

Commonwealth General Purchase Order Conditions (GPOC)

- 1. Provision of Supplies:** The Supplier must provide the Supplies to the Commonwealth in accordance with any instructions specified in the Purchase Order. The Supplier must promptly notify the Commonwealth if the Supplier becomes aware that it will be unable to provide all or part of the Supplies by the relevant delivery date and advise the Commonwealth as to when it will be able to do so.

To the extent the Supplies are services, they must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the Purchase Order.

To the extent the Supplies are goods, they must be delivered free from all Encumbrances and must meet any standard specified in the Purchase Order.

- 2. Acceptance:** The Commonwealth may accept or reject the relevant Supplies within 14 days after delivery of the Supplies.

If the Commonwealth does not notify the Supplier of acceptance or rejection within the 14 day period, the Commonwealth will be taken to have accepted the Supplies on the expiry of the 14 day period.

The Commonwealth may reject the Supplies where the Supplies do not comply with the requirements of the Purchase Order.

If the Commonwealth rejects the Supplies the Commonwealth may:

- (a) require the Supplier to repair or modify the Supplies, within a period determined by the Commonwealth, at the Supplier's cost, so that the Supplies meet the requirements of the Purchase Order; or
- (b) require the Supplier to provide, at the Supplier's cost, replacement Supplies which meet the requirements of the Purchase Order, within a period determined by the Commonwealth; or
- (c) terminate the Contract in accordance with the Termination clause of the GPOC.

In any case, and at the Commonwealth's request, the Supplier must, at its own cost, promptly remove any rejected Supplies from the Commonwealth's premises. Replacement, repaired or modified Supplies are subject to acceptance under this clause 2.

The Supplier will refund all payments related to the rejected Supplies unless replacement or repaired Supplies are accepted by the Commonwealth.

- 3. Title and Risk:** Title to the Supplies transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with the Acceptance clause of the GPOC. The risk of any loss or damage to the Supplies remains with the Supplier until their delivery to the Commonwealth at the delivery location.
- 4. Invoice:** The Supplier must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:
- (a) it is correctly addressed and calculated in accordance with the Contract;
 - (b) it relates only to Supplies that have been accepted by the Commonwealth as set out in the Acceptance clause of the GPOC;
 - (c) it is for an amount which, together with all previously correctly rendered invoices, does not exceed the Contract Price;
 - (d) it includes the Purchase Order number, and the name and phone number of the Contract Manager named in the Purchase Order; and
 - (e) it is a valid tax invoice in accordance with the GST Act.

Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Supplier, an admission of liability or evidence the obligations under the Contract have been completed satisfactorily, but is payment on account only.

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

- 5. Payment:** The Commonwealth must pay the invoiced amount to the Supplier within 30 days after receiving a correctly rendered invoice. If the Commonwealth fails to pay on a correctly rendered invoice within 30 days of receipt and the Supplier is a Small Business, the Supplier may submit a separate invoice for payment of simple interest on the unpaid amount at the General Interest Charge 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, provided the interest payable exceeds A\$10.
- 6. Price Basis:** The Contract Price is the maximum price payable for the Supplies and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

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The Commonwealth is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

7. **Offset:** If the Supplier owes any amount to the Commonwealth in connection with the Contract, the Commonwealth may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

8. **Quality Assurance:** Upon request by the Commonwealth, the Supplier must provide the Commonwealth and its nominees with access to the Supplier's premises to undertake quality audits and quality surveillance as defined in the relevant Australian Quality Standards of the Supplier's quality system and/or the production processes related to the Supplies.

9. **Insurance:** The Supplier must obtain and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain and if requested, must provide the Commonwealth with evidence the insurances remain in force.

10. **Indemnity:** The Supplier indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, wilful or negligent act or omission on the part of the Supplier, its officers, employees, agents or subcontractors; or
- (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or Moral Rights;

in connection with the Supplies.

The Supplier's liability to indemnify the Commonwealth under paragraph (a) is reduced to the extent that any wilful default or, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or contractors contributed to the liability, loss, damage, cost, compensation or expense.

The Commonwealth holds the benefit of this indemnity on trust for its officers, employees and contractors.

