

STANDARD CONDITIONS OF CONTRACT FOR PURCHASE OF GOODS

1. GENERAL

- 1.1 These are the terms and conditions referred to in the Purchase Order overleaf, attached or forwarded separately.
- 1.2 Sub-headings are not part of these Standard Conditions.
- 1.3 **When Conditions Apply.** These Standard Conditions apply to any contract entered into by the Commonwealth of Australia ('the Commonwealth') acting through and represented by the Australian Bureau of Meteorology, A.B.N. 92 637 533 532, issuing a Purchase Order to the nominated supplier ('the Supplier') whether as an offer or acceptance of an offer ('the Contract') to provide the goods specified in the Purchase Order ('the Goods').
- 1.4 **Conditions to Prevail.** Subject to clause 2.1, these Standard Conditions will prevail in any conflict between them and the terms of any offer or acceptance by the Supplier.
- 1.5 **Variation.** No agreement or understanding varying or extending this Contract shall be legally binding upon either party unless in writing and signed by both parties.

2. SPECIAL CONDITIONS

- 2.1 The contract conditions include any Special Conditions, referred to in the Purchase Order or in the Request for Tender and agreed to by the Supplier and, if any such Special Conditions are inconsistent with these Standard Conditions, the former will to the extent of the inconsistency prevail.

3. PACKING

- 3.1 The Goods must be packed so as to ensure their safe delivery.

4. DELIVERY

- 4.1 **Time, Place and Manner.** Subject to clause 4.2, delivery of the Goods must be made at the time, place and in the manner, specified in the Purchase Order.
- 4.2 **LATER DELIVERY.** The Commonwealth can specify in writing a later time for delivery.

5. QUALITY

- 5.1 **Free from Defects.** The Goods must be free of defect in materials and workmanship; and at least of merchantable quality.
- 5.2 **Rejection of Goods.** The Commonwealth can inspect the Goods at any time prior to payment and reject any Goods found not to be in accordance with the Contract.
- 5.3 **Latent Defects.** After acceptance the Commonwealth can reject Goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.
- 5.4 **No Payment for Rejected Goods or Damage.** The Commonwealth will not be liable to pay for any rejected Goods or for any damage done to or arising from inspection or rejection of the Goods.

- 5.5 **Replacement, Refund or Repair.** If the Commonwealth rejects any Goods, the Supplier must, without prejudice to the Commonwealth's rights otherwise arising under the Contract or the general law, comply with a requirement of the Commonwealth to:
- (a) replace, without cost to the Commonwealth, the rejected Goods with Goods in all respects in accordance with the Contract;
 - (b) refund any payment for the rejected Goods; or
 - (c) repair the Goods on site or otherwise to the satisfaction of the Commonwealth and in the case of (a) or (b), must remove the rejected Goods at the Supplier's expense.

- 5.6 **Inspecting Manufacture of Goods.** Without additional cost to the Commonwealth, the Supplier must provide reasonable access to premises and all other necessary assistance for Commonwealth representatives to inspect the manufacture of the Goods.

- 5.7 **Approval of Samples.** If the Commonwealth requires the Supplier to submit samples of Goods, the Supplier must not proceed to bulk manufacture until the Commonwealth has approved the samples.

6. PASSING OF PROPERTY

- 6.1 Property in, and risk of loss or damage to, the Goods passes to the Commonwealth on delivery to the Commonwealth.

7. WARRANTY

- 7.1 **Correction.** If the Commonwealth gives prompt notice of any defect or omission discovered in Goods during the warranty period specified in the Purchase Order, the Supplier must correct that defect or omission without delay and at no cost to the Commonwealth.

- 7.2 **Cost of Warranty.** The Supplier must meet all costs of an occurrence incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

8. INCLUSIVE PRICE

- 8.1 **Taxes, Duties, Imports and Extras.** The price of Goods includes:
- (a) all Taxes, Duties and other imposts for which the Supplier is liable;
 - (b) all insurance costs;
 - (c) all amounts payable for the use (whether in course of manufacture or usage of goods) of patents, copyright, designs, trade marks and other intellectual property rights; and
 - (d) all charges for supply of the Goods, and no extra charges will be made for testing, inspecting, packing, delivery, insurance or otherwise.

