

Simple Contract Terms

Some terms used in these Simple Contract Terms have been given a special meaning.

Their meanings are set out either in the *Simple Contracting Terms Glossary* or in the relevant *Customer Contract*.

Background:

The Customer requires the provision of certain Products and/or Services.

The Contractor has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Requirement.

1. Relationship of the Parties:

Neither Party is the employee, agent or partner of the other Party nor, by virtue of this Customer Contract, is authorised to bind or represent the other Party.

The Contractor must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Customer Contract, the Parties agree to:

- (a) communicate openly with each other and co-operate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct;
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and workplaces; and
- (e) when accessing any Western Australian Government place, area or facility, the Contractor must comply with any security and safety requirements notified to the Contractor by the Customer or of which the Contractor is, or should reasonably be, aware. The Contractor must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements. The Contractor must ensure that any material and property (including security-related devices and clearances) provided by the Customer for the purposes of the Customer Contract is protected at all times from unauthorised access, use by a third Party, misuse, damage and destruction and is

returned as directed by the Customer.

2. Entire Agreement:

The Customer Contract represents the Parties' entire agreement in relation to the subject matter. Anything that occurred before the making of this Customer Contract shall be disregarded (unless incorporated into the Customer Contract in writing).

No agreement or understanding varying or extending the Customer Contract is legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay does not operate to prejudice those rights.

3. Precedence of Documents:

The Customer Contract is comprised of:

- (a) the *Letter*;
- (b) the *Offer*;
- (c) the *Request*;
- (d) these *Simple Contract Terms*; and
- (e) the *Simple Contracting Terms Glossary*

as at 9:00am, Western Australian time, on the Commencement Date, unless otherwise agreed in writing between the Parties.

If there is ambiguity or inconsistency between documents comprising the Customer Contract, the document appearing higher in the list will have precedence.

4. Survival:

Clauses 9 [*Liability of the Contractor and Insurance*], 19 [*Compliance with Laws*] 20 [*Compliance with Western Australian Policies*], clause 22 [*Intellectual Property*] and clause 23 [*Pre-Existing Intellectual Property Rights*] survive termination or expiry of the Customer Contract.

5. Governing Law:

The laws of Western Australia apply to the Customer Contract and the Parties submit to the exclusive jurisdiction of the Courts of that State.

6. Conflict of Interest:

The Contractor has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Customer Contract.

If any conflict or potential conflict arises during the Customer Contract Term, the Contractor will immediately notify the Customer and comply with any reasonable Notice given to the Contractor by the Customer in relation to the conflict.

7. Assignment etc:

The Contractor may not assign any rights under the Customer Contract, or novate the Customer Contract without the Customer's written consent. To seek consent, the Contractor must provide the Customer with a Notice, which includes full details of the proposed assignment or novation and the rights the Contractor proposes to assign or novate.

To decline consent, the Customer must provide a Notice to the Contractor, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

8. Subcontracting:

Subcontracting any part of, or the entire Contractor's obligations under the Customer Contract, will not relieve the Contractor from any of its obligations under the Customer Contract. Part 1F of the *Civil Liability Act 2002* (WA) is excluded.

The Contractor must ensure that subcontractors specified in the Customer Contract (if any) perform that part of the Services specified.

The Contractor must make available to the Customer the details of all subcontractors engaged to provide the Products and/or Services under the Customer Contract. The Contractor acknowledges that the Customer may be required to publicly disclose such information.

The Contractor must ensure that any subcontract entered into by the Contractor, for the purpose of fulfilling the Contractor's obligations under the Customer Contract, imposes on the subcontractor the same obligations that the Contractor has under the Customer Contract (including this requirement in relation to subcontracts).

At the Customer's request, the Contractor, at no additional cost to the Customer, must promptly remove from involvement in the Customer Contract and subcontractor that the Customer reasonably considers should be removed.

9. Liability of the Contractor and Insurance:

The Contractor will indemnify the Customer and its officers and employees against any claim, cost, damage, expense or loss arising out of or in connection with any act or omission or any breach of the Contractor's obligations or representations

under the Customer Contract.

The Contractor's obligation to indemnify the Customer and its officers and employees will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officers and employees caused or contributed to the claim, cost, damage, expense or loss.

The Customer agrees to use its best endeavours to cooperate with the Contractor, at the Contractor's expense, in respect of the conduct of any defence or the agreement of any settlement of any claim, demand or proceeding the subject of the indemnity under this clause.

The Contractor will maintain public liability insurance, workers' compensation insurance (including common law liability) and any other insurance consistent with good industry practice a prudent Contractor would reasonably require in connection with the Products and/or Services under the Customer Contract and provide the Customer with proof of insurance upon request.

