

## CITY OF SWAN GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS

(Part 3 of Request Document)

### 3.1 Governing Law

The Contract shall be governed by the Laws of the State of Western Australia and all parties submit to the jurisdiction of the Courts of Western Australia to resolve any dispute.

### 3.2 Definitions

In these Conditions:

**Clean Up** means clearing away and removing for the Place for Delivery all of the Contractor's plant, equipment, surplus materials, rubbish, temporary works and packaging and leaving the whole of the Place for Delivery and Goods in a clean and tidy condition to the satisfaction of the Principal.

**Contract** means all the documents which constitute the parties' written agreement.

**Contract Sum** means:

- (a) where payment is to be for a fixed amount, then that amount exclusive of GST; or
- (b) if the Contract expressly provides for the supply of the Goods to the Principal on a price per unit or by weight or volume, then the amount determined by having regard (as is applicable) to the number, weight or volume of the Goods supplied by the Contractor to the Principal and GST.

Unless otherwise expressly provided for in the Contract, the Contract Sum is inclusive of any and all applicable excises, tariffs, levies, duties, taxes, securities and charges applicable to the Contractor's supply or Principal's purchase of the Goods.

**Contractor** means the party to the Contract who is not the Principal.

**Contractor Failure** means any or all of the events referred to in Clause 3.21(a).

**Date of Acceptance** means the date that the Principal accepts the Goods in accordance with Clause 3.11.

**Date for Delivery** means:

- (a) if the Contract specifies a date for the supply of Goods, that date; or
- (b) if the Contract specifies a period of time for the supply of goods, the last day of that period.

**Date of Delivery** means the date that the relevant Goods are actually supplied to the Place for Delivery.

**Goods** means the goods expressly identified in the Contract.

**GST** means goods and services tax as is applicable pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Laws** means all relevant Acts, Regulations, by-laws, order, proclamations, the common law and equity.

**Order** means the written order issued by the Principal to the Contractor which expressly:

- (a) identifies the Goods;
- (b) identifies the Contract Sum, alternatively all of the information required to determine and the method for determining the Contract Sum; and
- (c) requires the Contractor to supply the Goods to the Principal.

**parties** means both of the Principal and Contractor.

**party** means each of the Principal and contractor.

**Place for Delivery** means the location for the delivery of the Goods as expressed in the Contract.

**Principal** means the City of Swan.

**Safety Management Plan** means the Contractor's written plan to establish and maintain an effective health and safety management system.

**Specifications** means all of the technical specifications, designs, drawings and schedules that form part of the Contract.

**supply; supplied; and supplying** each include, but are not limited to, the sale, collection from any place, loading, packing, labelling, placarding, transporting, craneage, rigging, lifting, lowering, unloading, and, if expressly specified in an Order, unpacking, testing, installing, commissioning and Clean Up.

**tax invoice** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 3.3 No Rise and Fall Adjustment

The Contract Sum is not subject to rise and fall adjustment.

### 3.4 Notices

- (a) Any notice given under the terms of the Contract must be in writing, signed by the issuing party and sent by pre-paid post or email to or left at the recipient's address recorded in the Contract.
- (b) A notice is deemed to have been received by a party:
  - (i) if sent by pre-paid post, upon the expiration of 3 Business Days after the date on which it was sent; or
  - (ii) if sent by email:
    - a. prior to 5.00pm on a business day, that business day; or
    - b. if not prior to 5.00pm on a Business Day, the next Business Day; or
  - (iii) if left in an appropriate place at the party's address:
    - a. prior to 5.00pm on a Business Day, that Business Day; or
    - b. if not prior to 5.00pm on a Business Day, the next Business Day.
- (c) A notice sent by email is deemed to have been signed by the sender if it expressly records that it is sent by the sender.

## 3.5 Legal Compliance

- (a) The Contractor must, at its expense, comply with all applicable Laws.
- (b) The Contractor must indemnify the Principal to the extent that it suffers or incurs expense, cost, damage, loss, liability or penalty by reason of the Contractor's failure to comply with Clause 3.5(a).

## 3.6 Assignment and Subcontracting

Neither party may assign its rights or obligations under the Contract.

## 3.7 Supply

- (a) The Contractor must supply all of the Goods in full, to each relevant Place for Delivery and by the Date for Delivery.
- (b) Time is of the essence.
- (c) Immediately upon the Contractor becoming aware that:
  - (i) its supply of any of the Goods may be delayed beyond the Date for Delivery; or
  - (ii) any of the Goods have been damaged or contain defects;

the Contractor must, in writing, notify the Principal of (as is applicable):

- a. the likely duration of the delay, damage or defects; and
- b. the cause of the delay, damage or defects.

### **3.8 Packaging, Labelling and Placarding**

During supply, the Contractor must ensure that the Goods are properly, safely, securely and lawfully packaged, labelled and placarded.

