

# General conditions of contract for the supply of goods & services

## 1 General

- (a) **Agreement:** The documents listed in clause 1(b) ("Precedence of Contract Documents") comprise the Contract Documents and collectively set out the entire Contract between us and you. Under the Contract you agree to provide the Goods and/or Services to us and we agree to accept the Goods and/or Services from you. The Contract supersedes all previous arrangements between us and you in relation to the supply of the Goods and/or Services.
- (b) **Precedence of Contract Documents:** The Contract Documents must be read in the following order of precedence:
- (1) our Purchase Order;
  - (2) these General Conditions of Contract; and
  - (3) your Proposal.
- (c) **Inconsistency:** If a provision of a Contract Document is inconsistent with one or more of the other Contract Documents, then the Contract Document lower in the order of precedence must be read down to resolve the inconsistency. If the inconsistency remains unresolved, the inconsistent provision/s must be severed from the Contract Document lower in the order of precedence but this will not diminish the enforceability of the remaining provisions of that Contract Document.
- (d) **Definitions:** Some terms have particular meanings in these General Conditions of Contract and these meanings are set out in clause 8.2 ("Definitions").

## 2 Pricing and payment

- (a) **Pricing:**
- (1) Unless stated otherwise in our Purchase Order, the Contract Price is firm.
  - (2) If the Contract Documents state that the Contract Price is variable, you may only increase the Contract Price by giving us a written notice containing full details of the variation including all information regarding the cost of materials, direct labour, overheads, rise and fall, exchange rates, profit and such other cost components as we may require to verify the claim for variation. You may not increase the Contract Price until 21 days after we give you a written notice stating that we accept the increased Contract Price.
  - (3) If you offer a public authority a lower price for a Good or Service, you must also offer the same price to us.
  - (4) The Contract Price includes all Fees. You must supply us with any information that we may request about these Fees within 7 days of our request.
  - (5) Where permitted under the law or any authorisation, we may exchange any information relating to the Contract or our relationship with you (including information relating to the Contract Price) with a third party.
- (b) **Payment:**
- (1) If you perform the Services and/or provide the Goods to our satisfaction, will pay you for the Goods and/or Services by the later of:
    - (A) 31 days after the end of the month in which our specified accounts payable department receives your correct tax invoice; and
    - (B) 31 days after the end of the month in which we accept the Goods in accordance with clause 3.3(i).
  - (2) Each tax invoice and credit note must specify our relevant Purchase Order number and a correct statement of the Goods and/or Services to which that tax invoice or credit note relates.
  - (3) We may pay the Contract Price to you by cash, cheque or by electronic funds transfer.
  - (4) You cannot terminate the Contract if we do not pay you within these times and you cannot charge us interest or charges for any late payments.
  - (5) If the Contract allows us to pay you by progressive instalments, we may defer the payment of an instalment until:

- (A) you have provided that part of the Service; and/or
- (B) we have accepted those Goods, to which that instalment relates.

- (6) We may deduct any money that you owe us from any money that we owe you.
- (7) We may suspend our payment of the Contract Price if you do not perform any of your obligations under the Contract.
- (8) We do not have to pay you unless we have Accepted the Goods and/or Services. If we do pay you before we have Accepted the Goods and/or Services, then you must hold that payment on trust for us until we have Accepted the Goods and/or Services.
- (9) You must approve or decline each Credit Request within 14 days of receiving that Credit Request. If you do not approve or decline a Credit Request within 14 days you will be deemed to have approved that Credit Request. If you decline a Credit Request you must provide us with reasons for your decision.

(c) **GST:**

- (1) Words or expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 2.
- (2) All sums payable under the Contract, unless specifically described as "GST inclusive", do not include GST.
- (3) If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply. This amount must be paid in addition to, and at the same time as, payment for the taxable supply.
- (4) The supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment.
- (5) If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.
- (6) You must pay all Fees (other than GST) in connection with the supply of the Services.