10. Delivery and Acceptance:

The Contractor must provide the Products and/or Services as specified in the Customer Contract and meet any requirements and standard specified in the Customer Contract.

The Contractor must promptly notify the Customer if the Contractor becomes aware that it will be unable to provide all or part of the Products and/or Services specified in the Contract and advise the Customer when it will be able to so.

Any Products must be delivered free from any security interest. Unless otherwise stated, Products must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional Contractor of similar services and any standard specified in the Customer Contract.

The Customer may reject the Products and/or Services within fourteen (14) calendar days after delivery if the Products and/or Services do not comply with the requirements of the Customer Contract. If the Customer does not notify the Contractor of rejection within the fourteen (14) calendar day period, the Customer will be taken to have accepted the Products and/or Services, though the Customer may accept the Products and/or Services sooner. Title to Products transfers to the Customer only on acceptance.

If the Customer rejects the Products and/or Services, the Customer must issue a Notice clearly stating the reason for rejection, the remedy the Customer requires and the timeframe in which the Contractor is required to remedy the deficiencies. The

Contractor must comply with any such requirement. If the Contractor is unable to meet the Customer's timeframe, the Customer may terminate the Customer Contract in accordance with Clause 11 [*Termination for Cause*]. Remedied Products and/or Services are subject to acceptance under this clause.

The Contractor will refund all payments related to the rejected products and/or Services unless the relevant Products and/or Services are remedied and accepted by the Customer. No payment will be due for rejected Products and/or Services until their acceptance.

11. Termination for Cause:

The Customer may terminate the Customer Contract in whole or in part if:

- (a) the Contractor does not deliver the Products and/or Services as specified in the Customer Contract, or notifies the Customer that the Contractor will be unable to deliver the Products and/or Services as specified in the Customer Contract;
- (b) the Customer rejects the Products and/or Services in accordance with clause 10 [*Delivery and Acceptance*] and the Products and/or Services are not remedied as required by the Notice of rejection;
- (c) the Contractor breaches the Customer Contract and the breach is not capable of remedy;
- (d) the Contractor does not remediate a breach of the Customer Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Contractor; or
- (e) the Contractor:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* ; or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966*.

Termination of a Customer Contract under this clause, does not change the Customer's obligation to pay any Correctly Rendered Invoice.

12. Termination or Reduction for Convenience:

In addition to any other rights either Party has under
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the Customer Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Contractor, acting in good faith, may notify that it wishes to,

terminate the Customer Contract or reduce the scope or quantity of the Products and/or Services by providing a Notice to the other Party.

If the Contractor issues a Notice under this clause, the Contractor must comply with any reasonable directions given by the Customer. The Customer Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Contractor has complied with all of those directions.

If the Customer issues a Notice under this clause, the Contractor must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

In either case, the Contractor must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Contractor for Products and/or Services accepted in accordance with the Acceptance clause of the Customer Contract, before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Contractor for any reasonable costs the Contractor incurs that are directly attributable to the termination or reduction, provided the Contractor substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Contractor exceed the Contract Price. The Contractor will not be entitled to loss of anticipated profit for any part of the Customer Contract not performed.

13. Dispute Resolution:

For any dispute arising under the Customer Contract both the Contractor and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to

settle the dispute by direct negotiation;

- (d) If the dispute is not resolved within thirty (30) calendar days, either the Contractor and the Customer may commence legal proceedings.

Despite the existence of a dispute, the Contractor will (unless requested in writing by the Customer not to do so) continue their performance under the Customer Contract.

This procedure for dispute resolution does not apply to action relating to Termination for Cause under clause 11 or to legal proceedings for urgent interlocutory relief.

14. Specified Personnel:

The Contractor must ensure that the Specified Personnel set out in the Contract (if any) perform that part of the Services so specified. The Contractor must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer.

At the Customer's request, the Contractor, at no additional cost to the Customer, must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

15. Licences Approvals and Warranties:

The Contractor must obtain and maintain all licenses or other approvals required for the lawful provision of the Products and/or Services and arrange any necessary customs entry for any Products.

To the extent permitted by laws and for the benefit of the Customer, the Contractor consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Moral Rights.

The Contractor must provide the Customer with all relevant third Party warranties in respect of Products. If the Contractor is a manufacturer, the Contractor must provide the Customer with all standard manufacturer's warranties in respect of the Products it has manufactured and supplied.

The Contractor warrants and represents to the Contract Authority and the Customer that any "Lobbyist" (as that term is defined in Public Sector Commissioner's Circular 2009-13 "Public Sector Commissioner's Circular") which can be found at:

www.publicsector.wa.gov.au/PSCCirculars that it or any of its officers, employees, agents or sub-contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with the Customer Contract, is duly registered as a

"Lobbyist" in terms of that Public Sector Commissioner's Circular and has fully complied with its obligations under it.