### **3.9 Quality of Goods**

- (a) All Goods supplied by the Contractor must conform with the Specifications and Contract and, if no Specifications are incorporated into the Contract, then:
  - (i) unless the Contract expressly provides otherwise, all Goods must be new; and
  - (ii) the Goods must comply with:
    - a. the standards published by the Standards Association of Australia that are relevant to the Goods and current as at the Date of Delivery; or
    - b. if the Standards Association of Australia has not published any standards that are relevant to the Goods and current as at the Date of Delivery, then the standards published by the International Standards Organisation that are relevant to the Goods and current as at the Date of Delivery.
- (b) All Goods supplied by the Contractor must be fit for their intended purpose, free of damage and defects and safe to use.

### **3.10 Expenses of Supply and Removal**

- (a) Unless otherwise expressly provided by the Contract, the Contractor must at its own expense:
  - (i) supply the Goods to the Place for Delivery; and
  - (ii) decommission, unfix and remove from the Place for Delivery all Goods that do not comply with the Contract.
- (b) The Contractor must indemnify the Principal to the extent that the Principal suffers or incurs expense, cost, damage, loss or liability by reason of the Contractor's failure to comply with Clause 3.10(a).

### **3.11 Acceptance and Protection of the Goods**

- (a) Neither the:
  - (i) Contractor's supply of the Goods to the Place for Delivery or any other place; nor
  - (ii) Principal's receipt of the Goods;shall constitute the Principal's acceptance of the Goods.
- (b) The Principal shall be deemed to have accepted the Goods only if and when:
  - (i) it notifies the Contractor, in writing, that the Principal has accepted the Goods; or
  - (ii) subject to Clause 3.11(c), after 21 days have lapsed after the Contractor has both:
    - a. supplied the Goods to the Place for Delivery; and
    - b. satisfied its obligations expressed in Clause 3.15.
- (c) Clause 3.11(b)(ii) has no effect and the Principal is not deemed to have accepted the Goods if:
  - (i) within 21 days of the Contractor supplying the Goods to the Place for Delivery, the Principal rejects the Goods in accordance with Clause 3.12; or
  - (ii) the Contract requires the Contractor to test, install or commission the Goods. In those circumstances, the Goods may only be accepted in accordance with Clause 3.11(b)(i) and the Principal is not obliged to accept any of the Goods until 21 days after all testing, installing and commissioning is successfully completed to the Principal's satisfaction.
- (d) During the period commencing from the Principal's issue of the Order and ending on the Date of Acceptance, alternatively the Contract's termination, the Contractor must protect the Goods (**Protection Period**).
- (e) The Contractor:
  - (i) is solely liable to the Principal for any and all damage suffered by or loss of the Goods that occurs during the Protection Period; and
  - (ii) must, if any damage occurs to the Goods or any of the Goods are lost during the Protection Period from any cause whatsoever, indemnify the Principal for the replacement or repair (at the Principal's election) of the Goods.
- (f) The indemnity referred to in Clause 3.11(e) is reduced proportionately to the extent that the damage to or loss of the Goods was directly caused by the Principal's negligence.

## 3.12 Rejection and Removal of Goods

- (a) If, acting lawfully, the Principal determines that the Goods do not comply with the Contract or are defective or damaged, the Principal may reject the Goods by, prior to the Date of Acceptance, issuing to the Contractor a written notice expressly:
  - (i) rejecting the Goods;
  - (ii) identifying the grounds upon which the Principal rejects the Goods; and
  - (iii) directing the Contractor to, within a specified time remove, replace or rectify the Goods.
- (b) The Contractor must, at its expense, comply with the Principal's direction made in accordance with Clause 3.12(a)(iii). Time for the Contractor's compliance is of the essence.
- (c) The Contractor must indemnify the Principal to the extent that the Principal suffers or incurs expense, cost, damage, loss or liability by reason of the Contractor's failure to comply with Clause 3.12(b).

### 3.13 Ownership

The legal and beneficial ownership of each of the Goods passes to the Principal on the Date of Acceptance.

### 3.14 Payment

- (a) Upon the Contractor satisfying Clauses 3.7(a), 3.9 and 3.16 and after the Date of Acceptance, the Contractor may issue to the Principal a tax invoice.
- (b) The Contractor must not issue to the Principal a tax invoice that is unlawful or does not accord with the contract.
- (c) Subject to Clauses 3.14(a), 3.14(b) and 3.14(d), the Principal must, within 35 days of receiving the Contractor's lawfully issued and accurate tax invoice, pay the tax invoice.
- (d) The Principal may setoff from any monies owed by it to the Contractor pursuant to the Contract any amount owed by the Contractor to the Principal by reason of Clause 3.5(b), 3.10(b), 3.11(e), 3.12(c), 3.19(b) and/or 3.21(c)(ii).

