



STANDARD CONDITIONS OF CONTRACT FOR PROVISION OF SERVICES

1. GENERAL

1.1 Headings

Headings are not part of these Standard Conditions.

1.2 When Conditions Apply.

1.2.1 These are the terms and conditions referred to in the Purchase Order overleaf, attached or forwarded separately.

1.2.2 These 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 service provider ('the Contractor') whether as an offer or acceptance of an offer ('the Contract') to provide the services specified in the Purchase Order ('the Services').

1.3 Conditions to Prevail

Subject to clause 2, these Conditions will prevail in any conflict between them and the terms of any offer or acceptance by the Contractor.

1.4 Variation to Contract

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

The conditions of the Contract include any Special Conditions, referred to in the Purchase Order or in the Request for Tender or Request for Quotation and agreed to by the Contractor. If any such Special Conditions are inconsistent with these standard conditions the former will, to the extent of the inconsistency, prevail.

3. PROVISION

3.1 Manner

The Contractor warrants that it exercises skill, care and diligence to a high standard in providing the Services.

3.2 Time and Place

Subject to clause 3.3, the Services are provided at the time and place specified in the Special Conditions.

3.3 Later Time

The Commonwealth may specify in writing a later time for the provision of the Services.

4. QUALITY

4.1 Free from Defects

The Services must be free from defects in performance; meet their purpose; and be complete.

4.2 Inspection of Services

4.2.1 The Commonwealth may inspect the performance and outcome of the Services at any time.

4.2.2 If there is a defect in performance of the Services or the Services are not complete, the Commonwealth may by notice require the Contractor to remedy the defect, or complete the Services, at no additional cost to the Commonwealth.

4.2.3 If the Services do not meet their purpose or are not in accordance with the Contract, the Commonwealth may by notice require the Contractor to redo the Services at no additional cost to the Commonwealth.

4.2.4 Where the Contractor fails to:

- (a) remedy a defect in performance of the Services;
- (b) complete the Services; or
- (c) redo the Services

within 30 days after notification by the Commonwealth under clauses 4.2.2 or 4.2.3, the Commonwealth may perform the necessary work and recover the cost from the Contractor.

5. INCLUSIVE PRICE

5.1 The contract price for the Services includes:

- (a) all taxes, duties and other imposts for which the Contractor is liable;
- (b) all insurance costs;
- (c) all amounts payable for the use (whether in course of performance of the Services or their enjoyment) of patents, copyright, registered designs, trade marks and other intellectual property rights; and
- (d) all charges for performances of the Services.

5.2 All intellectual property created under the Contract and relating to the Services is, from the time of creation of the right, owned by the Commonwealth.

6. INDEMNITY AND INSURANCE

6.1 The Contractor 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, registered design, trade mark or any other intellectual property rights, by reason of the Commonwealth's receipt or enjoyment of the Services.

6.2 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 Contractor will provide the Commonwealth with proof of insurance acceptable to the Commonwealth.

7. DISCLOSURE OF INFORMATION

7.1 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.

7.2 The Commonwealth may impose any conditions or restrictions it considers appropriate when giving approval under this clause 7 and the Contractor must comply with such conditions or restrictions. This clause will survive the expiration or termination of this contract.



7.3 In this clause 7, '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 Contractor or which the Contractor otherwise accesses or becomes aware of as a result of this contract which the Contractor knows or ought to know is confidential (which without limitation includes any personal information or any security classified information), and in respect of the Contractor's confidential information means any information that is by its nature confidential that the Contractor 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 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.

8. CONFLICT OF INTEREST

8.1 The Contractor warrants that, at the date of entering into a 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 Contractor 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.

9. SECURITY

9.1 The Contractor shall, when present on or using the Commonwealth's premises or facilities, comply with any lawful direction or regulation (including, but not limited to, those relating to occupational health, safety, privacy and security) in effect at those premises or in regards to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the circumstances.

10. COMMONWEALTH ASSISTANCE

10.1 For the performance of the Contract, the Commonwealth shall provide free of charge to the Contractor such normal office services and facilities as well as access to the Commonwealth's data processing system as are reasonably required by the Contractor for the performance of the Services.

11. PAYMENT

11.1 The Commonwealth will pay for the Services no later than 30 days after satisfactory provision of the Services and receipt of a correctly rendered invoice.

11.2 An invoice will be correctly rendered if it is complete, the amount has been calculated in accordance with prices set out in the Purchase Order and, where explanation is necessary, accompanied by documentation substantiating the amount claimed, and is sent to the address for payment of invoices shown in the Purchase Order.

11.3 Late Payments

11.3.1 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 11.3.3. 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.

11.3.2 For the purpose of this clause 11.3:

- a) '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
- b) '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.

11.3.3 $SI = UA \times GIC \times D$

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.

11.3.4 Clause 11.3 applies if at the date of entering into this Contract:

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

12. TAXES, DUTIES AND GOVERNMENT CHARGES

12.1 In this clause 12, the following terms have the meanings respectively given to them in the A New Tax System (Goods and Services Tax) Act 1999: "consideration", "GST", "supply", "taxable supply" and "tax invoice".

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

12.3 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is inclusive of any GST imposed on the supply.

12.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.



12.5 No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.

13. SUBCONTRACTING AND ASSIGNMENT

13.1 Consent Required

The Contractor does not, without the consent in writing of the Commonwealth, subcontract the whole or any part of the work of providing the Services.

13.2 Liability of Subcontractors

The Contractor is liable to the Commonwealth, for the acts and omissions of any subcontractor as if they were the acts or omissions of the Contractor. The Contractor 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.

13.3 Assignment

The Contractor does not, without the consent in writing of the Commonwealth, assign the Contractor's rights or obligation under the Contract.

14. TERMINATION FOR INSOLVENCY OR BREACH

14.1 If the Contractor:

- (a) fails to provide the Services by the date required by the Contract;
- (b) is in breach of any other material term of the Contract;
- (c) 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;
- (d) being a corporation, comes under one of the forms of external administration referred to in Chapter 5 of the Corporation 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 Contractor.

14.2 On such termination the Commonwealth can;

- (a) cease payments under the Contract;
- (b) recover from the Contractor all sums paid for Services not provided; and
- (c) purchase similar services from alternative suppliers and claim by way of indemnity from the Contractor any loss it may occur in doing so.

15. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

15.1 The Contractor:

- (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.

16. LEGISLATION

16.1 Applicable Law

The Contract is governed by and construed in accordance with the law in force for the State or Territory in which the Contract is issued.

16.2 Compliance with laws

16.2.1 The Contractor agrees, in carrying out this Contract, to comply with all applicable laws, and ensure that any subcontractor complies with all applicable laws and in particular including, but not limited to:

- (a) the Crimes Act 1914 (Cth);
- (b) the Racial Discrimination Act 1975 (Cth);
- (c) the Sex Discrimination Act 1984 (Cth);
- (d) the Disability Discrimination Act 1992 (Cth);
- (e) the Equal Opportunity for Women in the Workplace Act 1999 (Cth); and
- (f) all legislation relating to occupational health and safety, industrial relations, and security.

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

17. ACCEPTANCE

17.1 The performance of any Contract will be deemed to be acceptance of the Standard Conditions of Contract stated herein.

18. AUDIT AND ACCESS

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