ Any information, materials, data, datasets or databases which are provided by or on behalf of the Customer or Principal or which are created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

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	<ul style="list-style-type: none"> -public liability insurance \$10 million per claim; -workers' compensation insurance. 	<p>Contract Details.</p> <p>Supplier must maintain run-off insurance for 6 years.</p>	<ul style="list-style-type: none"> -public liability insurance as specified; -workers' compensation insurance; -professional indemnity insurance, if specified, with run-off period of 4 years. 	<p>SOA Details.</p> <p>Supplier must maintain run-off insurance for 6 years.</p>	<p>Services, Supplier must maintain:</p> <ul style="list-style-type: none"> -public liability and products insurance of minimum \$1 million per claim; -workers' compensation insurance (if required by law); and -any other insurance as specified by Customer in writing.
Termination – for convenience	Customer may terminate on 30 days' prior Notice (or other reasonable period determined by Customer).	Customer may terminate giving at least 30 days' written notice.	Principal may terminate for convenience on 30 days' Notice (or other reasonable period determined by Principal).	Customer may terminate giving at least 30 days' written notice.	Customer may terminate at any time prior to delivery/completion, by written notice (process for Customer to reimburse Supplier for reasonable out of pocket expenses).
Termination – for cause	<p>Customer may immediately terminate if:</p> <ul style="list-style-type: none"> -Contractor commits breach, Customer issues show cause notice and Contractor fails to show reasonable cause by date specified; -Customer identifies a Conflict of Interest; -Customer is satisfied that Contractor has breached confidentiality/personal information provision; -Customer breaches insurance/licensing requirements; 	<p>Customer may immediately terminate if:</p> <ul style="list-style-type: none"> -Supplier breaches contract (must be breach that cannot be remedied/has not been remedied within reasonable period); -Conflict of Interest arises and in Customer's view cannot be appropriately managed, to the Customer's satisfaction*; -Customer is satisfied that any declarations and warranties provided by Supplier were or became inaccurate, misleading etc; 	<p>Principal may immediately terminate if:</p> <ul style="list-style-type: none"> -Contractor commits breach, Principal issues show cause notice and Contractor fails to show reasonable cause by date specified; -Principal identifies a Conflict of Interest; -Principal is satisfied that Contractor has breached confidentiality/personal information provision; -Customer breaches insurance/licensing requirements; 	<p>Principal may immediately terminate if:</p> <ul style="list-style-type: none"> -any Customer is entitled to terminate a Contract for cause; -Conflict of Interest arises and in Principal's view cannot be appropriately managed, to the Principal's satisfaction*; -Principal is satisfied that any declarations and warranties provided by Supplier were or became inaccurate, misleading etc; -Supplier ceases business/indicates it is unable or unwilling to complete the 	<p>Customer may terminate:</p> <ul style="list-style-type: none"> -if Supplier cannot meet the timeframes specified in Basic Order (no cost to Customer); -immediately if it believes Supplier has breached any warranties in Conflict of Interest and criminal organisations provision; -if contract is entered into under SOA, immediately on written notice if Principal is entitled to terminate SOA or if any customer entitled to terminate for cause any other contract under the SOA.

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	<p>-Customer is satisfied that Contractor has breached commissions, incentives or collusion provision;</p> <p>-Contractor becomes insolvent etc;</p> <p>-Contractor indicates it is unable/unwilling to complete.</p>	<p>-Supplier ceases business.</p> <p>-Supplier becomes Insolvent.</p> <p>Supplier may terminate for Customer's failure to pay under prescribed circumstances.</p> <p>*Customer may also terminate immediately if it believes Supplier has breached any warranty in clause 19 re anti-competitive conduct/conflict of interest/criminal organisations.</p> <p>Customer may also terminate if Principal can terminate the SOA or another customer can terminate for cause any other contract entered under the SOA.</p>	<p>-Principal is satisfied that Contractor has breached commissions, incentives or collusion provision;</p> <p>-Contractor becomes insolvent etc;</p> <p>-Contractor indicates it is unable/unwilling to complete.</p>	<p>SOA/any Contract/enter new Contracts;</p> <p>-Supplier breaches SOA and breach cannot be remedied or not within reasonable period nominated by Principal; or</p> <p>-Supplier becomes Insolvent.</p> <p>*Principal may also terminate immediately if it believes Supplier has breached any warranty in clause 19 re anti-competitive conduct/conflict of interest/criminal organisations.</p>	<p>If SOA terminates, Contract itself survives, unless otherwise specified in Basic Order.</p>
Suspension	No provision.	Customer can suspend contract where entitled to terminate under clause 21.	No provision.	Customer can suspend contract where entitled to terminate under clause 21.	No provision.
Commissions, incentives and collusion	Very extensive provisions.	<p>Similar but streamlined provisions.</p> <p>Broader termination rights where Customer <i>believes</i> Supplier has engaged in collusive/anti-competitive conduct it may immediately terminate.</p>	Very extensive provisions.	<p>Similar but streamlined provisions.</p> <p>Broader termination rights where Customer <i>believes</i> Supplier has engaged in collusive/anti-competitive conduct it may immediately terminate.</p>	<p>Conflict of interest provisions as for new General Contract Conditions.</p> <p>No anti-competitive conduct provision.</p>
Criminal organisations	No provision.	Supplier warrants neither it nor its Personnel convicted of specified offences or subject to order under <i>Criminal</i>	No provision.	Supplier warrants neither it nor its Personnel convicted of specified offences or subject to order under <i>Criminal</i>	Supplier warrants neither it nor its Personnel convicted of specified offences or subject to order under <i>Criminal</i>

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		<i>Organisation Act 2009 (Qld).</i>		<i>Organisation Act 2009 (Qld).</i>	<i>Organisation Act 2009 (Qld).</i>
Dispute resolution	No provision.	General Contract Conditions: Parties not to bring court proceedings (except urgent interlocutory) without first attempting to resolve. Comprehensive Contract Conditions includes a dispute resolution clause with an escalation pathway.	No provision.	Parties not to bring court proceedings (except urgent interlocutory) without first attempting to resolve.	No provision.
Publication	Detailed requirements.	Customer may publish information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy.	Detailed requirements.	Customer may publish information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy.	Customer may publish information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy or required by <i>Right to Information Act 2009 (Qld)</i> .
Transition Out services	No provision.	Comprehensive Contract Conditions includes a clause for transition out services to be provided by the Supplier at the Customer's request.	No provision.	No provision.	No provision.