



## Standard Conditions of Purchase

### General

1 These are the terms and conditions referred to in the purchase order ("**Purchase Order**").

### Purchase Orders

2 The nominated supplier's ("**the Supplier**") offer to provide Supplies to the Commonwealth is accepted by the Commonwealth when the Commonwealth sends a Purchase Order to the Supplier.

3 The Purchase Order specifies the precise nature of the Supplies the Commonwealth requires to be sourced or manufactured and delivered by the Supplier.

4 Each Purchase Order sent to the Supplier by the Commonwealth creates a separate contract between the Commonwealth and the Supplier ("**the Contract**").

### When these conditions apply

5 The terms of each contract created by the placement of a Purchase Order will be those set out in these Standard Conditions of Purchase ("**Standard Conditions**") and any Special Conditions specified in the Purchase Order (refer to clause 10). Therefore, these Standard Conditions apply to any contract entered into by the Commonwealth issuing a Purchase Order to the Supplier.

6 Subject to clauses 9 and 10, the Supplier shall provide the Supplies in accordance with these Standard Conditions.

### Interpretation

7 In these Standard Conditions:

- (a) "**Acceptance**" means acceptance of the Supplies in accordance with clauses 17 to 19, evidenced by the signature of the Commonwealth's representative on an acceptance certificate. "Accept" has a corresponding meaning.
- (b) "**Environmentally Friendly**" products means products that are manufactured to minimise their impact on the environment, whether through the manufacturing process itself, or through the use of recycled materials or because the products are biodegradable or recyclable at the end of their life. "Environmentally Friendly" products also include products that are made from natural products and/or are non-hazardous materials.

- (c) **“manufacture”** includes grow, extract, produce, process and assemble.

8 Headings are not part of these Standard Conditions and are provided for convenient reference only.

### **Conditions to prevail**

9 Subject to clause 10, these Standard Conditions will prevail to the extent of any inconsistency between them and the terms of any offer by the Supplier. The term **“Supplies”** means property and/or services as the context requires. A reference to property takes in every type of right, interest or thing which is legally capable of being owned and includes but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill.

### **Special Conditions**

10 The Contract conditions include any Special Conditions referred to in the Purchase Order and, if any such Special Conditions are inconsistent with these Standard Conditions, the former will, to the extent of this inconsistency, prevail.

### **Substitution of Supplies**

11 The Commonwealth may request the Hard Substitution of any of the Supplies where an equivalent product offered by the Supplier is more Environmentally Friendly and/or less expensive.

12 For the purposes of clause 11, “Hard Substitution” involves the substitution of Supplies with an alternative product offered by the Supplier that is equivalent to the Supplies.

### **Packing**

13 In preparing the Supplies for delivery, the Supplier must ensure:

- (a) the Supplies are packed to commercial packaging standards to ensure goods are received undamaged—Environmentally Friendly packaging material shall be used where practicable; and
- (b) packages are marked with the Purchase Order number, the name of the Commonwealth representative, the package number and delivery point, and are accompanied by an invoice, delivery docket or packing note.

## **Delivery**

### *Time, place and manner*

14 Subject to clause 15, delivery of the Supplies must be made at the time, place and in the manner specified in the Purchase Order. Unless otherwise specified in the Purchase Order, all deliveries to Parliament House are to be made to the Parliament House Loading Dock at a scheduled time. Arrangements to schedule deliveries can be made by calling (02) 6277 5500 during business hours, Monday to Friday. Failure to comply with the advised transport and/or delivery mode may render a cost variation at the Supplier's expense.

### *Later delivery*

15 The Commonwealth can specify in writing a later time for delivery.

## **Quality**

### *Free from defects*

- 16 The Supplier warrants that the Supplies are:
- (a) free from defects in design, materials and workmanship, fit for purpose and of merchantable quality; and
  - (b) conform with all relevant standards; and
  - (c) meet the requirements of the Contract.

## **Acceptance and Ownership**

17 All Supplies delivered by the Supplier shall be subject to acceptance by the Commonwealth in accordance with these Standard Conditions.

18 The Supplier shall, when seeking Acceptance, provide any other supporting evidence required by the Commonwealth.

19 Within 10 working days of the delivery of the Supplies, the Commonwealth shall:

- (a) Accept the Supplies; or
- (b) reject the Supplies, in which case the Commonwealth shall advise the Supplier in writing of the reasons for the rejection.

### *Rejection of Supplies*

20 If the Commonwealth does not reject the Supplies in accordance with clause 19, the Commonwealth will be deemed to have Accepted the Supplies.

21 If the Commonwealth rejects any Supplies, 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 Supplies with Supplies in all respects in accordance with the Contract;
- (b) refund any payment for the rejected Supplies; or
- (c) repair the Supplies, on site or otherwise, to the satisfaction of the Commonwealth; and
- (d) in the case of (a) or (b), where the Supplies are physical goods, equipment or property, the Supplier must remove the rejected Supplies at the Supplier's expense.