11. **Approvals and Compliance:** The Supplier must obtain and maintain any licences or other approvals required for the lawful provision of the Supplies and arrange any necessary customs entry for the Supplies. The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth laws and policies relevant to the Supplies.

12. **Conflict of Interest:** The Supplier warrants that no conflicts of interest exists, or is anticipated, relevant to the performance of its obligations under the Contract. If a conflict of that kind arises, the Supplier must notify the Commonwealth immediately. The Commonwealth may decide in its absolute discretion, without limiting its other rights under the Contract, that the Supplier may continue to provide the Supplies under the Contract.

13. **Warranties:** The Supplier must procure that the Commonwealth receives all relevant third party warranties in respect of Supplies.

If the Supplier is a manufacturer, the Supplier must provide the Commonwealth with all standard manufacturer's warranties in respect of the Supplies it has manufactured.

14. **Access to Supplier's Premises:** The Supplier agrees to give the Commonwealth, or its nominee, all assistance reasonably requested for any purpose associated with this Contract or any review of the Supplier's performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Supplies and the Contract.

15. **Criminal Code Acknowledgement:** The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995*. The Supplier must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

16. **Waiver:** If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

17. **Variation:** No agreement or understanding varying or extending the Contract, including in particular the scope of the Supplies, is legally binding upon either party unless in writing and agreed by both parties.

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- 18. Security and Safety:** When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Commonwealth or of which the Supplier is, or should reasonably be, aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.
- The Supplier must ensure that any material and property (including security-related devices and clearances) provided by the Commonwealth for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Commonwealth.
- 19. Conduct at Agency Premises:** The Supplier must, when using Commonwealth provided premises or facilities, comply with all reasonable directions of the Commonwealth, and act consistently with the behaviours set out in section 13 of the *Public Service Act 1999*.
- 20. Supplier not to make representations:** The Supplier 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 Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- The Contract does not create a relationship of employment, agency or partnership between the parties.
- 21. Privacy Requirement:** The Supplier agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act.
- The Supplier will immediately notify the Commonwealth if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 21.
- 22. Confidential Information:** The Supplier agrees not to disclose to any person, other than the Commonwealth, any confidential information relating to the Contract or the Supplies, without the prior written approval of the Commonwealth.
- This obligation will not be breached where the Supplier is required by law or a Stock Exchange to disclose the relevant information.
- At any time, the Commonwealth may require the Supplier to arrange for its employees agents or subcontractors to give a written undertaking relating to non-disclosure of the Commonwealth's confidential information in the form acceptable to the Commonwealth.
- The Commonwealth is not bound to keep any information in connection with the Contract confidential except to the extent it has agreed in writing to keep specified information confidential. The Commonwealth will not be in breach of any confidentiality agreement where the Commonwealth is required by Parliament to disclose the information.
- 23. Record Keeping:** The Supplier must maintain proper business and accounting records relating to the supply of the Supplies and allow the Commonwealth or its authorised representative to inspect those records when requested. The Supplier will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Supplier's accounts and records.
- 24. Freedom of Information (FOI) Act 1982 Requirements:** Where the Commonwealth has received an FOI request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Supplier must promptly provide the document to the Commonwealth, on request, at no cost.
- 25. Commonwealth Records and Archives Act 1983 Requirements:** The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Commonwealth.
- 26. Intellectual Property:** The Supplier grants a licence to the Commonwealth to allow the Commonwealth full use of the Supplies for their usual purpose. The Supplier warrants that it owns all Intellectual Property Rights necessary to grant this licence.
- 27. Moral Rights:** To the extent permitted by laws and for the benefit of the Commonwealth, the Supplier consents, and must use its best endeavours to procure that each author of Material consents in writing, to the use by the Commonwealth of Material, even if the use may otherwise be an infringement of their Moral Rights.
- 28. Notices:** Any notice or communication under the Contract will be effective if it is in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Purchase Order.

