

## Simple Contract Terms (Goods or Services)

### 1 Agreement

- 1.1 The Supplier has agreed to supply the Goods or Services to the Customer in accordance with the Contract.
- 1.2 The Contract is formed between the Customer and the Supplier when the Customer issues the Acceptance of Offer and is comprised of (in order of hierarchy):
  - (a) the Acceptance of Offer;
  - (b) the Supplier's Offer;
  - (c) the Request for Quote; and
  - (d) these Simple Contract Terms.
- 1.3 Unless terminated earlier in accordance with clause 10, the Contract continues until expiry of the Term.
- 1.4 Capitalised terms used in the Contract have the meaning given in clause 13.1.

### 2 Supply of Goods or Services

- 2.1 The Supplier must ensure that the Goods or Services:
  - (a) match the description, and conform to the specifications and requirements, in the Contract;
  - (b) conform to any applicable Australian Standards and any other standards specified in the Contract or required under any Law; and
  - (c) are delivered or completed by the date specified in the Contract.
- 2.2 The Supplier must:
  - (a) obtain and maintain all Authorisations necessary to supply the Goods or Services;
  - (b) comply with all applicable Laws and Authorisations in supplying the Goods or Services and, if applicable, accessing any Premises; and
  - (c) notify the Customer as soon as it becomes aware of any possible delay in supply of the Goods or Services.
- 2.3 The Supplier must promptly notify the Customer in writing if it believes it will be unable to supply the Goods or Services under the Contract.

### 3 Terms specific to Goods

- 3.1 The Supplier must comply with any delivery instructions in the Contract and must ensure that the Goods:
  - (a) are suitably packed and labelled to ensure delivery in good order and condition;
  - (b) correspond with any sample provided by the Supplier;
  - (c) are new, of merchantable quality and free from defects in materials, manufacture, workmanship and (if applicable) installation;
  - (d) are fit for their usual purpose, and any other purpose specified in the Contract; and
  - (e) are manufactured and supplied without infringing any person's Intellectual Property Rights.

- 3.2 The Supplier must ensure that the Customer receives the full benefit of any manufacturer's warranties applicable to the Goods.
- 3.3 The Supplier warrants that it has good and unencumbered title to the Goods. Title to the Goods transfers to the Customer on acceptance of the Goods in accordance with clause 5.

### 4 Terms specific to Services

The Supplier must ensure that the Services are:

- (a) provided with due care and skill in accordance with good industry practices current in the Supplier's industry;
- (b) provided in a timely and efficient manner;
- (c) fit for the purposes for which services of that type are commonly purchased and for any other purpose identified in the Contract; and
- (d) performed by appropriately skilled and qualified Personnel.

### 5 Delivery and Acceptance

- 5.1 The Supplier bears the risk of loss or damage to the Goods or Services until the Goods or Services are delivered to the Customer in accordance with the Contract. Risk in any Goods or Services removed by, or returned to, the Supplier re-passes to the Supplier at the time of removal or return (as applicable).
- 5.2 All Goods or Services delivered under the Contract are subject to inspection by the Customer prior to acceptance and the Supplier will provide all reasonable assistance to the Customer for inspections.
- 5.3 If the Goods or Services do not comply with the Contract:
  - (a) the Customer may, within the Acceptance Period, by notice to the Supplier reject the Goods or Services, detail the reason for the rejection and (acting reasonably) direct the Supplier to:
    - (i) replace the rejected Goods;
    - (ii) refund any payment for the rejected Goods or Services; or
    - (iii) repair the rejected Goods or re-perform the Services to the satisfaction of the Customer, within the time specified in the notice;
  - (b) the Supplier must, at its own cost, comply with the Customer's direction under clause 5.3(a); and
  - (c) if the Supplier fails to comply with the Customer's direction within the time specified in the Customer's notice, the Customer may have the Goods or Services supplied or performed by others and the costs incurred by the Customer will be a debt due and payable by the Supplier to the Customer on demand.
- 5.4 Remedied Goods or Services are subject to acceptance under this clause 5.

5.5 If the Customer does not reject the Goods or Services during the Acceptance Period, the Customer is taken to have accepted the Goods or Services.