8A INDEMNITY & INSURANCE.

- 8A.1 The Supplier indemnifies the Commonwealth, its officers, employees and agents against all loss, damage, injury or expense the Commonwealth may sustain or incur as a result, whether directly or indirectly, of any breach of this Contract including any action or claim for alleged infringement of any patent, copyright, design, trade mark or any other intellectual property right, by reason of the purchase, possession or use of the Goods.

8A.2 The Contractor will, for so long as any obligations remain in connection with this Contract, effect and maintain appropriate insurance policies. Upon request by the Commonwealth, the Supplier will provide the Commonwealth with proof of insurance acceptable to the Commonwealth.

9. ASSIGNMENT

9.1 The Supplier must not, without consent in writing of the Commonwealth, assign the Supplier's rights or obligations under the Contract.

10. SUBCONTRACTING

10.1 **Consent Required.** The Supplier must not, without consent in writing of the Commonwealth, subcontract the whole or any part of the work of manufacture or supply of Goods.

10.2 **Liability for Subcontractors.** The Supplier will be liable to the Commonwealth for the acts and omissions of any subcontractors as if those were the acts or omissions of the Supplier. The Contract remains fully responsible for the performance of the terms of this contract and the Services, notwithstanding any subcontract or consent on the Commonwealth's part to a subcontract.

11. APPLICABLE LAW

11.1 The Contract will be governed and construed in accordance with the law in force in the State or Territory in which the Purchase Order is issued.

11.2 The Contractor agrees, in carrying out this Contract, to comply with all applicable laws, and ensure that any subcontractor complies with all applicable laws.

11.3 The Supplier acknowledges that it is a 'contracted service provider' within the meaning of the *Privacy Act 1988 (Cwth)*. The Supplier agrees to comply with its obligations under that Act.

12. PAYMENT

12.1 **Due 30 Days.** Subject to clause 5.4, the Commonwealth must pay for the Goods no later than thirty (30) days after property in the goods has passed to it and receipt of a correctly rendered invoice.

12.2 **Invoices.** An invoice will be correctly rendered if it:

- is addressed in accordance with the Purchase Order;
- identifies the Purchase Order;
- is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- is, where GST is applicable, a valid tax invoice in accordance with GST legislation.

12.3 Late Payments

12.3.1 If the Bureau fails to pay to the Contractor an amount payable by it under this Contract by the day it is due for payment and payable, the Bureau agrees to pay simple interest on the unpaid amount at the General Interest Charge (GIC) rate calculated in respect of each day from the day after the amount was due up to and including the day that payment is made in accordance with the formula set out in clause 12.3.3. Interest is only payable by the Bureau when the amount of interest exceeds A\$10 and

the Contractor has issued a correctly rendered invoice in relation to the interest. This clause does not apply to any amounts that are in dispute, including where no payment is made due to the Bureau finding fault with workmanship or other such causes.

12.3.2 For the purpose of this clause 12.3:

- 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day; and
- 'The day that payment is made' is the day when the Bureau's system generates a payment request into the banking system for payment to the Contractor.

12.3.3 $SI = UA \times GIC \times D$

where:

- SI = simple interest amount;
UA = the unpaid amount;
GIC = General Interest Charge daily rate; and
D = the number of days from the day after payment was due to and including the day that payment is made.

12.3.4 Clause 12.3 applies if at the date of entering into this Contract:

- the Contractor is a Small Business as defined in Finance Circular 2008/10 Procurement 30 Day Payment Policy for Small Business;
- the value of the Contract is \$1 million (GST inclusive) or less; and
- the procurement is for a departmental item, not an administered item (refer to Purchase Order details).