## 3 Your obligations

### 3.1 Your obligations generally

- (a) **Laws and standards:** You must, at your expense, comply with all State and Federal government legislation and regulations and all applicable Australian Standards.
- (b) **Information:** You must carefully examine all of the information that we make available to you. You must also obtain and examine all reasonably available information that is relevant to you supplying the Goods and/or Services to us.
- (c) **Disruption to activities:** You must use your best endeavours not to disrupt our operations.
- (d) **Rules:** You must comply, and ensure that all of your Employees and sub-contractors comply, with the Contractors Code of Practice at all times.
- (e) **Orientation:** You must attend, and ensure that all of your Employees and sub-contractors attend, any orientation or training that we require prior to providing the Services.
- (f) **Reporting Officer:** You must report to the Reporting Officer regarding all aspects of the Contract.
- (g) **Surveys:** You must participate in any survey or quality review that we may conduct.
- (h) **Assignment:** You may only assign or transfer the benefit of the Contract with our prior written approval. If you are an incorporated body, any change in your shareholders which alters the effective control of you is deemed an assignment of the Contract.
- (i) **Confidentiality and privacy:** You must hold all Confidential Information in confidence and you must not directly or indirectly use or disclose to a third party at any time, including after the

termination of the Contract, any Confidential Information unless the use or disclosure:

- (1) is for the purpose of providing the Goods and/or Services;
  - (2) relates to information already within the public domain, other than by you breaching the Contract; or
  - (3) is required by law.
- (j) **Personal Information:** You must treat all Personal Information (as that term is defined in the *Privacy Act 1988 (Cth)*) in accordance with the provisions of the *Privacy Act 1988 (Cth)*.
- (k) **Sub-contracting:** You may only sub-contract the Services with our prior written approval.
- (l) **Indemnity:** You are liable for, and must indemnify us and our Employees, against all Claims and Losses that we may suffer or incur in connection with:
- (1) the loss of life of, or personal injury to, any person or to any property which is in any way attributable to your:
    - (A) breach of a term or condition of the Contract;
    - (B) sale or delivery of the of the Goods; or
    - (C) performance of the Services; and
  - (2) any infringement or alleged infringement of any Intellectual Property Rights that relates in any way to the Goods and/or Services.

You agree that any indemnity expressed to be granted by us in any Contract Document will have no effect.

- (m) **Conflict of interest:** If you reasonably believe that you have, or may have, a conflict of interest in relation to the Contract then you must promptly notify us of the conflict and take all reasonable steps, in consultation with us, to remove the conflict.
- (n) **Automatic extension void:** A term in Your Proposal that automatically extends the Contract for a further period is deemed void.
- (o) **Working with Children Clearance:** If:
- (1) in the course of providing the Goods and/or Services you will, or may, come into contact with children; or
  - (2) we request you to, then you must:
  - (3) obtain, at your expense, a Working with Children Clearance for you and for each person who will be supplying the Goods and/or Service; and
  - (4) immediately supply us with a copy of each Working with Children Clearance referred to in clause 3.1(o)(3).

### 3.2 Your obligations in relation to Services

- (a) **Scope and quality of Services:**
- (1) You must supply the Services in accordance with the Specification. If the Specification does not specify a standard for the Services, then you must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.
  - (2) You must ensure that all persons providing the Services have the necessary qualifications, skills and experience to provide the Services to the standard required under the Contract and you must provide us with any evidence that we may require of the qualifications, skills and experience of the persons providing the Services.
  - (3) If you do not supply a Service in accordance with this clause 3.2(a), then we may require you to re-supply that Service within a reasonable time at no cost to us.

### 3.3 Your obligations in relation to Goods

- (a) **Purchase Orders:**
- (1) You must fulfil all Purchase Orders for Goods that we may place with you.
  - (2) We may order Goods in such quantities as we may require from time to time and we will not be liable to you for any Loss that you may incur in relation to an anticipated Purchase Order that is subsequently not placed.