22 Any action of the Supplier in correcting or replacing the Supplies shall not relieve the Supplier from performing its obligations under the Contract.

23 The Commonwealth may require the Supplier to retake possession at any time of Supplies where a notice of rejection is issued under clause 19. Repossession of the Supplies shall not affect the obligation of the Supplier to provide conforming Supplies.

#### *No payment for rejected Supplies or for damage*

24 The Commonwealth will not be liable to pay for any rejected Supplies or for any damage done to or costs arising from inspection or rejection of the Supplies.

#### *Ownership and risk*

25 Subject to clauses 17 to 24, ownership of, and risk of loss or damage to, the Supplies will pass to the Commonwealth on payment of a claim relating to those Supplies in accordance with clauses 31 to 36. Intellectual property in Supplies created for the Commonwealth is owned by the Commonwealth from the date of creation.

### **Inspecting manufacture of Supplies**

26 Without additional cost to the Commonwealth, the Supplier must provide access to premises and all other necessary assistance for Commonwealth representatives to inspect the manufacturing of the Supplies upon request.

### **Approval of samples**

27 If the Commonwealth requires the Supplier to submit samples of the Supplies, the Supplier must not proceed to bulk manufacture until the Commonwealth has approved the samples.

## **Warranty Period**

### *Correction*

28 If the Commonwealth gives reasonable notice of any defect or omission discovered in the Supplies during any warranty period specified in the Purchase Order, the Supplier must correct that defect or omission without delay and at no cost to the Commonwealth. Where no warranty period is otherwise specified, the warranty period shall be 90 days from Acceptance by the Commonwealth.

### *Cost of warranty*

29 The Supplier must meet all costs of and incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

## **Price basis, payment and indemnity**

### *Duties, imposts and extras*

- 30 The price of the Supplies specified in each Purchase Order includes:
- (a) all duties and other imposts for which the Supplier is liable;
  - (b) all amounts payable for the use (whether in the course of manufacture or usage of the Property) of patents, copyright, registered designs, trade marks and other intellectual property rights;
  - (c) all charges for provision of the Supplies; and
  - (d) no extra charges will be made for testing, inspection, packing, delivery, insurance or otherwise.

### *Payment*

31 The Supplier must submit a claim for payment once the Supplies have been Accepted by the Commonwealth.

- 32 A claim for payment must:
- (a) be in the form of an invoice and meet the requirements of clause 36;
  - (b) if requested by the Commonwealth, be accompanied by an Acceptance certificate signed by both parties that relates to the Supplies listed in the claim for payment; and
  - (c) attach any other relevant documentation necessary to establish that, to the satisfaction of the Commonwealth, the claim is in accordance with the Contract.

- 33 On receipt of a claim for payment, the Commonwealth will either:
- (a) approve the claim;
  - (b) approve part of the claim where the part is submitted in accordance with clause 32; or
  - (c) reject the claim where the claim is not submitted in accordance with clause 32.

34 Where a claim or part of a claim is approved under clause 33, the Commonwealth must pay for the Supplies no later than 30 days from Acceptance of the Supplies or the submission of the claim, whichever is the later.

35 Where a claim or part of a claim is rejected under clause 33, the Commonwealth will, within 14 days of receipt of the claim, notify the Supplier in writing of the need to resubmit the claim or part of the claim and the reasons for the rejection.

36 An invoice will be correctly rendered if it is addressed in accordance with the Purchase Order, identifies the Purchase Order number, is a "Tax Invoice" for GST purposes, and is, where explanation is necessary, accompanied by documentation substantiating the amount claimed.

#### *Commonwealth's right to defer or deduct payments*

37 Without prejudice to its rights at common law or otherwise, the Commonwealth may deduct any payment or debt owed by the Supplier to the Commonwealth under this Contract from the payment of any moneys payable to the Supplier by the Commonwealth under this Contract.

#### *GST*

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

39 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.

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

41 In clauses 39 to 40, "taxable supply", "tax invoice" and "input tax credit" have the meanings respectively given to them in the GST Law.

## *Indemnity*

42 The Supplier indemnifies the Commonwealth against all loss, damage or expense arising in respect of 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 purchase, possession or use of the Supplies. If payment under an indemnity to the Commonwealth gives rise to a liability for the Commonwealth to pay GST, the Supplier shall pay and indemnify the Commonwealth against the amount of such GST.

43 The Supplier shall at all times indemnify the Commonwealth, its officers, employees and agents ("**those indemnified**") from and against any:

- (a) liability incurred by the Commonwealth;
- (b) loss of or damage to property of the Commonwealth; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against it (including legal costs and expenses on a solicitor and own client basis),

arising from:

- (a) a breach by the Supplier of this Contract; or
- (b) any act or omission involving fault on the part of the Supplier, its personnel or subcontractors in connection with this Contract.

