

Queensland Health

Basic Purchasing Conditions

1. The Contract

A Contract will be formed between the Customer and Supplier on the terms of these Basic Purchasing Conditions when the Supplier accepts a Basic Order, or delivers the Deliverables specified in a Basic Order. The Contract continues until:

- (a) the Deliverables are delivered without error or defect; or
- (b) the expiry date specified in the Basic Order (if applicable),

whichever is the earlier, unless terminated earlier in accordance with this Contract.

2. Interpretation

The definitions and rules of interpretation that apply to this Contract are set out in Attachment 1.

3. Supplier to deliver the Deliverables

- (a) The Customer appoints the Supplier to deliver the Deliverables. The Supplier accepts the appointment. The Supplier must deliver the Deliverables in accordance with this Contract and the Customer's delivery instructions including within the timeframes specified in the Basic Order or as otherwise agreed in writing.
- (b) The Supplier will promptly notify the Customer if it believes it will not be able to meet any delivery date or other timeframes specified in the Basic Order. If the Supplier cannot, or notifies the Customer that it cannot, meet the timeframes specified in the Basic Order, then the Customer may terminate the Contract at no cost to the Customer.

4. Right to cancel Basic Order before delivery for convenience

- (a) The Customer has the right to cancel the Basic Order and terminate this Contract at any time prior to delivery of the Deliverables, by written notice to the Supplier.
- (b) The Supplier will promptly notify the Customer if the Supplier will incur expenses as a consequence of the cancellation, including the estimated amount. If the Customer proceeds to cancel the Basic Order, the Customer will reimburse the Supplier for its reasonable out of pocket expenses reasonably incurred as a direct consequence of the cancellation. The Supplier must take all reasonable steps to mitigate against and minimise the expenses associated with cancellation.

5. Requirements

- (a) The Supplier must ensure that it delivers the Goods in accordance with the Contract, the Goods satisfy the description specified in the Contract, are new and unused, of a high quality, and fit for their usual purpose and any other purpose specified in the Contract.
- (b) The Supplier must ensure that it performs the Services in accordance with the Contract, to a high standard, in

a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.

- (c) All Deliverables delivered by the Supplier to the Customer specified in the Contract must, unless otherwise specified by the Customer, comply in all aspects with:
 - (i) applicable legislative requirements; and
 - (ii) and applicable Government code, policy or guideline; and any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO), including any that may be introduced or varied during the Contract,which govern the provision of the Goods and/or Services.
- (d) If the Supplier enters the Site to deliver the Deliverables, the Supplier must comply with Customer policies, codes of conduct, rules, standards and procedures, and workplace health and safety policies, relevant to the Site of which it is notified. The Customer will make copies available on request.
- (e) The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.
- (f) The Supplier must comply with all Laws necessary for the Supplier to perform the Contract (and provide evidence of compliance if the Customer asks), and ensure that use of the Goods by the Customer as contemplated in the Contract will comply with all Laws.
- (g) The Supplier must:
 - (i) at its cost and by the start date of the Contract, be insured or take out, and maintain:
 - (A) public liability insurance for a minimum amount of \$20 million per occurrence;
 - (B) product liability insurance for a minimum amount of \$20 million in the annual aggregate policy period, or as otherwise agreed in writing by the parties; and
 - (C) workers' compensation insurance (if required by Law)
 - (D) any other insurance specified in writing by the Customer prior to the start date of the Contract,with an insurer or insurers authorised and licensed to operate in Australia or otherwise with an insurer or insurers with a security rating of A- or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercial available;
 - (ii) promptly notify the Customer if any insurance policy specified in clause 5(g)(i) is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under the Contract; and



- (iii) maintain all required insurance policies which are maintained on a "claims made" basis for a minimum period of 6 years after the Contract. or such other period specified in the Details; and
 - (iv) on request, provide to the Customer an insurance certificate of currency confirming that the Supplier has effected and renewed, or is insured under, the insurance policies specified in clause 5(g)(i).
- (h) The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements. The Supplier is not, and Supplier Personnel are not, employees of the Customer.
- (i) If the Supplier collects or has access to any Personal Information in order to perform the Contract, the Supplier must, when performing this Contract:
- (i) if the Customer is an 'agency' for the *Information Privacy Act 2009* (Qld), other than for Chapter 3 of that Act, comply with those parts of Chapter 2 of that Act which are applicable to the Customer, as if the Supplier were the Customer; or
 - (ii) otherwise – comply with the Australian Privacy Principles in the *Privacy Act 1988* (Cth).
- (j) The Supplier must comply with the Ethical Supplier Threshold.