- (b) **Specified brands:** If we specify a particular brand of Good then you must not supply another brand without our written approval.
- (c) **Quality of goods:** You must ensure that all Goods, and any packaging that those Goods may come with:
  - (1) conform to any specifications or samples that we have provided to you;
  - (2) complies with the Therapeutic Goods Act 1989 (Cth) and the regulations that apply to that Act (if relevant);
  - (3) complies with all relevant standards of the Standards Association of Australia or such other standard as we consider appropriate. We will not accept electrical equipment until that equipment has successfully passed our electrical safety testing;
  - (4) are suitable for their purpose as stated in the Contract and fully capable of the Good's intended use; and
  - (5) have a reasonable shelf life having regard to our usual consumption patterns.
- (d) **Warranties:** You must obtain all available warranties relating to the Goods and ensure that we obtain the benefit of those warranties. Without limiting any warranty that you must provide to us under another Contract Document or at law, you must provide us with a full parts and labour warranty for the Goods for a period of 12 months from the date the Goods are Accepted.
- (e) **Aids to Manufacture:** If you need to make or acquire an Aid to Manufacture and you include the cost of the Aid to Manufacture in the Contract Price, then that Aid to Manufacture becomes our property and you must deliver it properly packed and labelled to an address that we nominate.
- (f) **Samples:** At our request, you must supply and deliver samples of the Goods to us free of charge within 14 days of our request.
- (g) **Documentation and training:** In respect to the Goods and at your cost, you must supply us at the time of delivery with:
  - (1) 2 copies of all user instructions;
  - (2) 1 complete copy of service instructions (including working instructions, theory of operation, circuit diagrams, calibration instructions and a components part list) in good technical English;
  - (3) at least 2 copies of all training manuals;
  - (4) current copies of all necessary material safety data sheets; and
  - (5) sufficient training so that our Employees who will use the Goods are competent in the efficient operation, service and maintenance of the Goods.
- (h) **Delivery:**
  - (1) It is essential that you deliver the Goods in full to the location, and at the time and date, that we specify. You must promptly notify us in writing if you think that the delivery of the Goods is likely to be delayed, however, this notice will not release you from your obligations under the Contract and you are not entitled to any Claims in connection with the delay.
  - (2) When you deliver the Goods, you must give us a delivery note setting out, as a minimum, our Purchase Order number and a correct statement of the Goods delivered.
  - (3) You must properly, safely and securely package and label all Goods for identification and safety.
  - (4) You must pay all costs relating to the delivery, installation and commissioning of the Goods including costs relating to packaging, freight, insurance and the return of any Goods that you wrongly supply.
- (i) **Acceptance:** Our acceptance of the Goods only occurs when our authorised Employee notifies you that we have accepted the Goods. Delivery and receipt of the Goods does not mean we have accepted the Goods.
- (j) **Property in the Goods:** Property in the Goods passes to us when we accept the Goods. You retain all risk in the Goods prior to this time.
- (k) **Deficient Goods:** If, at any time, we determine that the Goods are Deficient Goods, we may notify you of the deficiency and require you, at your expense, to immediately:

- (1) remove the Deficient Goods from our premises and either replace them with Goods conforming to the terms of the Contract or to rectify them to conform with the Contract; or
- (2) refund the price paid and remove the Deficient Goods from our premises.

You must immediately reimburse us for any expenses that we may incur in relation to the Deficient Goods.

#### 4 Insurance

- (a) **Insurance:** You must take out and maintain for the duration of the Contract the following insurance policies:
  - (1) **Workers' Compensation and Employers' Liability Insurance** covering all claims and liabilities in respect of any statute and at common law for the death of, or injury to:
    - (A) you;
    - (B) any person that you employ or whom statute deems to be your worker or sub-contractor; and
    - (C) if you are a company, each of your directors, and you must ensure that the Workers' Compensation and Employers' Liability Insurance policy is extended to indemnify us as principal for any liability we may have by operation of statute or at common law;
  - (2) **General Public and Products Liability Insurance** covering liability to any person for death, bodily injury, loss of or damage to property and consequential loss with a limit of liability of at least \$10 million for any one occurrence. You must ensure that the General Public Liability Insurance policy is extended to indemnify us and include us as a named insured with respect to any liability incurred as a result of the acts or omissions of you, your employees or your contractors;
  - (3) **Motor Vehicle Insurance** covering damage to all motor vehicles used in connection with the Services, liability in respect of loss, damage or destruction of any property and injury to or death of any person which arises out of the ownership, possession, control, use or driving of such motor vehicle, regardless of whether any motor vehicle is licensed (or required to be licensed) as a motor vehicle under the provisions of any statute; and
  - (4) **Professional Indemnity Insurance** covering any claims made against you or any of your sub-contractors for breach of professional duty by reason of any act, error or omission whenever committed in the provision of the Services with a limit of liability of at least \$10 million for any one occurrence. You must ensure that you either renew the Professional Indemnity Insurance policy for 7 years after the expiration of the Contract or you must purchase 7 years run off cover.
- (b) **General:** You must:
  - (1) observe and perform all terms and conditions of such insurances and pay all deductibles;
  - (2) ensure that all insurances provide for 30 days prior notification of intention by the insurers to cancel or vary the insurances or lapse of the insurances and you must immediately notify us of any such notification;
  - (3) ensure we are not prejudiced by any breach of the conditions of the insurances;
  - (4) on request, provide us with details of the insurances and evidence of currency and premium payment; and
  - (5) ensure that all insurances are effected with reputable financially secure insurers approved by us and that all insurances are on terms acceptable to us.
- (c) **We may take out policy:** If you fail to take out and maintain a required insurance policy, we may take out and maintain any insurance policy that you fail to take out or maintain. If we do this, it will be at your cost and we may deduct the cost of the insurance from any amount that we may owe you.
- (d) **Nothing limits your liability:** Nothing in this clause 4 limits your liability under the Contract.