5.6 Acceptance of the Goods or Services does not relieve the Supplier of its obligations under the Contract or at Law.

## 6 Access to Premises

If the Supplier or its Personnel access the Premises to supply the Goods or Services, the Supplier must and must ensure that its Personnel:

- (a) act in a safe and lawful manner;
- (b) comply with the Customer's site policies and all reasonable directions relating to occupational health, safety, security and confidentiality;
- (c) cooperate with the Customer's Personnel;
- (d) avoid unnecessary interference with the operations of the Customer and prevent nuisance and disturbance;
- (e) do everything reasonably necessary to protect people and property on the Premises; and
- (f) promptly notify the Customer of any breach of this clause 6 and of any hazard or risk at the Premises arising in connection with the supply of the Goods or Services.

## 7 Price and Payment

7.1 The price stated in the Contract is:

- (a) final;
- (b) inclusive of all costs and charges including packaging, delivery, duties, insurance and all costs and charges until the Goods or Services are accepted; and
- (c) inclusive of GST.

7.2 Subject to clause 7.3, the Customer will pay the amount owing to the Supplier under a Tax Invoice duly submitted in accordance with the Contract within 20 days of the later of receipt of such invoice and receipt of the Goods or Services. A Tax Invoice must quote the Contract ID number. The Supplier must promptly provide any supporting documentation or other evidence reasonably required to substantiate a Tax Invoice and performance of the Contract.

7.3 The Customer may withhold payment of any amount which it disputes in good faith until the dispute is resolved.

## 8 Supplier's Obligations

8.1 **(Insurance)** The Supplier must take out and maintain, with a reputable and solvent insurer authorised to operate in Australia as an insurance company:

- (a) all insurance required by Law;
- (b) such insurance as is consistent with good industry practice and that a prudent supplier would hold in connection with the Contract, including appropriate Public and Products Liability insurance; and

(c) any other insurance specified in the Contract, each in accordance with any Contract requirements.

8.2 **(Confidential information)** Other than information in the public domain, the Supplier must keep the Customer's information confidential and only use or disclose the information to the extent necessary to perform the Contract or as required by Law.

8.3 **(Conflict of interest)** The Supplier must immediately notify the Customer in writing if a conflict of interest (whether anticipated, real or perceived) arises at any time during the Contract and comply with any reasonable direction given to the Supplier by the Customer in relation to the declared conflict.

8.4 **(Subcontracting)** Any subcontracting of the Supplier's obligations under the Contract requires the Customer's prior written consent, and a subcontract will not relieve the Supplier from its obligations under the Contract.

8.5 **(Payments to subcontractors and suppliers)** The Supplier must not unreasonably withhold payment of any amount that is due and payable to its subcontractors or suppliers in connection with the Contract and must make such payments in a timely manner.

8.6 **(Intellectual property)** The Supplier:

- (a) grants (and must ensure that any other owner of any Intellectual Property Rights grants) to the Customer an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferrable (including sub-licensable) licence to exercise all the Intellectual Property Rights in the New Material and Existing Material;
- (b) warrants that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with providing the Goods or Services and to grant to the Customer the licences contemplated by the Contract;
- (c) gives, or arranges for a third party to give, a Moral Rights Consent in relation to the New Material and Existing Material; and
- (d) indemnifies and will keep indemnified the Customer and its Personnel from and against all Claims and Loss resulting from the Supplier's failure to comply with clause 8.6 including resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Supplier.

8.7 **(Access to records)** The Supplier must maintain proper records relating to the supply of the Goods or Services for 7 years after the later of expiry or termination of the Contract and agrees to provide the Customer with access to such records and all reasonable assistance for any purpose associated with the Contract, including requests made under the *Freedom of Information Act 1992 (WA)* and audits or reviews by the Office of the Auditor General or any other government body. The Supplier must not transfer custody or ownership, or allow the destruction, of any records (as defined in

the *State Records Act 2000* (WA)) without the prior written consent of the Customer.

