General Terms and Conditions - Conditions of Contract (Goods)

Department of Housing and Public Works

1. Definitions

   "Business Days" In clause 14, has the meaning as defined in GST Legislation; In all other clauses, means a day that is not:
   a Saturday or a Sunday; or
   a public holiday, special holiday or bank holiday in the place where the goods are provided.

   "Ethical Supplier Mandate" means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

   "Ethical Supplier Threshold" means the Ethical Supplier Threshold described in the Queensland Procurement Policy;

   "GST" means a goods and services tax imposed by or through the GST legislation.

   "GST Legislation" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax imposition legislation (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 such legislation.

   "Principal’s Representative" means the QBuild officer appointed from time to time to represent the Principal in this Contract.

   "Supplier" means the individuals, partners trading in a partnership or company whose offer for the supply of Goods has been accepted by the Principal.

2. Condition of goods

   All Goods shall be new and shall comply with the Contract. If no standards are specified, the Goods must comply with Australian Standards applicable to the Goods. The Principal shall not be required to accept, pay for or be in any way liable for any Goods that do not comply with the Contract and shall be entitled to cancel any order and return any Goods which do not comply at no cost to the Principal.

3. Inspection and tests

   The Principal’s Representative shall be entitled to inspect and test all Goods supplied. Where Goods fail such inspection or tests, the Principal’s Representative shall be entitled to reject the Goods and the Supplier shall be liable to remove the rejected Goods at its expense within 10 Business Days of notification of the rejection, failing which the Principal’s Representative shall be entitled to return the rejected Goods at the Supplier’s expense.

4. Workplace health and safety

   a) For the purposes of this clause:
      ‘Act’ means the Work Health and Safety Act 2011 (Qld), as amended from time to time;
      ‘Regulation’ means the Work Health and Safety Regulation 2011 (Qld), as amended from time to time;
      ‘workplace’, ‘inspector’, ‘notifiable incident’, ‘principal contractor’ and ‘regulator’ have the same meaning as in the Act.

   b) The Supplier will:
      (i) comply with and discharge all obligations imposed on the Supplier by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking; and
      (ii) discharge the duties of a person who conducts a business or undertaking under the Regulation.

   c) The Supplier will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:
(i) any breach of this clause by the Supplier;
(ii) any breach by the Supplier of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;
(iii) any enforcement of obligations imposed on the Supplier under the Act, the Regulation or any other regulations.

d) If a notifiable incident occurs at the workplace the Supplier must:
   (i) immediately notify the regulator and the Superintendent of the notifiable incident; and
   (ii) take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs.

5. Warranty

The Supplier shall provide a warranty from the manufacturer that the Goods shall achieve the performance requirements and characteristics as specified and operate satisfactorily and that the Goods are free of defects and that the Goods shall be repaired or replaced at no cost to the Principal for the period stated in the specifications and if no period is stated, for a period of 12 months from delivery or collection (whichever is applicable). The Supplier shall ensure the warranties are in the name of the Principal and shall provide the warranties at the time of delivery or collection of the Goods. The Supplier shall comply with all warranty conditions.

6. Delivery

If the Supplier is required to deliver the Goods to a QBuild depot or worksite, delivery shall be made between the hours of 7 am and 4 pm on business days unless otherwise authorised by the Principal's Representative. Where Goods are delivered by the Supplier, it must hold a current public liability insurance policy to a minimum of twenty million dollars ($20,000,000) and a current WorkCover policy for employees or equivalent insurance policy if self-employed. Where Goods are delivered to a QBuild depot or worksite, the Supplier shall ensure the delivery documentation identifies the delivery instructions, contents, order number, Supplier and the site.

Where Goods include hazardous substances, the delivery documentation must include a material safety data sheet in accordance with the Work Health and Safety Act 2011 (Qld). The Supplier shall ensure the Principal's Representative at site signs the delivery docket to confirm receipt of goods. The Supplier shall provide the delivery docket, operating manuals, warranties and relevant documentation to the Principal’s Representative.

7. Price

The price shall be inclusive of supply, insurance, packaging and where applicable, delivery to the site specified on the offer form.

