

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 provides the Goods or Services set out in a Basic Order. The Contract continues until the Goods are delivered or the Services are performed, or the expiry date specified in the Basic Order (if applicable) 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 provide Goods and/or Services

The Customer appoints the Supplier to supply the Goods and/or Services. The Supplier accepts the appointment. The Supplier must provide the Goods and/or Services in accordance with this Contract and the Customer's delivery instructions including within the timeframes specified in the Basic Order or as otherwise agreed.

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 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

The Customer has the right to cancel the Basic Order and terminate this Contract at any time prior to delivery of the Goods or completion of the Services, by written notice to the Supplier.

The Supplier will promptly notify the Customer if it 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 minimise the expenses associated with cancellation.

5. Requirements

- (a) The Supplier must ensure that the Goods satisfy the description in the Contract or the Basic Order, are new and unused, of a high quality, and fit for their usual purpose and any other purpose disclosed by the Customer before the Contract is formed.
- (b) The Supplier must ensure the highest quality of work, and provide the Services 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) If the Supplier enters the Site to deliver the Goods or provide the Services, the Supplier must comply with Customer policies, codes of conduct, rules, standards and procedures, and workplace health and safety policies, relevant to the Site. The Customer will make copies available on request.
- (d) The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.
- (e) 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.
- (f) If the Supplier enters the Site to deliver the Goods or provide the Services, the Supplier must maintain public liability and products insurance for a minimum amount of \$20million per claim and workers' compensation insurance (if required by law), and any other insurance specified in writing by the Customer.
- (g) The Supplier must not use or disclose or otherwise make available any Confidential Information to any person except to its Personnel on a need to know basis to perform the Contract.



- (h) 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*, other than for Chapter 3 of the *Information Privacy Act* – comply with those parts of Chapter 2 of the *Information Privacy 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*.
- (i) 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.
- (j) The Supplier must comply with the Ethical Supplier Threshold.

6. Conflict of Interest and criminal organisations

6.1 Conflict of Interest

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 created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed in writing to the Customer.

6.2. Criminal organisation

The Supplier warrants that neither it nor its Personnel:

- (a) 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
- (b) are subject to an order under, or have been convicted of an offence under the Criminal Organisation Act 2009 (Qld).

6.3. Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 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.

In addition to any other remedies available to it under Law or contract, the Customer may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has breached any warranties in this clause.

7. Invoicing, Price and payment

- (a) The Supplier may invoice the Customer after delivery of Goods or Services 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 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.
- (e) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

8. 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.

9. 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) personal injury, including sickness, injury or death; or
- (b) loss of, or damage to, tangible property; or
- (c) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel; or
- (d) any Claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights.

10. Intellectual Property Rights

The Supplier grants (and must procure that relevant third parties grant) 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 Goods and Services, for any purpose of the Customer, the State of Queensland or other Queensland Government Body. The Supplier warrants that it is authorised to grant the rights in this clause.

11. Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, shall vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. 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. The Supplier must comply with clause 5(h) 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.

12. Where Requirements not met

If any Requirements for the Goods and/or Services are not met, at the request of the Customer the Supplier will promptly:

- (a) resupply the relevant Goods;
- (b) re-perform the relevant Services; or
- (c) refund the Customer any monies paid,

and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.

If the Supplier fails to comply with its obligations under this clause, the Customer may have the Goods and/or Services re-supplied or re-performed by others, and the Supplier shall pay to the Customer on demand any costs incurred by the Customer in doing so. Acceptance of the Goods and/or Services by the Customer does not relieve the Supplier of any of its obligations under the Contract.

13. 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) **(variation)** the Contract may only be varied by written agreement of authorised representatives of the parties;
- (c) **(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;
- (d) **(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;
- (e) **(manufacturer warranties)** the Supplier assigns 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;
- (f) **(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;
- (g) **(packaging)** the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- (h) **(rejected Goods)** if the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost;
- (i) **(risk)** 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.
- (j) **(title)** title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price;
- (k) **(no encumbrance)** the Supplier warrants that the Goods 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; and
- (l) **(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.

14. Not used

15. Comparable Employee Wage Rates

- (a) This clause 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, (**EB9 clause**); or
 - (ii) Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 6) 2016 (BEMS6) (CB/2017/8), clause 7.2 (**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 'Policy').
- (b) Subject to this clause and on the terms set out in the Policy and the relevant clause referred to in clause (a) above, 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 rates of pay in Queensland Public Health Sector Certified Agreement (No.8) 2011 (EB8) (No.CA/2012/28); or
 - (ii) where the type of labour relates to the BEMS6 clause, the final rates of pay in Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No.5) 2011 (BEMS5)(CA/2012/38).
- (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.

16. Vaccine Preventable Diseases

- (a) The Supplier warrants that any 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 16(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

17. Ethical Supplier Threshold

- (a) Where the Customer reasonably suspects that the Supplier is not complying 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

Attachment 1

Definitions and Interpretation

A. Definitions

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.

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 and Interpretation* forms a part.

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 the Customer or the Supplier ("**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.

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.

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.

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

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).

Information Privacy Act means the *Information Privacy Act 2009* (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.

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

Laws means all:

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

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: for the purpose of the Information Privacy Act – in that Act; or for the purposes of the Privacy Act – 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.

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

Privacy Act means the *Privacy Act 1988* (Cth).

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.

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.

Right to Information Act means the *Right to Information Act 2009* (Qld).

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:

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

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.

B. Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(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;
- (d) **(contract departures)** the contract departures section of the Details will take precedence over all other documents.
- (e) **(currency)** all currency amounts are in Australian dollars;
- (f) **(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;
- (g) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";

- (h) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (i) **(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;
- (j) **(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;
- (k) **(person)** a person includes the person's executors, administrators, novatees and assignees;
- (l) **(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;
- (m) **(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.

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.

C. Notices

- (a) A notice will be deemed to be given:
 - (i) if posted – two (2) Business Days after the date of posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless
 - (iv) the sending party receives an automated message that the email has not been delivered,
 - (v) 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.
- (b) A notice of suspension or termination of a