## 9 Liability and Indemnity

- 9.1 The Supplier indemnifies the Customer, its Personnel and the State of Western Australia against any Claim or Loss arising from or in connection with:
- (a) any breach of the Contract; or
  - (b) any wilful, tortious or unlawful act or omission, by the Supplier or its Personnel, except to the extent that the Claim or Loss is caused by the negligence of the Customer or the Customer's Personnel.
- 9.2 Subject to clause 9.3 and to the extent permitted by Law, neither party is liable to the other party for any indirect or consequential loss, including any loss of profit, loss of revenue, loss of business, loss of opportunity, loss of anticipated savings or loss of business reputation.
- 9.3 The exclusion of liability in clause 9.2 does not apply to:
- (a) any statutory fine arising from any breach of Law;
  - (b) any special, exemplary or punitive damages;
  - (c) any personal injury, sickness or death;
  - (d) any loss of or damage to property;
  - (e) the indemnity in clause 8.6(d) or a breach of clause 8.2 or 8.6;
  - (f) criminal or fraudulent acts or omissions of, or fraudulent misrepresentation by, a party;
  - (g) wrongful acts committed by a party with a reckless indifference to the consequences;
  - (h) wilful default by a party or abandonment of the Contract by the Supplier;
  - (i) any matter which is the subject of a Claim against the Customer, its Personnel or the State of Western Australia by a third party and for which the Supplier has given an indemnity under the Contract; or
  - (j) the extent the Supplier recovers or is entitled to recover under the policies of insurance required by the Contract, or for amounts the Supplier would have been entitled to recover but for the Supplier's breach of the policies of insurance required by the Contract or breach of the Contract, with no deduction made for any deductible or excess applicable under such insurance paid or payable to the insurer.

## 10 Breach and Termination

- 10.1 A party may, by providing notice to the other party, immediately terminate the Contract if the other party breaches a material term of the Contract and:
- (a) the breach is not capable of remedy; or
  - (b) the breach is capable of remedy and is not remedied within the reasonable period specified in a notice of breach issued by the non-defaulting party.

- 10.2 The Customer may by notice immediately terminate the Contract if:

- (a) clause 2.3 applies; or
- (b) an Insolvency Event occurs in respect of the Supplier (except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act)

- 10.3 Subject to clause 7, the Customer will pay the Supplier for Goods or Services accepted in accordance with clause 5 before the effective date of termination.

## 11 Dispute Resolution

- 11.1 For any dispute arising under the Contract the parties must follow the following procedure:
- (a) the Supplier's and Customer's contract managers will negotiate to endeavour to resolve the dispute;
  - (b) failing resolution under clause 11.1(a) within 5 Business Days of referral of the dispute to the contract managers, either party may give notice to the other describing the dispute and referring it to senior representatives for resolution by negotiation, and senior representatives of the parties must promptly endeavour to resolve the dispute; and
  - (c) if the dispute is not resolved within 15 Business Days of the date of the notice under clause 11.1(b), or at any time in respect of urgent interim proceedings, either party may commence legal proceedings.
- 11.2 Subject to clause 7.3, the parties must continue performance of the Contract during a dispute.

## 12 General

- 12.1 **(Governing law and jurisdiction)** The Contract is governed by the laws in the State of Western Australia, and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with the Contract.
- 12.2 **(Relationship)** Nothing in the Contract gives a party authority to bind the other party in any way. The Supplier is an independent contractor, and nothing in the Contract may be construed to make the Supplier a partner, agent, employee or joint venturer of the Customer. The Supplier must not represent that the Supplier or any of its Personnel are the employees, agents, partners or joint venturers of the Customer.
- 12.3 **(Variation)** A term of the Contract can only be varied if the proposed variation is in writing and agreed to by both parties.
- 12.4 **(Assignment)** The Supplier must not assign any rights under the Contract without the Customer's prior written consent.
- 12.5 **(Entire agreement)** The Contract represents the parties' entire agreement in relation to the subject matter, and supersedes all prior agreements, understandings and negotiations.

12.6 **(Survival)** Clauses 3.2, 8.1, 8.2, 8.6, 8.7, 9, 10.3, 12 and 13 and all other provisions of the Contract which expressly or by implication are intended to survive the termination or expiry of the Contract, survive the termination or expiry of the Contract.

12.7 **(Notices)** Any notice or communication under the Contract must be in writing and delivered, posted or sent by email to the address or email address of the addressee specified in the Contract (as updated from time to time by notice) and is deemed effective if:

- (a) sent by hand or post - upon delivery to the address; or
- (b) sent by email, provided that the size of the email is less than 10MB:
  - (i) upon actual delivery as evidenced by acknowledgement of receipt from the addressee's system (by any means);
  - (ii) at the time the email is first opened or read by the addressee; or
  - (iii) after 2 Business Days following the date the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives, within that period, an automated message that the email has not been received,

whichever is first in time; and

- (c) if the notice is delivered or transmitted after 5pm Australian Western Standard Time, it is deemed to be delivered or transmitted on the following Business Day.