16. Invoice:

If the Contractor is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Contractor must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Customer Contract by the Contractor.

Payment of any invoice is not evidence that the obligations under the Customer Contract are accepted, evidence of the value of the obligations performed by the Contractor, or an admission of liability, but is payment on account only.

If the Contractor owes any amount to the Customer in connection with the Customer Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

17. Payment:

The Customer must pay the amount of a Correctly Rendered Invoice to the Contractor within thirty (30) calendar days after receiving it, or if this day is not a business day, on the next business day.

The Customer may pay the amount specified in a Correctly Rendered Invoice by:

- (a) cash;
- (b) cheque;
- (c) electronic funds transfer to the account with a financial institution nominated by the Contractor; or
- (d) credit card.

The Contractor must not impose a surcharge on the Customer for payment by credit card.

18. Notices:

A Notice is deemed to be effected:

- (a) If delivered by hand – upon delivery to the relevant address;
- (b) If sent by registered post – upon delivery to the relevant address; or
- (c) If transmitted electronically – upon actual delivery as evidenced by a delivery receipt by the addressee.

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed

to be effected on the next working day in that place.

19. Compliance with Laws:

The Contractor must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Customer Contract is performed.

20. Compliance with Western Australian Policies:

The Contractor must comply with, and ensure its officers, employees, agents and subcontractors comply with all Western Australian policies relevant to the Products and/or Services.

If the Contractor becomes aware of any actual or suspected breach of the requirements set out in clauses A to C below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Contractor's Premises and Records: The Contractor must maintain proper business and accounting records relating to the supply of the Products and/or Services and performance of the Customer Contract.

The Contractor agrees to give the Customer, or its nominee, access to the Contractor's, or its subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Customer Contract or any review of the Contractor's or the Customer's performance under the Contract. This will include, but is not limited to, in connection with a request made under the *Freedom of Information Act 1992* or audit or review by the Office of the Auditor General Western Australia. Unless the access is required for the purpose of a criminal investigation into the Contractor, its employees or subcontractors, the Customer will reimburse the Contractor's substantiated reasonable cost for complying with the Customer's requires.

The Contractor must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any record (as defined in the *State Records Act 2000*)

without the prior written consent of the Customer. All records, including any held by subcontractors, must be returned to the Customer at the conclusion of the Contract.

B. Confidential Information: The Contractor agrees not to disclose to any person, other than the Customer, any confidential information relating to the Customer Contract or the Products and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Contractor is required by law or a stock exchange to disclose the relevant information. If, at any time, the Customer requires, the Contractor is to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Contractor acknowledges that unauthorised disclosure of official information is an offence. Legislation (including, but not limited to, the *Criminal Code Act Compilation Act 1913*) contains provisions relating to the protection of prescribed official information and sets out the penalties for the unauthorised disclosure of that information.

C. Privacy Act 1988 (Cth) Requirements: In providing the Products and/or Services, the Contractor agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988 (Cth)* and not to do anything would breach an Australian Privacy Principle as defined in that Act.

21. Police Clearance:

The Customer may request the Contractor, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any of the Contractor's officers, employees, agents and subcontractors.

The Contractor must comply with that request within thirty (30) calendar days of such request.

If any police clearance evidences that any of the Contractor's officers, employees, agents and subcontractors has committed a criminal offence punishable by imprisonment or detention, then the Customer may, without prejudice to their other rights under the Customer Contract, request the Contractor to promptly remove that Contractor's officers, employees, agents and subcontractors from involvement in the Customer Contract.

If the Contractor is requested to remove any of the Contractor's officers, employees, agents and subcontractors under this clause, the Contractor must, at its own cost, promptly remove that person from all involvement in the Customer Contract and arrange for a replacement of that person.

22. Intellectual Property:

Unless otherwise indicated in the Customer Contract, the Contractor owns the Intellectual Property Rights in the Material created under the Customer Contract. The Contractor grants to the Customer:

- (a) a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under the Customer Contract for any purpose; and
- (b) a right to sub-licence the rights in (a), above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence excludes the right of commercial exploitation by the Customer.

The Contractor warrants that it is entitled to grant this licence, and that the provision of the Products and/or Services and any Material under this Customer Contract, and its use by the Customer in accordance with this Customer Contract, will not infringe any third Party's intellectual property rights.

23. Pre-existing Intellectual Property Rights:

The Contractor grants to, or in the case of Third-Party Material, must obtain for, the Customer a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence (including the right to sub licence) to exercise the Intellectual Property Rights in all Pre-existing Material and Third Party Material incorporated into the Material to enable the Customer to receive the full benefit of the Products and/or Services and the Material and to exercise its rights in relation to the Material.