8. Invoicing

The Supplier must submit invoices to the Principal within seven (7) days of delivery or collection of the Goods (whichever is applicable). The invoice should state the correct ABN, the order number, description of goods, volume, unit cost, and any other information reasonably required by the Principal and comply with the requirements of GST legislation.

9. Payment

Payment will be made by means of electronic transfer to the supplier’s nominated bank account 22 business days after delivery or collection of the goods and receipt of a valid tax invoice.

The Principal’s Representative shall assess the payment claim to determine the amount to be paid.

If the Principal’s Representative determines that the amount to be paid is other than the claimed amount, the Principal's Representative shall issue a payment schedule within 22 business days of receipt of the payment claim. The payment schedule shall state the amount to be paid and the reasons for the difference from the claimed amount.

The Principal shall only be liable to pay:

a) If the Principal's Representative has issued a payment schedule, the amount to be paid identified in the payment schedule;
b) Otherwise, the claimed amount;

Payment shall be made within 22 business days of receipt of a payment claim.

Payment shall take into account interim payments for variations (if any), the deduction of retention moneys (if any) and any other amount which the Principal may be entitled to deduct or which is due and payable by the Contractor to the Principal whether under the Contract, any other contract or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Contractor, the Principal may have recourse to retention moneys or unconditional undertakings provided in lieu of retention (if any).

Unless otherwise expressly agreed, the Principal will not be liable to pay the Supplier for the Goods any amount other than the agreed price.
Payment will be made by means of electronic transfer to the Supplier’s nominated bank account fifteen (15) business days after delivery or collection of the Goods (whichever is applicable) and receipt of a valid tax invoice.

10. Responsibility in transit

If the Supplier is required to deliver the Goods to site, the Supplier shall be responsible for the Goods until delivery to the site and receipt by the Principal’s Representative. The Principal’s Representative shall notify the Supplier within seven (7) days of receipt of any damaged Goods which shall be replaced at the Supplier’s expense.

11. Cancellation

The Principal shall be entitled to cancel the Contract at any time by written notice to the Supplier. The Principal shall be liable for costs reasonably incurred by the Supplier up to the date of cancellation, together with any costs and expenses reasonably incurred by reason of the cancellation, but shall not be liable for payment to the Supplier for any other compensation, including for loss of profits or any other reason as a result of cancellation, nor shall the Principal be liable for payment to the Supplier for any amount greater than the amount that the Principal would have paid to the Supplier had the Contract been completely performed.

12. Dispute Resolution

If the Supplier has a complaint or dispute relating to the supply of Goods under the Contract, the Supplier shall use the dispute resolution process set out in the Conditions of Working with QBuild – Suppliers of Goods. In the event that the dispute is not resolved, either party may initiate mediation, conciliation or independent expert determination before undertaking litigation.

13. GST

a) Payments for any taxable supplies under the Contract include GST.

b) The Supplier must issue to the Principal a tax invoice or adjustment note (as the case may require) within twenty-eight (28) business days after each of the following occurring in relation to that taxable supply:

(i) the Supplier submitting a claim for payment that is not in the form of a valid tax invoice;

(ii) the Superintendent certifying an amount for payment different to the amount claimed;

(iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.

c) Whenever the Principal reasonably considers itself bound by law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Supplier, amounts calculated and to be withheld in accordance with the law.

14. Information Privacy Act

The Supplier’s obligations in relation to the Information Privacy Act are as set out in the Conditions of Working with QBuild – Suppliers of goods.

15. Conflict of Interest

The Supplier’s obligations in relation to the conflict of interest and disclosure are as set out in the Conditions of Working with QBuild – Suppliers of goods.

16. Queensland Procurement Policy

The Supplier must, and must ensure its subcontractors, in carrying out the work under the Contract, comply with:

(a) the principles of the Queensland Procurement Policy (Policy) and any requirements under the Contract in this regard; and

(b) the Ethical Supplier Threshold.

The Supplier acknowledges that a failure to comply with the Principal’s policies that apply to the work under the Contract or the Supplier’s obligations under the Contract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract.

Failure to comply in any respect with the requirements of the Policy will be considered a substantial breach of Contract.