6. Where Requirements not met

- (a) If any Requirements for the Deliverables are not met, at the request of the Customer the Supplier will promptly:
- (i) resupply the relevant Goods;
 - (ii) re-perform the relevant Services; or
 - (iii) refund the Customer any monies paid,
- and the Customer may exercise any other rights or remedies that it has under this Contract or otherwise.
- (b) If the Supplier fails to comply with its obligations under this clause 7, the Customer may have the Deliverables re-supplied or re-performed by others, and the Supplier will pay to the Customer on demand any costs incurred by the Customer in doing so acceptance of the Deliverables by the Customer does not relieve the Supplier of any of its obligations under the Contract.

7. Therapeutic Goods Act - Recall, Suspension, Cancellation or Alert

- (a) This clause applies in each event of a notice (a '**TGA Notice**') being issued for any of the following in relation to the Goods under any of the *Therapeutic Goods Act 1989* (Cth), its Regulations or Orders (the '**TGA**') or the *Uniform Recall Procedure for Therapeutic Goods*:
- (i) a recall (including a recall for product correction) of the Goods;
 - (ii) a suspension or cancellation of the registration or listing of the Goods on the *Australian Register of Therapeutic Goods*;
 - (iii) a hazard alert being issued in relation to the Goods; or
 - (iv) a safety alert being issued in relation to the Goods such that the Goods do not conform to the Requirements.
- (b) For the purposes of the remainder of this clause 7, on and from the date of issue of a TGA Notice and for the remainder of the term of the Contract in respect of the purchase of Goods subject to the TGA Notice (the '**Affected Goods**'), the functional and technical specifications corresponding to the minimum requirements necessary to remedy, including repair or correct (to '**Remedy**') the defect, fault or issue raised in

the TGA Notice (the '**Issue**') in relation to the Affected Goods are included in the Requirements.

- (c) Notwithstanding any other clause of the Contract, and without limiting any other rights that the Customer that purchased Affected Goods under the Contract has or may have under the Contract, the Supplier must, solely at the Supplier's cost:
- (ii) within 30 calendar days, or as otherwise agreed by the parties, of the TGA Notice being issued deliver to the Customer a product that is compliant with TGA requirements and meets or exceeds the Requirements (a '**Substitute Product**') in an equivalent number of units as the units of Affected Goods. For this clause 7(c)(i):
 - (A) the requirements of this clause 7(c)(i) are not contingent on the doing of any act by the Customer, including delivering up the Affected Goods for substitution; and
 - (B) the Customer will hold a lien over the Substitute Products until:
 - (I) delivery by the Supplier of Remedied Goods or Alternative Goods (refer to clause 7(c)(ii) for definitions); and
 - (II) acceptance of the Remedied Goods or Alternative Goods in accordance with the Contract, subject to the application of the remedies and consequences under the Contract in the event of non-acceptance;

OR

- (iii) within 30 calendar days, or as otherwise agreed by the parties, of the requirements of clause 7(c)(iii) being met and subject to clause 7(c)(iii)(B):
 - (A) Remedy the Issue by, at the Supplier's discretion, Remedying the Affected Goods so that they are TGA compliant and meet or exceed the Requirements (the '**Remedied Goods**') or providing alternative Goods that are TGA compliant and meet or exceed the Requirements (the '**Alternative Goods**'); and
 - (B) deliver to the Customer the relevant Remedied Goods or Alternative Goods in an equivalent number of units as the units of Affected Goods.
 - (iv) For clause 7(c)(ii):
 - (A) the Customer must deliver the Affected Goods to the Supplier within 20 Business Days, or as otherwise agreed by the parties, after receiving the TGA Notice; and
 - (B) Remedied Goods or Alternative Goods delivered in accordance with clause 7(c)(ii) will be subject to acceptance of the same in accordance with the Contract, subject to the application of the remedies and consequences under the Contract in the event of non-acceptance, including clause 7(d).
- (d) Notwithstanding any other clause of the Contract, and without limiting any other rights of the Customer under the Contract, if the Supplier fails to meet its obligations under clause 7(c) (a '**TGA Clause Breach**'), the Customer may, in its absolute discretion, within 10 Business Days of the Supplier's TGA Clause Breach, by written notice to the Supplier, reject the Affected Goods and the Supplier must fully refund to the Customer the Price paid for the Affected Goods (a '**Refund**'), provided only that the Customer:
- (i) must have complied with clause 7(c)(iii)(A);
 - (ii) returns to the Supplier or makes available for collection by the Supplier, at the Customer's absolute discretion, any Substitute Products; and
 - (iii) returns to the Supplier or makes available for collection by the Supplier, at the Customer's absolute discretion, any putative Remedied Goods or Alternative Goods that:

- (A) fail acceptance in accordance with the Contract;
- (B) subsequently prove not to be TGA compliant; or
- (C) do not meet the Requirements,

and the Refund is a debt due and owing to the Customer by the Supplier which the Customer may set-off against any amounts payable to the Supplier by the Customer.

- (e) The Supplier must indemnify the Customer for all reasonable costs of, and incidental to, the discharge of its obligations in accordance with this clause 7.

8. Regulated Goods

- (a) In this clause 8, the following definitions apply:
 - (i) **Consumer** means an individual or entity in Queensland that is the end user, final consumer or final beneficiary of Regulated Goods.
 - (ii) **Regulated Goods** means Goods in respect of which the price is:
 - (A) regulated, subsidised or subject to rebates of any kind;
 - (B) anywhere in the supply chain;
 - (C) by any Australian, State or local government authority (an '**Authority**').
 - (iii) **Regulated Price** means the lowest price at which Regulated Goods can be lawfully acquired by a Consumer, from time to time, taking into account:
 - (A) the price (or maximum price) set by an Authority; and/or
 - (B) any subsidy paid or payable by an Authority; and/or
 - (C) any rebate paid or payable by an Authority.
- (b) If the Goods are Regulated Goods:
 - (i) the Price must not exceed the Regulated Price applicable at the time; and
 - (ii) if at any time the Price paid by the Customer exceeds the Regulated Price:
 - (A) the difference between the Price and the Regulated Price (the '**Price Difference**') is immediately payable by the Supplier to the Customer as a debt due and owing; and
 - (B) the Customer may set off the Price Difference against any amounts payable to the Supplier by the Customer.

9. Warranties - Medical devices

Where the Goods are medical devices as defined in the TGA (each a '**Medical Device**'), the Supplier warrants that the Medical Devices:

- (a) have been tested, and are certified as having been tested, in accordance with acceptance testing required for new Medical Devices before they are released for clinical use according to Australian Standard AS 3551 or equivalent;
- (b) meet, and will continue to meet, all regulatory requirements for Medical Devices, including the requirements under the TGA; and
- (c) may be used in accordance with the Documentation without risk to health or safety of persons.

10. Warranties - Conflicts of interest and criminal organisation

- (a) The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not

engaged in any business or activity and do not have any obligations where a Conflict of Interest is, or may reasonably be perceived to be, created in conflict with its obligations under this Contract, except as disclosed in writing to the Customer.

- (b) The Supplier warrants that neither it nor its Personnel:
 - (i) have been convicted of an offence under the *Criminal Code* where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the *Criminal Code*; or
 - (ii) are subject to an order, or have been convicted of an offence, under the *Criminal Organisation Act 2009* (Qld).

11. Warranties – General

- (a) The warranties in this Contract are provided as at the date of the Contract and on an ongoing basis.
- (b) The Supplier will immediately notify the Customer if it becomes aware that any warranty made in this Contract was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way.
- (c) In addition to any other remedies available to it under Law or this Contract, the Customer may, in its absolute discretion, immediately terminate the Contract if the Supplier has breached any warranties in this Contract.

12. Invoicing, Price and payment

- (a) The Supplier may invoice the Customer after delivery of Deliverables that comply with the Requirements.
- (b) The Supplier must include adequate information for the Customer to verify that the invoice is accurate and will provide supporting documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause.
- (c) The Customer will pay each correctly rendered tax invoice within 30 days of receipt.
- (d) The Customer may:
 - (i) withhold payment of any amount which it disputes in good faith, until the dispute is resolved, and it is determined that the amount is payable.
 - (ii) suspend payments under the Contract during any period that the Supplier is in breach of the Contract.
- (e) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

13. GST

- (a) Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.
- (b) Where GST is imposed on a supply under the Contract, the recipient of the supply shall pay to the supplier an amount equal to the GST (if any) payable on the taxable supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meanings as in the GST Law.

