

Short Form Conditions of Contract

For the Provision of Goods and/or Services

Version 002- dated 1 July 2009



1. Definition and Interpretation

1. Definitions

In this Contract, unless the context otherwise requires, the following definitions will apply:

"Approved Expenses" means the Contractor's expenses (if any) which have been agreed between the Customer and Contractor and approved by the Customer prior to any expenditure being incurred, as specified in the Order;

"Cluster Members" means the agencies and their representatives (if any) as specified in the Order;

"Conflict of Interest" means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under this Contract fairly and objectively;

"Contract" means the legally binding contract as agreed between the Customer and the Contractor pursuant to clause 2.1;

"Contract Material" means any material that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing or carrying out this Contract;

"Contractor" means the entity specified in this Contract from whom the Goods and/or Services are being procured;

"Correctly Rendered Invoice" means an invoice:

- (a) in which the amount claimed is due for payment in accordance with this Contract;
- (b) in which the amount claimed is correctly calculated in accordance with this Contract;
- (c) which correctly identifies the Goods and/or Services supplied; and
- (d) which, if GST is applicable is a valid tax invoice under the GST Legislation;

"Customer" means the entity specified in this Contract procuring the Goods and/or Services, on its own behalf and/or behalf of any Cluster Members;

"Goods" means any material, plant, item or equipment specified in the Order;

"GST" means a goods and services tax imposed by or through the GST Legislation;

"GST Amount" means the amount of GST payable in respect of any taxable supply under this Contract, calculated at the rate of GST applicable at the time;

"GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

"Intellectual Property Rights" includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the commencement date of this Contract, but excludes Moral Rights;

"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, on or after the commencement date of this Contract;

"Notice" means notice in writing which may be given by personal delivery, pre-paid postage or facsimile to the Party's business address or registered office or, except for a notice under clause 15, notice given by email to a Party's nominated email address;

"Order" means the document used to authorise and record the purchase of the Goods and/or Services by the Agency;

"Party" means the Customer and Contractor;

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion;

"Price" means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Customer for the Goods and/or Services, as specified in the Order, and unless otherwise specified in the Order is inclusive of packaging, handling, freight, GST, and all other duties, taxes and charges;

"Records" means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Customer to the Contractor in connection with the performance of this Contract and includes a copy of any Records;

"Services" means any services specified in the Order;

"Short Form – Conditions of Contract" means these terms and conditions of Contract;

"Specifications" means the description of the Customer's requirements.

1.2 Interpretation

The following rules shall apply in interpreting this Contract, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;

- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity, person includes an individual, corporation, partnership or other legal entity;
- (f) "consent" means prior written consent;
- (g) a reference to a clause, attachment or annexure is a reference to a clause, attachment or annexure to this Contract;
- (h) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next business day in that place, unless the Customer and Contractor agree otherwise;
- (i) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

2. FORMATION OF CONTRACT

- 2.1 The following documents will constitute the entire Contract between the Customer and the Contractor:
 - (a) the Order or other document incorporating the terms and conditions of the Short Form - Conditions of Contract,
 - (b) Specifications;
 - (c) the Contractor's offer; and
 - (d) any other documentation forming part of this Contract, as agreed in writing between the Agency and the Contractor.
- 2.2 In the event of any conflict between the documents specified in clause 2.1, the order of precedence to resolve the conflict will be in the above order.
- 2.3 This Contract supersedes all prior representations, agreements, statements and understandings between the Customer and Contractor, whether oral or in writing relating to the subject matter of this Contract.

