

# General Terms and Conditions - Conditions of Contract (Goods)

## QBuild, Department of Housing and Public Works

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### 1. Definitions

“Business Days” In clause 20, has the meaning as defined in GST Legislation; in all other clauses, means a day that is not:

- a) a Saturday or a Sunday; or
- b) a public holiday, special holiday or bank holiday in the place where the goods are provided.

“Contract” means the agreement in writing between the Principal and the Supplier for the Supply of Goods in accordance with the Contract, the invitation documents, the Suppliers offer and the **Conditions of Working with QBuild – Supplier of Goods**.

“Contract Price” means for a lump sum contract the lump sum amount accepted by the Principal, stated in the LOA and for a contract where a Schedule of Rates has been accepted, the amount ascertained by calculating the products of the rates, accepted by the Principal and the corresponding quantities, or provisional quantities, in the Schedule of Rates stated in the LOA.

“Delivery” and “deliver” means delivered to, and unloading at, the Delivery Address specified on the Offer Form or such other address as might be agreed.

“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.

“Letter of Acceptance” means the written correspondence issued by the Principal accepting an offer that makes the Contract.

“Principal” means the party so defined on the Offer Form, or in absence of any definition on the Offer Form, The State of Queensland through QBuild, a business unit of the Department of Housing and Public Works.

“Superintendent” means the person nominated by the Principal to exercise the functions of the Superintendent under the Contract, who at all times must, exercise its functions acting honestly and fairly, acts within certain times prescribed under the Contract or where no times, a reasonable time, and arrives at a reasonable measure of value of goods, quantities or time. The Superintendent may appoint a representative to exercise any of its powers, duties, discretions and authorities.

“Supplier” means the entity whose offer has been accepted by the Principal.

“Supply” means to make Goods available for collection or deliver Goods, as applicable, in accordance with the Contract.

### 2. Condition of Goods

All Goods will be new and will comply with the Contract. If no Standards are specified, the Goods must comply with Australian Standards applicable to the Goods and be fit for the intended purpose. The Principal will not be required to accept, pay for, or be in any way liable for, any Goods not in accordance with the Contract and will be entitled to cancel any order and return any Goods found to not be in accordance with the Contract at no cost to the Principal.

### 3. Inspection and tests

The Superintendent will be entitled to inspect and test all Goods supplied. Where Goods fail such inspection or tests, the Superintendent will be entitled to reject the Goods and the Supplier will be liable to remove the rejected Goods at its expense within 10 Business Days of notification of the rejection, failing which the Superintendent will 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 a workplace, in connection with the Supply or Delivery of Goods, 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. Protection of persons and property**

The Supplier will take all measures necessary to protect people and property, including the Goods; avoid unnecessary interference with passage of people and vehicles and prevent nuisance, unreasonable noise and disturbance. If the Supplier damages any property, the Supplier must provide or arrange temporary protection for the damage and repair it at its cost.

**6. Warranty**

The Supplier must provide a warranty from the manufacturer that the Goods are fit for purpose and will achieve the performance requirements and characteristics specified, or where no specification is provided, will be in accordance with the appropriate Australian Standards, and operate satisfactorily and that the Goods are free of defects and that the Goods will 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 must ensure the warranties are in the name of the Principal and must provide the warranties at the time of delivery or collection of the Goods. The Supplier must comply with all warranty conditions.

**7. Indemnity by the Supplier**

The Supplier indemnifies the Principal against:

a) loss of or damage to the Principal's property; and

b) claims by any person in respect of injury, death or loss of or damage to any property,

resulting from, or in any way connected with, the Supplier providing the Goods under the Contract and the use of the goods for their intended purpose. The Supplier's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, or its employees or agents, contributed to the loss, damage, death or injury.

**8. Public liability insurance**

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). The insurance policy must cover the Supplier's liability to the Principal for loss of, or damage to, property and death or injury to any person resulting from, or in any way connected with, the Supplier providing the Goods under the Contract and the use of the goods for their intended purpose. The Supplier must maintain such insurance for the duration of the Contract and produce evidence of insurance if requested.

**9. Insurance of employees**

Before supplying the Goods, the Supplier must hold a current WorkCover policy for employees or equivalent insurance policy if self-employed. The Supplier must maintain such insurance for the duration of the Contract and produce evidence of insurance if requested. The Supplier must ensure that every sub-supplier is similarly insured.