### 13 Definitions and Interpretation

13.1 **(Definitions)** In the Contract, unless the context otherwise requires:

**Acceptance of Offer** means the letter or other instrument issued by the Customer to the Supplier accepting the Offer, and which may (if agreed) specify additional terms and amendments to the Request for Quote and these Simple Contract Terms.

**Acceptance Period** means 14 days after the later of installation and delivery or performance of the Goods or Services by the Supplier.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or with a government agency required under any Law, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Customer under the Contract.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

**Claim** includes any claim, demand, action, proceeding, cause of action or suit of any nature, made under or arising in connection with the Contract or under any Law.

**Contract** means the Contract formed between the Customer and the Supplier consisting of the

documents specified in clause 1.2 of the Simple Contract Terms.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Customer** means the State Agency or other body identified as the Customer in the Request for Quote.

**Department CEO** has the meaning given in the Procurement Act.

**Existing Material** means a work (as defined in the *Copyright Act 1968* (Cth)), a product or any other material:

- (a) which was created prior to the commencement of the Contract or is to be created during the term of the Contract outside the scope of the Contract;
- (b) in which Intellectual Property Rights are not owned by the State of Western Australia or the Customer; and
- (c) required specifically for, or in connection with, the Goods or Services.

**Goods** means the goods described in the Request for Quote.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means any of the following:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up;
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved;
  - (ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate;
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in the Corporations Act) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate;
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate;

- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property;
- (g) a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation;
  - (ii) stops or suspends payment of all, or a class of, its debts;
  - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - (A) insolvent or unable to pay its debts when they fall due; or
    - (B) the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act; or
  - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- (h) a person becomes an insolvent under administration as defined in the Corporations Act, or is placed under external administration or special administration for the purposes of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), or action is taken which could result in that event;
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (j) anything analogous or having a substantially similar effect to any of the acts or events specified above happens under the Law of any applicable jurisdiction.

**Intellectual Property Rights** means patents, copyright, rights to circuit layouts, registered designs, trade marks, plant breeder's rights, database rights and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential and any application or right to apply for registration of any of those rights.

**Law** means Commonwealth, Western Australian and local government acts, ordinances, regulations, by-laws, orders, awards and other subordinate legislation, the common law and principles of equity.

**Loss** includes any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use, loss of revenue and loss of profit.

**Moral Rights** has meaning given in the *Copyright Act 1968* (Cth).

**Moral Rights Consent** means a waiver of Moral Rights to the extent permitted by Law and an

unconditional consent to any act or omission in relation to the New Material and Existing Material by or on behalf of the Customer or its Personnel or authorised person.

**New Material** means anything created by the Supplier under the Contract in which Intellectual Property Rights subsist.

**Offer** means the offer submitted by the Supplier in response to the Request for Quote.

**Personnel** means the officers, employees, agents, contractors and subcontractors of a party (other than, in respect of the Customer, the Supplier).

**Premises** means any premises which are owned or occupied by the Customer or are identified in the Contract as premises on which the Goods or Services are to be supplied.

**Procurement Act** means the *Procurement Act 2020* (WA).

**Request for Quote** means the request issued by the Customer for the supply of the Goods or Services.

**Services** means the services described in the Request for Quote, including any deliverables provided as part of the Services.

**Simple Contract Terms** means these Simple Contract Terms.

**State Agency** has the meaning given in the Procurement Act.

**Supplier** means the entity supplying the Goods or Services, as identified in the Acceptance of Offer.

**Tax Invoice** has the same meaning as in the GST Act.

**Term** means:

- (a) the Term specified in the Contract; or
- (b) if no Term is specified, the period from the date of the Acceptance of Offer until expiry of the last Acceptance Period, unless notice is given under clause 5.3 within the Acceptance Period.

13.2 **(Interpretation)** In the Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (c) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (d) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (e) headings are for convenience only and do not affect interpretation;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (g) a reference to a person includes a reference to the person's executors, administrators,

successors, substitutes (including a person taking by novation) and permitted assigns;

- (h) if the Supplier consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Supplier under the Contract binds each person who comprises the Supplier jointly and severally;
  - (ii) each person who comprises the Supplier is deemed to agree to do all things necessary to enable the obligations imposed on the Supplier under the Contract to be undertaken;
  - (iii) the act of one person who comprises the Supplier binds the other persons who comprise the Supplier; and
- (i) a breach by one person who comprises the Supplier constitutes a breach by the Supplier;
- (j) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;
- (k) all monetary amounts are in Australian dollars;
- (l) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part of it; and
- (m) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day.