3. PROVISION OF GOODS AND/OR SERVICES

- 3.1 The Contractor shall deliver the Goods and/or provide the Services at or by the time specified in the Order, and, if not specified, within a reasonable time having regard to normal commercial practice.
- 3.2 The Contractor must ensure that the Goods and/or Services comply in all respects with:
 - (a) the terms of this Contract;
 - (b) applicable legislation; and
 - (c) any applicable Government code, policy or guideline and any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO), including any that may be introduced or varied during this Contract, which govern the provision of the Goods and/or Services.
- 3.3 All Goods supplied by the Contractor must be in a new and unused condition, of recent origin, suitably packed and otherwise appropriately prepared for transportation, unless otherwise specified in the Order.
- 3.4 The Contractor warrants that all Goods will be fit for purpose.
- 3.5 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Customer upon delivery.
- 3.6 The Contractor warrants that it will provide the Services with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.
- 3.7 The Contractor must ensure that any manufacturer's or supplier's warranty that applies to the Goods and/or Services will be transferred to the Customer, at no cost to the Customer.
- 3.8 The Contractor will be responsible for the supply and performance of all personnel, material and equipment, necessary for the proper supply or performance of the Goods and/or Services.
- 3.9 The Contractor must take all measures to protect people and property, avoid unnecessary interference with the passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance.
- 3.10 The Contractor must comply with any reporting requirements reasonably requested by the Customer during this Contract.

4. PRICE AND PAYMENT

- 4.1 If the Goods and/or Services are provided in accordance with this Contract, the Customer will:
 - (a) pay the Contractor the Price; and
 - (b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.
- 4.2 The Customer will not be liable to reimburse the Contractor for expenses other than the Approved Expenses, unless the Contractor has obtained the Customer's prior written consent.
- 4.3 The Customer is not obliged to pay the Contractor for any part of the Goods and/or Services until the:
 - (a) Contractor has given the Customer a Correctly Rendered Invoice;
 - (b) Contractor has delivered to the Customer any Goods and/or Services that are due to be delivered; and
 - (c) Customer has certified that the Goods and/or Services specified in the Correctly Rendered Invoice have been provided in accordance with this Contract.
- 4.4 Despite any certification under clause 4.3(c), the Contractor must promptly supply or supply again, any part of the Goods and/or promptly perform or perform again, any part of the Services, certified by the Customer as not having been supplied and/or performed in accordance with this Contract. The Customer may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Customer is satisfied that the Goods and/or Services have been supplied or supplied again and/or performed or performed again, in accordance with this Contract.

- 4.5 Upon receipt of an invoice, the Customer may require the Contractor to provide additional information or documentary evidence to enable the Customer to determine whether or not an amount is payable.
- 4.6 Unless otherwise agreed between the Customer and the Contractor, the Customer will make payment within 30 days after the last to occur of clause 4.3(a) and clause 4.3(b) or, if additional information or evidence is required by the Customer pursuant to clause 4.5, 30 days after receipt of the additional information or evidence.
- 5. GST**
- 5.1 If the Price is exclusive of GST the:
- (a) Customer will pay the GST Amount to the Contractor in addition to the Price; and
 - (b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.
- 5.2 If the Price is inclusive of GST the:
- (a) Customer is not required to pay the GST Amount in addition to the Price; and
 - (b) Contractor must remit the GST Amount to the Commissioner for Taxation in accordance with the GST Legislation.
- 5.3 Where the amount of GST collected by the Customer under this Contract differs, for any reason, from the amount of GST paid or payable by the Contractor, including but not limited to:
- (a) an amendment to the GST Legislation;
 - (b) the issue of a ruling or advice by the Commissioner for Taxation;
 - (c) a refund of GST to the Contractor in respect of any supply made under this Contract; or
 - (d) a decision of any tribunal or court;
- then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.
- 6 CONFLICT OF INTEREST**
- 6.1 The Contractor warrants that, to the best of its knowledge, as at the commencement date of this Contract neither the Contractor nor any of its officers or employees have, or are likely to have a Conflict of Interest in the performance of the Contractor's obligations under this Contract.
- 6.2 If a Conflict of Interest or risk of Conflict of Interest arises during the Term of this Contract (without limitation, because of work undertaken by the Contractor for any person other than the Customer), the Contractor must immediately give notice of the Conflict of Interest, or the risk of it, to the Customer.
- 7. INTELLECTUAL PROPERTY RIGHTS AND MORAL RIGHTS**
- 7.1 Title to, and Intellectual Property Rights in, all Contract Material will, upon its creation, vest in the Customer, unless otherwise specified in the Order.
- 7.2 If the Contractor is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the individual's Moral Rights.
- 7.3 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under this Contract, the Contractor must, prior to allowing that individual to commence work in respect of the Goods and/or Services, obtain from that individual who is to create Contract Material:
- (a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under this Contract in full, without impediment or cost to the Customer; and
 - (b) without limiting clause 7.3(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under this Contract that might otherwise constitute an infringement of the person's Moral Rights.
- 7.4 If the Order specifies that the Customer is not to be vested with title to Intellectual Property Rights in all Contract Material, the Contractor grants to the Customer a royalty free, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) to use and exploit any Intellectual Property Rights in the Contract Material necessary to enable the Customer to lawfully use the Goods and/or Services for any purpose of the Customer.
- 8. RECORDS AND PERSONAL INFORMATION**
- 8.1 The Contractor must not use Records or Contract Material for any purpose other than to provide the Goods and/or Services and must ensure that no unauthorised person has access to the Records or Contract Material while in the Contractor's possession or control, either during or after completion of this Contract.
- 8.2 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must, if the Customer is an "agency" within the meaning of the Information Privacy Act 2009, comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Contractor was the Customer and, in any other case, comply with any other privacy legislation or regime applicable to the Contractor.
- 8.3 On termination or completion of this Contract the Contractor must return all Records to the Agency.