**10. Time for collection or delivery**

The Supplier must make the Goods available for collection, or deliver the Goods, as applicable, within the time stated on Offer Form or the order, as applicable. The Superintendent may extend this time for any reason at its sole discretion.

**11. Delivery**

Deliveries will only be accepted between the hours of 7 am and 4 pm on business days, unless otherwise authorised by the Superintendent. Where Goods are delivered, the Supplier will ensure the delivery documentation identifies the delivery instructions, including details of contents, order number, Supplier's details and, where applicable, operating manuals, warranties and any other relevant documentation specified.

Where Goods include hazardous substances, the delivery documentation must also include a material safety data sheet in accordance with the *Work Health and Safety Act 2011 (Qld)*. The Supplier must ensure the Superintendent, or other person purporting to have authority to receive the goods on behalf of the Superintendent signs the delivery docket to confirm receipt of Goods.

Goods unaccompanied by appropriate delivery documentation may be rejected until the appropriate delivery documentation has been received.

Superintendent must notify the Supplier within seven (7) days of receipt of any damaged or non-compliant goods which will be replaced at the Supplier's expense.

**12. Price**

Lump sum prices and/or unit prices, as applicable, are fixed and are all inclusive of all supply costs, including, customs duty (as applicable and unless specifically stated to be exempt) and any other taxes (including GST where Supplier is registered for GST) and/or duties, insurance, packaging, marking, handling, freight and delivery, (when delivery is applicable).

**13. Invoicing**

The Supplier will only be entitled to invoice for Goods that have been supplied that are in accordance with the Contract.

The Supplier must submit a tax invoice to the Superintendent within seven (7) days of delivery or collection of the Goods (whichever is applicable). The invoice will state the correct Supplier's name and ABN, the order and contract number (as applicable), description of goods, volume, unit costs, and details of all applicable extensions that makeup the invoiced amount and any other information reasonably required by the Principal.

Invoices must comply with the requirements of GST legislation.

**14. Variations**

The Superintendent may direct in writing a variation, in nature or quantity, to any Goods under the Contract and the Supplier shall promptly comply with that direction. The Supplier must submit a detailed price for the variation, to the Superintendent, within 14 days of the direction. The variation will be valued by agreement between the Supplier and the Superintendent or failing agreement, by the Superintendent, and the Contract Price adjusted accordingly. The Superintendent may make interim payments for variations until the respective variations have been finally valued.

**15. Payment**

Unless otherwise expressly agreed, the Principal will only be liable to pay the Supplier for the Goods received, at agreed prices.

The Superintendent will assess the payment claim to determine the amount to be paid.

If the Superintendent determines that the amount to be paid is other than the claimed amount, the Superintendent will issue a payment schedule within 15 Business Days of receipt of the payment claim. The payment schedule will state the amount to be paid and the reasons for the difference from the claimed amount.

The Principal will only be liable to pay:

- a) if the Superintendent has issued a payment schedule with the amount identified to be paid in the payment schedule;  
or
- b) otherwise, the claimed amount;

Subject to clause 18, payment will be made:

- a) within 15 Business Days of receipt of a tax invoice; or
- b) where the Supplier is a small business in accordance with the ***Conditions of Working with QBuild – Suppliers of Goods***, within 20 days of invoice date.

Payment may take into account interim payments for variations (if any) and any other amount which the Principal may be entitled to deduct or which is due and payable by the Supplier 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 Supplier, the Principal may have recourse to any other means including at law.

Payment will be made by means of electronic transfer to the Supplier's nominated bank account.

## 16. Responsibility in transit

If the Supplier is required to deliver the Goods, the Supplier will be responsible for the Goods:

- a) until delivery to the Delivery Address and a signed delivery docket, in accordance with clause 11 has been obtained; or
- b) in the case of damaged or otherwise non-compliant goods, until such goods have been replaced, at the Supplier's expense.