14. Intellectual Property Rights

The Supplier grants (and must procure that relevant third parties grant) to the Customer an irrevocable, unconditional, perpetual, free of additional charge, non-exclusive, worldwide and transferable (including sub-licensable) licence to exercise all Intellectual Property Rights in the Deliverables, for any purpose of the Customer or any Associated Health Agency and the Supplier warrants that it is authorised to grant the rights in this clause.

15. Customer Data

- (a) Nothing in this Contract affects ownership of Customer Data, including any Intellectual Property Rights in Customer Data, and any Customer Data created in the performance of this Contract vests in the Customer on creation.

- (b) The Supplier has no right, title or interest in Customer Data except as specified in this clause.
- (c) The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the Contract.
- (d) The Supplier must comply with clause 5(i) and all applicable Laws in relation to Customer Data which is Personal Information, and must provide reasonable assistance to the Customer on request to enable the Customer to comply with Laws, policies and standards applicable to the Customer in relation to Customer Data including (without limitation) identifying, labelling, searching, reporting, copying, retrieving and modifying Customer Data in relation to Personal Information, public records, right to information and information standards.

16. Confidentiality

A Recipient must not use or disclose or otherwise make available any Confidential Information of a Discloser to any person except:

- (a) to its Personnel and then only on a need to know basis to perform the Contract;
- (b) as required by Law;
- (c) with the written consent of the Discloser; or
- (d) in the case of the Customer:
 - (i) to its professional procurement or probity advisors for the Customer's internal purposes only on a strictly confidential basis without further disclosure;
 - (ii) to its Personnel for Queensland Government reporting purposes; or
 - (iii) to the Minister or Parliament on request.

17. Comparable Employee Wage Rates

- (a) This clause 17 applies where the Deliverables include Services and such Services include the types of labour referred to in:
 - (i) *Queensland Public Health Sector Certified Contract (No.9) 2016 ('EB9')* (CB/2017/17) clause 6.4.4, or the equivalent clause in the current replacement to EB9 (the '**EB9 Clause**'); or
 - (ii) *Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 6) 2016 ('BEMS6')* (CB/2017/8), clause 7.2, or the equivalent clause in the current replacement to BEMS6 (the '**BEMS6 clause**'),

as further defined in the Queensland Government Policy on the contracting out of Services issued by the Department of Premier and Cabinet (the '**Contracting Out Policy**').

- (b) Subject to this clause 17 and on the terms set out in the Contracting Out Policy, the Supplier must pay wage rates which are no less favourable in aggregate than the following rates of pay for comparable employees:
 - (i) where the type of labour relates to the EB9 Clause, the final rates of pay in the previous Queensland Public Health Sector Certified Agreement (for example, EB8 in relation to the EB9 Clause); or
 - (ii) where the type of labour relates to the BEMS6 Clause, the final rates of pay in the previous Queensland Health Building, Engineering & Maintenance Services Certified Agreement (for example, BEMS5 in relation to the BEMS6 Clause).

- (c) Where the Services include the type of labour in the EB9 Clause, the Supplier must, if requested by the Customer, provide information to the Customer about the skills and knowledge used in providing the Services, as required by clause 6.4.6 of EB9 or the current replacement to EB9.

18. Vaccine Preventable Diseases

- (a) The Supplier warrants that its Personnel meet the vaccine preventable disease screening requirements set out in *Human Resources Policy B1: Recruitment and Selection ('Policy B1')* or *Health Service Directive # QH-HSD-047:2016* and Protocol # *QH-HSD-047-1:2016 Vaccine Preventable Disease Screening for Contractors, Students and Volunteers* (the '**Directive**'), where applicable.
- (b) If neither Policy B1 nor the Directive is applicable at the start date of this Contract, the Customer may require compliance by the Supplier with Policy B1 or the Directive at any time during the term of the Contract, and the Supplier will promptly comply with the requirement.
- (c) Notwithstanding clause 18(b), where Policy B1 or the Directive apply in relation to this Contract, the Customer may, at any time during the term of the Contract, require the Supplier to produce documentary evidence of vaccination or proof of non-susceptibility to specified vaccine preventable diseases in relation to any relevant Personnel (including prior to relevant Personnel being permitted to provide Services) and the Supplier will promptly comply with the requirement.

