

Guidance Notes for Queensland Government Short Form Contract Conditions – ICT Products and/or Services

To be used for ICT procurement during the COVID-19 pandemic

INTRODUCTION

These Guidance Notes are to help Customers complete the *Queensland Government Short Form Contract Conditions – ICT Products and/or Services* (Version 1 dated April 2020) (**Short Form Contract Conditions**). They are to be read in conjunction with the Queensland Government's *Emergency Procurement Guide – COVID-19* (the **Emergency Procurement Guide**).

These Guidance Notes provide guidance only and should not be relied upon in place of legal advice. If a Customer has any questions regarding these Guidance Notes or preparing a particular Work Order under the Short Form Contract Conditions, the Customer should contact its procurement or legal team for advice. The Guidance Notes do not constitute a legally binding document and do not form part of, or affect the interpretation of, any Contract.

WHAT ARE THE SHORT FORM CONTRACT CONDITIONS?

The Short Form Contract Conditions are an agreement between a Customer and a Supplier for the Supplier to supply ICT Products and/or Services to the Customer on a set of pre-determined contractual terms. As part of the Short Form Contract Conditions, the Customer and Supplier are required to complete a Work Order which outlines the relevant commercials for the particular procurement, including the Deliverables, Specifications and Price.

Interpretation

For the purposes of these Guidance Notes:

- **Customer** means the entity which requires the provision of ICT Products and/or Services; and
- **Supplier** means the potential supplier of the ICT Products and/or Services under the Short Form Contract Conditions.

A term (other than a term defined above) that is defined in these Guidance Notes has the same meaning as in the Short Form Contract Conditions.

WHEN TO USE?

The Short Form Contract Conditions have been designed for emergency ICT procurement during the COVID-19 pandemic. The document can be used to form Contracts in response to one of the emergency response categories outlined in the Emergency Procurement Guide.

The Short Form Contract Conditions are **only to be used** where:

- (a) the total value of the ICT procurement is less than one million dollars;
- (b) the total length of the agreement (the "**Term**"), inclusive of all extensions to the Term, is no more than 12 months; and
- (c) the objectives detailed in the Emergency Procurement Guide have been considered.

WHEN NOT TO USE?

The Short Form Contract Conditions are **not** to be used where:

- (a) the ICT procurement has a value which exceeds one million dollars or requires a term of longer than 12 months; or
- (b) either party requires amendment to the Conditions in the Short Form Contract Conditions.

In the circumstances listed above, the parties may choose to purchase off an existing Standing Offer Arrangement or enter into a Contract under the QITC Framework depending on the risk and value of the procurement.

IMPORTANT DETAILS

There are a number of key positions under the Contract which contribute to a different allocation of risk for the Customer to that which you might be used to. These include:

Capped Term	The total Term must not exceed 12 months. There is a contractual restriction on any variations in breach of this requirement.
Liability cap	The Queensland Government is willing to accept an aggregate mutual liability cap (the quantum of which is to be specified in the Work Order). Liability is only uncapped for personal injury or loss of, or damage to, tangible property. Customer's should consider alternative methods to mitigate risk associated with IP, Confidential Information, Personal Information and Customer Data.
Indemnities	There are no indemnities provided by the Supplier under the Contract on the basis of the special circumstances/limited duration in which the Contract is to be used.
IP ownership	The Supplier owns the Intellectual Property Rights in all New Material created under the Contract but does grant a broad licence back to the Customer to use the New Material.
Transition Out	There is no transition out clause in the Contract and the Supplier has no further obligations in relation to the Product and/or Services when the Contract ends.
Specifications	There are no detailed ICT Product and Service specific terms that Customers would be used to seeing in General and Comprehensive contracts. This will mean particular attention will need to be given to the Specifications in the Work Order, to make it clear what the Supplier is expected to deliver.

PREPARING AND EXECUTING THE SHORT FORM CONTRACT CONDITIONS

Step 1: Complete the cover page of the Short Form Contract Conditions

The Supplier and Customer must complete the highlighted sections of the front cover page.

Step 2: Complete the Work Order

The effectiveness of the Short Form Contract Conditions relies on the accuracy and detail of the content in the Work Order. All sections of the Work Order must be completed by the parties. In particular, Customers should note:

- the maximum total duration of the Contract cannot exceed 12 months;
- a list of Deliverables and the Specifications for those Deliverables may be included in the Work Order by way of attachment. Consider referring to the QITC Comprehensive Contract Conditions as a guide to what you might want to specify here depending on the nature of the Deliverables being acquired;
- a liability cap needs to be included (otherwise liability will be unlimited for both parties); and
- Pricing should be clearly aligned to the Deliverables. The Supplier can only issue invoices on completion and acceptance (if applicable).

Step 3: Supplier execution

Once the Work Order has been agreed and completed by the parties, it is recommended that the Supplier executes the Short Form Contract Conditions first.

(if sending by mail) The Customer should prepare two identical copies of the Short Form Contract Conditions and send them to the Supplier for execution.

(if sending by email) The Customer should prepare a pdf copy of the Short Form Contract Conditions and send it to the Supplier for execution.

The Supplier execution block is on the second page of the Short Form Contract Conditions, and assumes that the Supplier is a company and that the Short Form Contract Conditions will be signed by a director and director/secretary of the Supplier. If a different form of execution block is required, then this should be provided by the Supplier. You should seek legal advice if an alternative form of execution block is proposed.

The Supplier should sign two copies of the document and then return them both to the Customer.

Step 4: Customer execution

Upon receipt of the Short Form Contract Conditions which are signed on behalf of the Supplier, the Customer's authorised representative may sign the Short Form Contract Conditions in the relevant section indicated on the first page of the document.

The individual executing the Short Form Contract Conditions on behalf of the Customer should also have the necessary authority to do so, including the appropriate delegation.

Once executed, one copy of the executed Short Form Contract Conditions should be provided to the Supplier for its records.