44 The indemnity referred to in clauses 42 or 43 will survive the expiration or termination of this Contract.

## **Prices**

45 All prices set out in a Purchase Order are FIXED and are not subject to variation unless specified in the Purchase Order. Requests for variations other than that specified above are to be directed to the "Contact Officer" nominated on the Purchase Order prior to delivery.

## **Compliance with Commonwealth policies**

46 The Supplier shall, in its dealings with its employees, have due regard to Commonwealth policies on employment including equal employment opportunity, access and equity, affirmative action, occupational health and safety, and workplace diversity.

47 The Supplier undertakes to keep its staff informed of matters affecting them as employees within Parliament House, and to promote good staff communications and consultation and to protect the health, safety and welfare of the staff.

48 The Supplier's attention is drawn to the obligations of relevant employers under the *Equal Opportunity for Women in the Workplace Act 1999*. Enquiries for further information about the legislation should be directed to the Equal Opportunity for Women in the Workplace Agency ("EOWA") on (02) 9448 8500 or at [www.eowa.gov.au](http://www.eowa.gov.au).

49 The Supplier shall not enter into a subcontract under this Contract with a subcontractor named by the Director EOWA as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

50 The Supplier shall comply with its obligations, if any, under the *Disability Discrimination Act 1992*. Information about the Commonwealth Disability Strategy can be obtained from the Commonwealth Department of Families, Community Services and Indigenous Affairs web site at [www.facsia.gov.au](http://www.facsia.gov.au).

### **Confidentiality**

51 The Supplier shall not, and shall take all reasonable steps to ensure that its officers, employees, agents and subcontractors do not, make public or disclose to any person other than the Commonwealth, information about the Contract or any of the Commonwealth's confidential information without the prior written approval of the Commonwealth.

### **Insurance**

52 Unless otherwise specified in the Purchase Order, the Supplier shall effect and maintain the following insurances:

- (a) public liability insurance in the amount of at least \$5 million for each claim;
- (b) product liability insurance (or the equivalent) in respect of the Supplies in the amount of at least \$5 million for each claim;
- (c) marine insurance (or the equivalent) sufficient to cover the Supplier's liability for the Supplies until property passes to the Commonwealth, including the transportation, any incidental storage and the delivery of the Supplies; and
- (d) worker's compensation as required by law.

53 In addition to the insurances required under clause 52, the Supplier shall also effect and maintain any other insurance policy specified in the Purchase Order.

54 On request, the Supplier shall provide evidence acceptable to the Commonwealth of the currency of the policies of insurance required under clause 52 or the Purchase Order. Clauses 52 and 53 shall continue in operation for so long as any obligations remain in connection with the Contract.

## **Security**

55 The Supplier shall adhere to any reasonable security procedures notified by the Commonwealth.

## **Access to records**

56 The Supplier shall grant, at all reasonable times, the Auditor-General (or his or her delegate) access to the Supplier's premises, records, accounts and other financial material or material relevant to the Contract however and wherever stored, in the custody or possession or control of the Supplier, its officers, employees, agents or subcontractors for inspection and copying if requested.

## **Termination**

### *For default*

57 Where a party fails to satisfy any of its obligations under this Contract, the other party, if it considers that the failure is:

- (a) not capable of remedy, may, by notice, terminate this Contract immediately; or
- (b) capable of remedy, may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.

58 The Commonwealth may also, by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Supplier:

- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (c) suffers a change in control or ownership which adversely affects the Supplier's ability to manufacture and deliver the Supplies; or
- (d) ceases, or threatens to cease, to carry on business.

59 Where the Commonwealth terminates the Contract under clause 57 or 58, the Commonwealth may cease payments under the Contract; recover from the Supplier all sums paid for undelivered Supplies; and purchase similar Supplies from alternative suppliers and claim by way of indemnity from the Supplier any loss it may incur in doing so.

*For convenience*

60 The Commonwealth may, at any time by written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Commonwealth shall be liable only for payment for Supplies provided before the effective date of termination in accordance with this Contract. For the avoidance of doubt, the Commonwealth shall not be liable for loss of prospective profits.

**Variation**

61 Variations to the Contract are only effective if they are in writing and signed by both parties.

**Assignment**

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

**Subcontracting**

*Consent required*

63 The Supplier must not, without the consent in writing of the Commonwealth, subcontract the whole or any part of the work of manufacture or provision of the Supplies. The Commonwealth may impose any terms and conditions it considers appropriate when providing such consent.

*Liability for subcontractors*

64 The Supplier will be liable to the Commonwealth for the acts and omissions of any subcontractor as if those were the acts or omissions of the Supplier.

**Applicable law**

65 The Contract will be governed by and construed in accordance with the laws in force in the Australian Capital Territory.