19. Ethical Supplier Threshold

- (a) Where the Customer reasonably suspects that the Supplier is not complying, or has not complied, with the Ethical Supplier Threshold, the Customer may by notice require the Supplier to show cause, by the date specified in the notice (which must not be less than 5 Business Days), why the Customer should not terminate the Contract.
- (b) If the Supplier fails to show reasonable cause by the date specified by the Customer, then the Customer may, by notice in writing to the Supplier, terminate the Contract.

20. Disputes

- (a) If any dispute arises concerning this Contract, it must be resolved according to this clause 20.
- (b) Either party may give the other a notice in writing (a '**Dispute Notice**') setting out the details of the dispute. Within 5 Business Days after the date on which a party gives the other party a Dispute Notice (the '**Dispute Notice Date**'), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved by way of clause 20(b), then, no later than 10 Business Days after the Dispute Notice Date, senior management representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (d) If the dispute is not resolved by way of clause 20(c), then, no later than 20 Business Days after the Dispute Notice Date, the Director-General/Chief Executive Officer (or their nominee) must meet and use reasonable endeavours to resolve the dispute.
- (e) If the dispute is not resolved by way of clause 20(d), then, no later than 30 Business Days after the Dispute Notice Date, or such other time as agreed between the parties, the dispute must be referred to mediation according to clause 20(f).
- (f) Where the dispute is referred to mediation, the parties:
 - (i) will conduct the mediation in Brisbane;
 - (ii) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia will determine the mediator and the parties will appoint that mediator;
 - (iii) may be legally represented at the mediation;

- (iv) will each bear their own costs of the mediation, the mediation venue and the mediator; and
- (v) will continue to perform their obligations under the Contract notwithstanding the existence of a dispute.

21. Suspension

- (a) In addition to the Customer's termination rights, the Customer may suspend the Contract immediately on written notice in its absolute discretion, or in any circumstances when it is entitled to terminate under this clause 21.
- (b) The Customer may end a suspension on written notice to the Supplier and, promptly after receiving the notice, the Supplier will re-commence performance of the Contract.
- (c) If the Customer suspends the Contract for any reason which is not due to the act, default or omission of the Supplier:
 - (i) the Customer will:
 - (A) pay the Supplier's reasonable and documented expenses directly resulting from the suspension; and
 - (B) have no other liability to the Supplier relating to the suspension; and
 - (ii) the Supplier must take reasonable steps to minimise its expenses relating to the suspension.

22. Termination

- (a) In addition to any other rights of termination in this Contract, the Customer may terminate the Contract immediately on written notice if the Supplier:
 - (i) ceases business or is, or becomes, Insolvent;
 - (ii) indicates that it is unable or unwilling to complete the Contract; or
 - (iii) breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Customer.
- (b) The Supplier may terminate the Contract immediately on written notice only if:
 - (i) the Customer has not paid any amount which is undisputed and properly payable;
 - (ii) the Supplier has notified the Customer of the outstanding amount stating that it will terminate the Contract if the Customer does not pay such amount within a reasonable time set out in the notice and the reasonable time expires without the Customer disputing the amount or making payment.

23. Liability

The maximum liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract is an amount equal to the total of all Prices (including additional expenses and charges) payable under the Contract, multiplied by 1.5. The cap on liability does not apply to liability in relation to:

- (a) any non-excludable statutory liability;
- (b) personal injury, including sickness, injury or death; or
- (c) loss of, or damage to, tangible property; or
- (d) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel; or

- (e) any Claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights.