9. SECURITY, ACCESS AND COMPLIANCE WITH AGENCY POLICIES

- 9.1 The Contractor, and any employee, agent or subcontractor of the Contractor, must, when entering upon the Customer's premises, dealing with the Customer's employees or members of the public, or using the Customer's facilities, equipment or resources, comply with all applicable policies, standards codes of conduct, directions and procedures of the Customer, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Customer.

10. LIABILITY

- 10.1 The liability of a Party to the other Party for loss or damage sustained, shall be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with this Contract or otherwise at law.
- 10.2 Unless otherwise agreed in writing between the Customer and Contractor the liability of a Party arising under and/or in connection with this Contract, shall exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 10.3 The liability of a Party arising under and/or in connection with this Contract, shall, except in relation to liability:
- (a) for personal injury (including sickness, injury, death);
 - (b) for loss of, or damage to, tangible property;
 - (c) a breach of the Intellectual Property Rights and Moral Rights clause 8;
 - (d) under an indemnity provided by the Contractor under clause 11,
- be limited to three (3) times the Contract Price.
- 10.4 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under or in connection with a breach of this Contract, or in tort, or for any other common law or legislative cause of action arising under or in connection with this Contract.

11. INDEMNITY

- 11.1 In this clause 11 a "claim" includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement.
- 11.2 The Contractor releases, discharges and indemnifies the Customer and its officers and employees from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:
- (a) negligent or unlawful act or omission of the Contractor, its officers or employees;
 - (b) breach of this Contract by the Contractor;
 - (c) contravention of any legislative requirements by the Contractor, its officers or employees; or
 - (d) infringement by the Contractor, its officers and employees of the Intellectual Property Rights or Moral Rights of any third party,
- except to the extent the claim is due to the negligent or unlawful act or omission of the Customer, its officers or employees.

12. INSURANCE

- 12.1 The Contractor warrants that it will hold and maintain for the duration of this Contract the following insurances:
- (a) Workers' Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) Public Liability insurance for a minimum amount of \$10 million in respect of each claim; and
 - (c) any other insurances as specified in this Contract.
- 12.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 12.3 The Contractor must, if requested by the Customer, provide evidence of compliance with its insurance obligations to the satisfaction of the Customer.

13. LICENSING REQUIREMENTS

- 13.1 The Contractor warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.
- 13.2 The Contractor must, if requested by the Customer, provide evidence of compliance with its obligations under this clause, to the satisfaction of the Customer.

14. VARIATION

- 14.1 This Contract will only be varied by written agreement between the Customer and Contractor. The Customer and Contractor shall act reasonably in deciding whether to agree to a variation, as requested by the other Party.