#### 5 Intellectual Property

- (a) **Intellectual Property:** You automatically assign all Intellectual Property Rights in all Contract Material to us upon their creation.
- (b) **Licence:** You grant us an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in any Pre-existing Material during the remainder of the duration of the Intellectual Property Rights in that Pre-existing Material and you warrant that you have the right to grant these licences.
- (c) **Division Material:** All Division Material remains our property and you must return it to us on the termination of the Contract. You are responsible for the safekeeping and maintenance of any Division Material while it is in your possession or control.

#### 6 Termination

**Termination:** We may terminate the Contract:

- (a) immediately by giving you a Notice at any time if we think you have committed an Event of Default; or
- (b) for any reason by giving you 30 days written notice.

#### 7 Miscellaneous

- (a) **Notices:** We must address all Notices to you to the person and at the address set out in Your Proposal or to such other person and/or address that you notify us of in writing.  
You must address all Notices to us to the person and at the address set out in our Purchase Order or to such other person and/or address that we notify you of in writing.  
  
All Notices must be in writing and signed by the party giving the Notice. A Notice may be delivered personally, by facsimile, by prepaid post or by email.
- (b) **Waiver:** Our failure to take advantage of any default or breach by you of a term or condition of the Contract is not a waiver of that term or condition. If we do waive a term or condition it will be in writing.
- (c) **Governing law and jurisdiction:** The Contract between us and you is governed by the laws of the Relevant State and you accept the jurisdiction of its courts.
- (d) **Costs:** You must pay your own costs plus any stamp duty (including any fines or penalties) in relation to the Contract.
- (e) **Amendments:** A variation to the Contract must be in writing and signed by us and you.
- (f) **Relationship:** You are an independent contractor. Nothing in the Contract makes you our partner. You do not have the authority to act as our representative or on our behalf.
- (g) **Other rights:** If a party exercises a right under the Contract, this does not affect any other right that party may have.
- (h) **Continuing obligations:** Your obligations under clauses 3.1(i) ("Confidentiality and privacy"), 3.1(j) ("Personal Information"), 3.1(l) ("Indemnity"), 3.3(a) ("Purchase Orders"), 3.3(d) ("Warranties"), 4 ("Insurance"), 5 ("Intellectual Property") and this clause 7(h) are continuing ones and survive the termination of the Contract.

#### 8 Interpretation and definitions

##### 8.1 Interpretation

In these General Conditions of Contract, unless the context otherwise requires:

- (a) mentioning something after **includes, included** or **including** does not limit what appeared before that term. **Examples** do not limit what else may be included;
- (b) reference to:
  - (1) one gender includes the other genders;
  - (2) the singular includes the plural and the plural includes the singular;
  - (3) a person includes a public body, a company and an incorporated or unincorporated association or body of persons;
  - (4) a party includes the party's executors, administrators, successors and permitted assigns; and

- (5) \$ or dollar in any Contract Document is a reference to Australian currency unless denominated otherwise;
- (c) if you consist of more than one person then the Contract binds each of you jointly and severally;
- (d) headings are for convenience only and do not affect the interpretation, or form part, of these General Conditions of Contract;
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (f) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

## 8.2 Definitions

In these General Conditions of Contract, the following terms have particular meanings:

**Accepted:** When we have given you a notice as set out in clause 3.3(i) ("Acceptance") that we have accepted the Goods and/or Services.

**Aid to Manufacture:** Includes any pattern, jig, die, drawing or other aid to manufacture or production.

**Business Day:** Any week day from Monday to Friday inclusive other than a public holiday in the Relevant State.

**Claim:** Any claim, demand, cause of action or proceeding in respect of the Contract.

**Confidential Information:** Any information which:

- is by its nature confidential;
- is designated by us as confidential; or
- you know, or ought to know, is confidential.