24. Indemnity

The Supplier releases, discharges and indemnifies the Customer and each of its Personnel (the '**Indemnified Persons**') from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:

- (a) negligent or unlawful act or omission of the Supplier, including its Personnel;
- (b) breach of the Contract by the Supplier;
- (c) contravention of any legislative requirements by the Supplier, including its Personnel; or
- (d) infringement by the Supplier, including its Personnel of the Intellectual Property Rights or Moral Rights of any third party, except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

25. General

The parties agree that:

- (a) (**communication**) they will direct all enquiries relating to the Contract to the other party's nominated contact person, or to another person if the other party directs;
- (b) (**electronic communication**) any notices under this Contract may be communicated by electronic means in satisfaction of electronic transactions legislation;
- (c) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (d) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;
- (e) (**relationship**) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Customer;
- (f) (**manufacturer warranties**) the Supplier assigns, at no cost to the Customer, any manufacturer's warranty to the Customer, where possible to do so, and must inform the Customer where it is not possible to do so;
- (g) (**Deliverables warranties**) Without limiting the Supplier's obligations under the Contract or otherwise, the Supplier must:
 - (i) comply with obligations applying after the expiry of the warranty period specified in the Supplier's quote or offer; and
 - (ii) without limiting any other rights of the Customer, comply with obligations set out in the express warranty specified in the Supplier's quote or offer, if any;
- (h) (**delivery**) the Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with the Customer's instructions. If the Supplier asks, the Customer will confirm in writing that the Deliverables have been received;
- (i) Where the Supplier fails to deliver any Deliverables by the nominated time for delivery, the Customer shall have the right to cancel the relevant part of the Order pertaining to those Deliverables at no cost to the Customer;
- (j) (**packaging**) the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- (k) (**rejected Goods**) if the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 calendar days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost;
- (l) (**risk**) unless otherwise specified in this Contract, risk will transfer to the Customer when the Goods are delivered to the delivery

address specified in writing by the Customer, in accordance with the delivery instructions, and the Goods are in the Customer's custody, care and control;

- (m) **(title)** title in the Deliverables will transfer on the earlier of the delivery or payment of the applicable Price;
- (n) **(no encumbrance)** the Supplier warrants that the Deliverables are not (and when title passes, will not be) subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract;
- (o) **(right to publish)** the Customer may publish information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy, or as required under the *Right to Information Act 2009* (Qld);
- (p) **(notices)** the following applies in relation to notices under this Contract:
 - (i) A notice will be deemed to be given:
 - (A) if posted – two (2) Business Days after the date of posting;
 - (B) if delivered by hand during a Business Day – on the date of delivery;
 - (C) if emailed, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
 - (ii) A notice of suspension or termination of a Contract which is sent via email must also be sent by post or hand delivery and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.
- (q) **(definitions)** the definitions set out in Attachment 1 to this Contract apply to this Contract;
- (r) **(interpretation)** unless it is expressly stated that a different rule of interpretation will apply:
 - (i) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
 - (ii) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
 - (iii) **(consistency)** where an Invitation to Offer, Request for Quote or Contract is made up of more than one document, the Invitation to Offer, Request for Quote or Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;
 - (iv) **(contract departures)** the contract departures section of the Details will take precedence over all other documents.
 - (v) **(currency)** all currency amounts are in Australian dollars;
 - (vi) **(headings)** headings are provided for convenience and do not affect the interpretation of the Invitation to Offer, Request for Quote or documents making up a Contract;
 - (vii) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";
 - (viii) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
 - (ix) **(governing law)** the laws of Queensland apply to a Contract and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
 - (x) **(law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
 - (xi) **(person)** a person includes the person's executors, administrators, novatees and assignees;
 - (xii) **(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
 - (xiii) **(severability)** if any part of a Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

Attachment 1 - Definitions

Affected Goods has the meaning given to it in clause 7.

Alternative Goods has the meaning given to it in clause 7.

Associated Health Agency means Queensland Health, a Hospital and Health Service or any other Queensland Government Body involved in the provision of health services in Queensland.

Authority has the meaning given to it in clause 8.

Basic Order means any form of order from the Customer for the provision of Goods and/or Services which incorporates or refers to the Basic Purchasing Conditions.

Basic Purchasing Conditions means the *Queensland Health Basic Purchasing Conditions* of which this *Attachment 1 Definitions* forms a part.

BEMS6 has the meaning given to it in clause 17.

BEMS6 Clause has the meaning given to it in clause 17.

Business Day means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Customer's address.

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those arising out of the terms of any settlement.

Confidential Information means all information disclosed by or on behalf of one party ("**Discloser**") to the other party ("**Recipient**") in connection with an Invitation to Offer, Request for Quote or a Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Customer) all Customer Data. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the recipient can demonstrate was already in its possession or was independently developed by the recipient; or
- (c) the recipient receives from another person on a non-confidential basis.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

Consumer has the meaning given to it in clause 8.