15. BREACH AND TERMINATION

- 15.1 The Customer may terminate this Contract for convenience by giving 30 days prior notice or such other reasonable period as specified by the Customer.
- 15.2 If this Contract is terminated pursuant to clause 15.1:
- (a) the Contractor shall, following receipt of that notice from the Customer, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and/or sub-contractors; and

- (b) the Customer will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss or any other reason in relation to termination nor shall the Customer be liable for payment to the Contractor for any amount greater than the amount that the Customer would have paid to the Contractor had this Contract been completely performed.
- 15.3 Without limiting clause 15.5, where the Contractor commits any substantial breach of this Contract or, the Customer may by notice, require the Contractor to show cause by the date specified in the notice, why the Customer should not terminate this Contract.
- 15.4 If the Contractor fails to show reasonable cause by the date specified by the Customer, then the Customer shall have the power upon notice to the Contractor to terminate this Contract.
- 15.5 The Customer may immediately terminate this Contract by notice to the Contractor if:
- (a) the Contractor gives notice of a Conflict of Interest under clause 6.2;
 - (b) the Contractor breaches any part of clause 12 or clause 13;
 - (c) the Contractor:
 - (i) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
 - (ii) has a receiver or a receiver or manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration;
 - (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (iv) is wound up, voluntarily or involuntarily; or
 - (d) the Contractor indicates that it is unable or unwilling to complete this Contract.
- 15.6 If the Customer terminates this Contract under either clauses 15.4 or 15.5, the termination is without prejudice to any rights of the Customer under this Contract or at common law.

16. GENERAL PROVISIONS

16.1 Relationship of the Customer and Contractor

- 16.1.1 The relationship of the Customer and Contractor under this Contract is one of principal and contractor and the Contractor is not by virtue of this Contract in partnership or joint venture with the Customer and must not represent itself or allow itself to be represented as a partner or joint venturer, officer or employee of the Customer.

16.2 No Advertising

- 16.2.1 The Contractor must not make any public announcement or advertisement in any medium in relation to this Contract without the consent of the Customer.

16.3 Waiver

- 16.3.1 Any failure by a Party at any time to enforce a clause of this Contract, or any forbearance, delay or indulgence granted by a Party to the other, will not constitute a waiver of the Party's rights.
- 16.3.2 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.
- 16.3.3 A waiver by a Party of a breach of any part of this Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

16.4 No Assignment or Sub-contracting

- 16.4.1 The Contractor must not assign its interest in this Contract or sub-contract the provision of any Goods and/or Services pursuant to this Contract, without the prior consent of the Customer.

16.5 Governing Law

- 16.5.1 This Contract is governed by and construed in accordance with the laws of Queensland and the Customer and Contractor submit to the non-exclusive jurisdiction of the courts of Queensland.
- 16.5.2 Notwithstanding clause 16.5.1, the Customer and Contractor agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986* to this Contract to the fullest extent permitted by law.

16.7 Severability

- 16.7.1 If any part of this Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

16.8 Further Assistance

- 16.8.1 The Contractor must do all things reasonably required by the Agency to give effect to this Contract.

16.9 Disclosure by Customer

- 16.9.1 The Contractor acknowledges that the Customer, its officers, employees and sub-contractors may use and disclose any of the information provided by the Contractor to Queensland Government departments or agencies, Queensland Government Bodies,

Non-Government Organisations and/or the Commonwealth, States or Territories for any purpose in connection with the administration of this Contract.

16.10 Disclosure of Information

16.10.1 Despite any other provision of this Contract, the Customer is entitled to publish on the Queensland Government Chief Procurement website: www.qgcpcp.qld.gov.au under '*eTender system for Government Suppliers*' or by any other means, the following details:

- (a) the name and address of the Customer;
- (b) a description of the Goods and/or Services;
- (c) commencement date of this Contract or award date;
- (d) Contract value;
- (e) name and address of the Contractor; and
- (h) procurement method used.

17. CLAUSES TO SURVIVE TERMINATION

17.1 The following clauses will survive termination or expiration of this Contract:

- clause 7 Intellectual Property Rights and Moral Rights;
- clause 8 Records and Personal Information;
- clause 10 Liability;
- clause 11 Indemnity;
- clause 16.2 No Advertising;
- clause 16.3 Waiver;
- clause 16.5 Governing Law;
- clause 16.9 Disclosure by Customer; and
- clause 16.10 Disclosure of Information.