12A TAXES, DUTIES AND GOVERNMENT CHARGES

12A.1 Except as provided by this clause 12A, the Supplier agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

12A.2 If Goods and Services Tax (GST) applies to the Goods, the Supplier shall give the Commonwealth a tax invoice in accordance with GST legislation. All consideration paid by the Commonwealth for any supply the Supplier makes to the Commonwealth under this contract includes any GST imposed on the supply. The Supplier may not claim from the Commonwealth any amount for which the Supplier can obtain an input tax credit.

13. TERMINATION

13.1 If the Supplier;

- fails to deliver the Goods by the date required by the Contract;
- is in breach of any other material term of the Contract;
- being an individual, makes any arrangement, assignment, composition or agreement for the benefit of his or her creditors under the *Bankruptcy Act 1966 (Cwth)* as amended, or a creditor's petition is filed with an Australian Court seeking a sequestration order against his or her estate
- being a corporation, comes under one of the forms of external administration referred to in Chapter 5 of



the Corporations Law, or an order has been made for the purpose of placing the corporation under external administration, or an application is filed with an Australian Court seeking the appointment of a liquidator, receiver or other external administrator

the Commonwealth can, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or part by notice in writing to the Supplier.

- 13.2 On such termination the Commonwealth can;
- (a) cease payments under the Contract;
 - (b) recover from the Supplier all sums paid for undelivered Goods; and
 - (c) purchase similar goods from alternative suppliers and claim by way of indemnity from the Supplier any loss it may occur in doing so.

14. INTERPRETATION

- 14.1 In these Standard Conditions, "manufacture" includes grow, extract, produce, process and assemble.

15. ACCEPTANCE

- 15.1 The performance of any part of this Contract will be deemed to be acceptance of the Standard Conditions of Contract stated herein.

16. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 16.1 The Supplier:
- (a) is not by virtue of this Contract;
 - (b) must not represent itself to be; and
 - (c) must ensure that none of its employees or agents represents themselves to be;

an employee, partner or agent of the Commonwealth or otherwise able to bind or represent the Commonwealth.

17. DISCLOSURE OF INFORMATION

- 17.1 Neither party will disclose the other's Confidential Information without the other's prior written approval except:
- (a) when disclosure is authorised or required by law;
 - (b) to a Minister of the Commonwealth of Australia or in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; or
 - (c) when the Confidential Information is in the public domain otherwise than due to a breach of this clause.
- 17.2 The Commonwealth may impose any conditions or restrictions it considers appropriate when giving approval under this clause 17 and the Supplier must comply with such conditions or restrictions. This clause will survive the expiration or termination of this Contract.
- 17.3 In this clause 17, 'Confidential Information' means in respect of the Commonwealth's confidential information, any information that is by its nature confidential that is provided by the Commonwealth to the Supplier or which the Supplier otherwise accesses or becomes aware of as a result of this Contract which the Supplier knows or ought to know is confidential (which without limitation

includes any personal information or any security classified information), and in respect of the Supplier's confidential information means any information that is by its nature confidential that the Supplier has specifically identified to the Commonwealth as being confidential and the Commonwealth has agreed in writing that this is the case, but does not in either case include:

- (a) information that is in or comes into the public domain otherwise than due to a breach of this Contract;
- (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- (c) that has been independently developed or acquired by the receiving party.

18. AUDIT AND ACCESS

- 18.1 The Supplier agrees to give the Commonwealth, or any persons authorised in writing by the Commonwealth, access to premises occupied by the Supplier where the Goods are being produced or where records may be kept relating to this Contract, and the Supplier agrees to permit those persons to inspect and take copies of any material relevant to this Contract.

19. CONFLICT OF INTEREST

- 19.1 The Supplier warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, the Supplier undertakes to notify the Commonwealth immediately in writing of that conflict or risk, and take any steps that the Commonwealth reasonably requires to resolve the conflict or deal with the risk.

20. SECURITY

- 20.1 The Supplier must, when present on or using the Commonwealth's premises or facilities, comply with any lawful direction all security and office or regulations (including, but not limited to, those relating to occupational health, safety, privacy and security) in effect at those premises or in regard to those facilities, as notified by the Commonwealth, or as might reasonably be inferred from the circumstances.