Contract means an agreement between the Customer and the Supplier, made up of:

- (a) the Details and the Basic Purchasing Conditions and any document which the Details state will form part of the Contract; or
- (b) for the purchase of Goods or Services under a Basic Order, the Basic Order and Basic Purchasing Conditions and any document which the Basic Order states will form part of the Contract.

Contract Details means a document titled '*Contract Details*' that contains information about a specific contract between the Customer and Supplier.

Contracting Out Policy has the meaning given to it in clause 17.

Customer means the State of Queensland or the entity listed in the Details or Basic Order (as applicable), and in the definitions of 'Customer Data' and 'Confidential Information' includes all Associated Health Agencies.

Customer Data means any information, materials, data, datasets or databases to the extent provided by or on behalf of the Customer or

to the extent created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

Customer Inputs means the Customer's Personnel, equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Deliverables means the Goods, Services and documentation to be provided to the Customer including as described in the Requirements, and all incidental and ancillary goods, services and documentation.

Details means:

- (a) the Contract Details; or
- (b) where a Basic Order is issued following an RFQ (which does not reference Contract Details), the details in the RFQ, including the specifications and the Supplier's offer, as varied or clarified in writing in the Basic Order.

Directive has the meaning given to it in clause 18.

Discloser has the meaning given in the definition of Confidential Information.

Dispute Notice has the meaning given to it in clause 20.

Dispute Notice Date has the meaning given to it in clause 20.

EB9 has the meaning given to it in clause 17.

EB9 Clause has the meaning given to it in clause 17.

Ethical Supplier Threshold means the Ethical Supplier Threshold described in paragraph 2.3 of the *Queensland Procurement Policy*.

Goods means the goods the Supplier will provide, described in the Details or the Basic Order.

Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hospital and Health Service means a Hospital and Health Service established under section 17 of the *Hospital and Health Boards Act 2011* (Qld).

A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or something having a substantially similar effect to (a) to (f) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders' rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Request for Quote or Contract (as applicable), but excludes Moral Rights

Invitation Process means the process commenced by the issuing of a request for quote or any other process by which the Customer seeks an offer for the supply of goods and/or services and concluding upon formal announcement by the Customer of the selection of a preferred supplier or upon the termination of the process.

Invitation to Offer (ITO) means an Invitation to Offer issued by a Customer.

Issue has the meaning given to it in clause 7.

Key Personnel means the people identified in Requirements as 'key personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

Medical Device has the meaning given to it in clause 9.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Request for Quote or Contract (as applicable).

Personal Information has the meaning given:

- (a) for the purpose of the *Information Privacy Act 2009* (Qld), in that Act; or
- (b) for the purposes of the *Privacy Act 1988* (Cth), in that Act.

Personnel means officers, directors, employees, agents and contractors of an entity. In the definition of Confidential Information, the Customer's Personnel includes Associated Health Agency Personnel.

Policy B1 has the meaning given to it in clause 18.

Price means the price or prices described in the Contract or calculated using a calculation method in the Details.

Price Difference has the meaning given to it in clause 8.

Queensland Government Body means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Recipient has the meaning given in the definition of Confidential Information.

Regulated Price has the meaning given to it in clause 8.

Refund has the meaning given to it in clause 7.

Remedied Goods has the meaning given to it in clause 7.

Remedy has the meaning given to it in clause 7.

Request for Quote (RFQ) means a Request for Quote issued by a Customer.

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Contract, which are set out in the Contract, the Invitation to Offer or Request for Quote (if any), or otherwise agreed by the parties in writing.

Services means the services the Supplier will perform, described in the Details or Basic Order (as applicable).

Site means the site or premises at which the Deliverables are to be provided as specified by the Customer in the Details or Basic Order (as applicable).

Supplier means:

- (a) for a Contract: is described in the Basic Order or Details (as applicable); and
- (b) for an Invitation Process: is a potential supplier invited to participate in the Invitation Process.

Supplier's Breach has the meaning given to it in clause 7.

TGA has the meaning given to it in clause 7.

TGA Clause Breach has the meaning given to it in clause 7.

TGA Notice has the meaning given to it in clause 7.

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract by a party or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract or of a Law in respect of the Supplier's obligations under the Contract, committed with reckless disregard for the consequences and in circumstances where the Supplier knows or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.