## 17. Default of the Supplier

- a) Subject to clause 17(c), if the Supplier fails to perform the Supply within the time for collection or delivery stated in the Offer Form, or fails to proceed with the Supply at a reasonable rate of progress, or complete the Supply by the time stated in the Offer Form, or commits any substantial breach of the Contract, or indicates that it is unable or unwilling to complete the Supply; the Principal may, by written notice, require the Supplier to show cause by the date specified in the notice, which will be not less than five (5) days, why the Principal should not exercise a right under clause 17(b).
- b) If the Supplier fails to show reasonable cause by the date specified in the show cause notice, the Principal will have the power, upon notice in writing to the Supplier, to terminate the Contract or suspend payment and take the remaining Supply of Goods, wholly or partly, out of the Supplier's hands, without prejudice to any rights of the Principal under the Contract or at common law.
- c) If the Supplier:
  - (i) fails to hold a current licence required to perform the Supply; or
  - (ii) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - (iii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966 (Cth)*, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - (iv) has a liquidator or receiver or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets; or
  - (v) fails to maintain registration with QBuild as a QBuild registered Supplier of Goods, the Principal may without giving a notice to show cause, exercise a right under clause 17 (b), but only when and to the extent that there is no restriction on enforcing that right under the Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001 (Cth)*.
- d) In the event that the Principal takes the Supply out of the hands of the Supplier, the Principal may itself, or by means of others, complete the whole or any part of the remaining Supply. If the cost incurred by the Principal in completing the Supply is greater than the amount which would have been paid to the Supplier, if the Supplier had completed the Supply, the difference will be a debt due from the Supplier to the Principal, otherwise any difference will be a debt due from the Principal to the Supplier.

## 18. Cancellation

The Principal will be entitled to cancel an order at any time for the Principal's convenience or for breach of the conditions of this Contract, by written notice to the Supplier.

In the event of cancellation for convenience, the Principal will be liable for the costs reasonably incurred by the Supplier in anticipation of performing the supply up to the date of cancellation, together with any costs and expenses reasonably incurred by reason of the cancellation, but will not be liable for payment to the Supplier for any other compensation, including loss of profits or any other reason as a result of cancellation.

Nothing in this clause will make the Principal liable for payment to the Supplier for any amount greater than the Contract Price.

If cancellation is as a consequence of a breach of clauses 21-23, inclusive, the Supplier will have no entitlement to any payment for any costs incurred consequent to the cancellation.

#### 19. Dispute Resolution

If the Supplier has a complaint or dispute relating to the Contract, the Supplier must use the dispute resolution process set out in the **Conditions of Working with QBuild – Suppliers of Goods** ([www.hpw.gov.au](http://www.hpw.gov.au)). In the event that the dispute is not resolved, either party may initiate mediation, conciliation or independent expert determination before undertaking litigation.

#### 20. GST and PAYG

- 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; or
  - (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 will be entitled to withhold from any payment, otherwise due to the Supplier, amounts calculated and to be withheld in accordance with the law.

#### 21. Information Privacy Act

If the Supplier collects or has access to Personal Information in order to Supply Goods under the Contract, the Supplier must:

- a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009 (Qld)* ("IPA"), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Supplier was the Principal;
- b) not use Personal Information other than in connection with the Supply of Goods under the Contract, unless required or authorised by law;
- c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
- d) ensure that its officers, employees, agents and sub-suppliers do not access, use or disclose Personal Information other than in connection with the Supply of Goods under the Contract;
- e) ensure that its sub-suppliers who have access to Personal Information comply with obligations the same as those imposed on the Supplier under this clause;
- f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.

On request of the Principal, the Supplier must obtain from its employees, officers, agents or sub-suppliers, supplying goods under the Contract, an executed Deed of Privacy in a form acceptable to the Principal.

The Supplier must immediately notify the Principal on becoming aware of any breach of this clause.

This clause will survive the termination or expiry of the Contract.

In this clause, 'Personal Information' is 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.

#### 22. Anti-Competitive Conduct, Conflict of Interest and Criminal Organisations

The Supplier warrants that neither it, nor its Personnel\* have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated Offer or any actual or potential contract with any entity for the Goods. In addition to any other remedies available to it under Law or Contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in collusive or anti-competitive conduct. The Supplier warrants that neither it nor its Personnel hold any office or possess any property or are engaged in any business or activity or have any obligations whereby a Conflict of Interest\*\* is created, or might appear to be created, in conflict with its obligations under this Contract except as disclosed. If the Principal requests, the Supplier must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Principal.

The Supplier warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 161P of the *Penalties and Sentences Act 1992 (Qld)*.

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

In addition to any other remedies available to it under Law or Contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has breached any warranty in this clause.

*\*Personnel means officers, directors, employees, agents and sub-suppliers;*

*\*\*Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.*

### **23. Queensland Procurement Policy**

The Supplier must, and must ensure its sub-suppliers in the Supply of Goods, 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 Supply of Goods 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 and entitle cancellation of the Contract in accordance with clause 18.