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29. **Assignment:** The Supplier must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.
30. **Specified Personnel:** The Supplier must ensure that the Specified Personnel provide the Supplies and are not replaced without the prior consent of the Commonwealth.
- At the Commonwealth's request, the Supplier, at no additional cost to the Commonwealth, must promptly replace any Specified Personnel that the Commonwealth reasonably considers should be replaced with personnel acceptable to the Commonwealth.
31. **Subcontracting:** Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract.
- The Supplier must make available to the Commonwealth the details of all subcontractors engaged to provide the Supplies under the Contract. The Supplier acknowledges that the Commonwealth is required to disclose such information.
- The Supplier must ensure that any subcontract entered into by the Supplier for the purpose of fulfilling its obligations under the Contract imposes on the subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).
32. **Termination:** The Commonwealth may terminate the Contract in whole or in part if:
- the Supplier does not deliver all of the Supplies to the delivery location by the relevant delivery date, or notifies the Commonwealth that it will be unable to deliver the Supplies to the delivery location by the relevant delivery date;
 - the Commonwealth rejects any of the Supplies in accordance with the Acceptance clause of the GPOC;
 - the Supplier breaches the Contract and the breach is not capable of remedy;
 - the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued to the Supplier; or
 - the Supplier:
 - is unable to pay all its debts when they become due;
 - if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the Corporations Act 2001 appointed to it; or
 - if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the Bankruptcy Act 1966.
33. **Termination or Reduction for Convenience:** In addition to any other rights it has under the Contract, the Commonwealth, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Supplies by notifying the Supplier in writing. If the Commonwealth issues such a notice, the Supplier must stop or reduce work in accordance with the notice; comply with any directions given by the Commonwealth; and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.
- Where the Contract is terminated under this clause, the Commonwealth will be liable for payments to the Supplier only for Supplies accepted in accordance with the Acceptance Clause in the GPOC, before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Commonwealth.
- The Supplier will be entitled to profits for the proportion of the Supplies accepted before the effective date of termination but will not be entitled to profit anticipated on any part of the Contract that is terminated or subject to a reduction in scope.
34. **Survival:** Clauses 10, 21, 22, 23, 24, 25, 26 and 27 of the GPOC, survive termination or expiry of the Contract.
35. **Dispute Resolution:** For any dispute arising under the Contract:
- both Contract Managers will try to settle the dispute by direct negotiation;
 - if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a notice setting out the details of the dispute;
 - within five business days, each Contract Manager will nominate a senior representative, not having prior direct involvement in the dispute;
 - the senior representatives will try to settle the dispute by direct negotiation; and
 - failing settlement within a further 10 business days, either the Commonwealth or the Supplier may commence legal proceedings.

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The Commonwealth and the Supplier will each bear its own costs for dispute resolution.

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

The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

- 36. Compliance with Laws:** The Supplier must ensure that it and all subcontractors comply with all relevant laws in connection with the Contract and all of its obligations under Australian tax laws.
- 37. Applicable Law:** The laws of the Australian Capital Territory apply to the Contract.
- 38. Entire Agreement:** The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers (except to the extent they are incorporated into the Contract in writing) and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

39. Definitions: In the Contract:

"Commonwealth" means the Commonwealth of Australia as represented by the agency named in the Purchase Order.

"Contract Manager" means the contract manager specified in the Purchase Order.

"Contract" means the contract between the Commonwealth and Supplier comprising the Purchase Order and the GPOC.

"Contract Price" means the total contract price specified in the Purchase Order, including any GST component payable, but for the purposes of the Payment clause of the GPOC only, does not include any simple interest payable on late payments.

"Encumbrance" means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

"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.

"GST" means a Commonwealth goods and services tax imposed by the *GST Act*.

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

"Intellectual Property Rights" means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

"Material" means any material brought into existence as a part of, or for the purpose of producing the Supplies, and includes but is not limited to documents, equipment, information or data stored by any means.

"Moral Rights" means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

"Purchase Order" means the purchase order, issued by the Commonwealth to purchase goods and services on behalf of the Commonwealth, into which these conditions are incorporated.

"Small Business" means an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

"Specified Personnel" means the personnel specified in the Purchase Order to provide the Supplies.

"Supplier" means the supplier specified in the section of the Purchase Order entitled "Parties".

"Supplies" means:

- (a) the Goods, Services, or Goods and Services specified in the Purchase Order; and
- (b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Commonwealth as specified in the Purchase Order.