**Contract:** means the contract between us and you for the supply of Goods and/or Services by you and the terms and conditions of which are contained in the Contract Documents.

**Contract Documents:**

- our Purchase Order;
- these General Conditions of Contract; and
- your Proposal.

**Contract Material:** All works items, materials or information of whatever nature that you produce or develop, or that are produced or developed under your direction, in the course of providing the Goods and/or Services.

**Contract Price:** The contract price specified in our Purchase Order or, if the Purchase Order does not specify a contract price, the contract price specified in Your Proposal.

**Contractors Code of Practice:** Our contractors code of practice (as amended from time-to-time) located via at the website [www.sjog.org.au](http://www.sjog.org.au) and following the link to "Supplier Information".

**Credit Request:** Our request to you to credit or refund an item on a tax invoice.

**Deficient Goods:** Goods that we consider to be defective, of an inferior quality, different from those ordered or supplied otherwise in accordance with the Contract.

**Division Material:** Any material or information, in whatever form, that we may provide to you.

**Employees:** Employees, officers, servants, agents and representatives.

**Event of Default:** It is an event of default if:

- you breach an obligation under the Contract and you fail to remedy the breach within 14 days of receiving a Notice from us;
- you commit 3 breaches of your obligations under the Contract over any 12 month period, whether or not we gave you a Notice of the breaches and whether or not you have rectified the breaches;
- you cease, or threaten to cease, to carry on business, go into liquidation, are made bankrupt or enter into any arrangement for the benefit of creditors;
- you do not comply with our reasonable direction in relation to the provision of the Goods and/or Services;
- you or any or your directors (if you are an incorporated body), are convicted of a criminal offence; or

- (f) we believe that our reputation is, or is likely to be, damaged by something you have done.

**Fees:** Includes customs excise, levies, duties, taxes and charges, stamp duty and dumping duty or security that may be levied or demanded under the *Australian Customs Tariff (Anti Dumping) Act 1975* at the rates in force at the date of the Contract.

**General Conditions of Contract:** These general conditions of contract for the supply of Goods and Services.

**Goods:** The goods specified in our Purchase Order (if any).

**Intellectual Property Rights:** All intellectual property throughout the world including all patents, copyright, moral rights, performance rights (as described in Part XIA of the *Copyright Act 1968 (Cth)*), rights in circuit layouts, plant breeder's rights, registered designs, trade marks and the right to have confidential information kept confidential and includes any application or right to apply for registration of any of those rights.

**Loss:** Includes any damage, loss, cost, expense or liability of any kind (including legal costs and expenses) however arising and whether actual or contingent, present or future, or fixed or unascertained.

**Notices:** Means a notice from one party to the other and that must comply with the requirements set out in clause 7(a) ("Notices").

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

- was created prior to the commencement of the Contract;
- you do not own; and
- is required specifically for, or in connection with, the Goods and/or Services.

**Purchase Order:** Our written order to you, whether in the form of a letter, official purchase order or some other form, requesting you to provide the Goods and/or Services. We may give you a Purchase Order at any time and a Purchase Order may consist of a number of Purchase Orders or releases of a Purchase Order.

**Relevant State:** Is the same State as the State in our address for receiving Notices.

**Reporting Officer:** The person described as such in our Purchase Order or any other person we inform you is the Reporting Officer.

**Services:** The services specified in our Purchase Order (if any).

**Specification:** Any technical specification, drawing or schedule set out in a Contract Document.

**We / us / our:** The legal entity requesting the Goods and/or Services as set out in our Purchase Order.

**Working with Children Clearance:** Means a current assessment notice under:

- if the Relevant State is New South Wales, the *Commission for Children and Young People Act 1998 (NSW)*;
- if the Relevant State is Victoria, the *Working with Children Act 2005 (Vic)*;
- if the Relevant State is Western Australia, the *Working with Children (Criminal Record Checking) Act 2004 (WA)*; or
- if the Relevant State is some other State or Territory, the relevant child protection legislation of that State or Territory.

**You:** The person to whom we have addressed our Purchase Order, or, if that person is incorrect or does not exist, the person who accepts the terms of the Contract and includes your successors and permitted assigns.

**Your Proposal:** Your letter of proposal, expression of interest, tender document, terms and conditions of supply or similar written offer (if any) to provide us with the Goods and/or Services.



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