### 3.15 Warranties and Manuals

On or before the earlier of the Date for Delivery or termination of the Contract, the Contractor must:

- (a) obtain and transfer to the Principal and ensure that the Principal receives the benefit of all warranties specified in the Contract; and
- (b) supply to the Principal all operation, service, maintenance and every other manual relevant to the Goods.

### 3.16 Workmanship

If the Contract requires the Contractor to test, install or commission any of the Goods, then such services and workmanship carried out or to be carried out must:

- (a) be performed with due care, skill and diligence; and
- (b) be fit and proper having regard to and comply with the Contract and all Laws.

### **3.17 Occupied Sites**

The Contractor must consult and cooperate with all other persons authorised to be at the Place for Delivery so as to ensure that:

- (a) no person at the Place for Delivery is exposed to a risk of injury, damage or loss by reason of the supply of the Goods; and
- (b) the supply of the Goods does not obstruct or interfere with other persons authorised to be at the Place for Delivery.

### **3.18 Safety Management Plan**

- (a) At least 7 days prior to the Contractor entering the Place for Delivery, the Contractor must submit to the Principal the Contractor's Safety Management Plan.
- (b) The Contractor's Safety Management Plan must expressly provide for and oblige all persons under the Contractor's control to, prior to entering the Place for Delivery, successfully complete induction training on all of the hazards and risks relevant to the supply of the Goods at the Place for Delivery and the controls and methods to be used to eliminate, or if it is not reasonably practicable to do so minimise, those hazards and risks.
- (c) The Contractor must, at its expense, comply with the Principal's direction to review and amend its Safety Management Plan.
- (d) Throughout the term of the Contract, the Contractor must implement, comply with and enforce its Safety Management Plan.

### **3.19 Intellectual Property**

- (a) The Contractor warrants that its:
  - (i) supply of the Goods; and
  - (ii) supply or use of any design, document, working method or material that relates to the Goods;

does not infringe any copyright, patent, registered design, trademark or other intellectual property right of any person.

- (b) The Contractor must indemnify the Principal to the extent that the Principal suffers or incurs expense, cost, damage, loss or liability by reason of the Contractor's breach of warranty expressed in Clause 3.19(a).

## 3.20 Confidentiality

- (a) The Contractor must treat as and keep confidential all information that is (**confidential information**):
  - (i) disclosed or made known to the Contractor by the Principal or its agents; and
  - (ii) not information that is available to the general public in Western Australia.
- (b) The Contractor must not use, disclose or authorise the use or disclosure of any confidential information to any person without the prior written consent of the Principal.

## 3.21 Contractor's Default

- (a) If the Contractor:
  - (i) fails to supply the Goods to the Place for Delivery by the Date for Delivery;
  - (ii) fails to comply with Clause 3.9, 3.15, 3.16, or 3.18;
  - (iii) fails to provide to the Principal copies of the insurance certificates that the Contractor is obliged to effect and maintain in accordance with the Contract; or
  - (iv) intimates that it is unwilling or unable to supply the Goods;

and the Contractor Failure persists for 7 days after the Principal has, in writing, notified the Contractor of:

- a. the Contractor Failure; and
- b. the Principal's intention to terminate the Contract if the Contractor does not immediately remedy the Contractor Failure;

then the Principal may, without prejudice to any other rights that the Principal has or may have pursuant to any Laws, terminate the Contract by written notice.

- (b) If the Contractor:
  - (i) causes or contributes to the death of any person whilst at the Place for Delivery; or
  - (ii) becomes bankrupt or externally administered in accordance with Chapter 5 of the *Corporations Act 2001* (Cth) (as is applicable);

then the Principal may, by giving the Contractor written notice, immediately terminate the Contract.

- (c) If the Principal terminates the Contract pursuant to Clause 3.21(a) or 3.21(b), then:
  - (i) the Principal's liability to the Contractor arising from or in any way connected to the Contract is limited to that portion of the Contract Sum that is payable for the Goods that have been supplied to the Principal, are fit for their purpose, undamaged, free of defects, comply with the Contract and have been accepted by the Principal pursuant to Clause 3.11;
  - (ii) the Contractor must indemnify the Principal for any and all loss, costs, expenses and liability that the Principal suffers or incurs by reason of the Contractor not having supplied all of the Goods for the Contract Sum; and
  - (iii) without limiting the rights of the Principal, the Principal may recover from the Contractor any loss, expense or damage suffered or incurred by the Principal by reason of the Contractor not having supplied all of the Goods for the Contract Sum.

## 3.22 Principal's Default

If the Principal fails to make a payment that is by reason of Clause 3.14, due and payable to the Contractor and that failure persists for 7 days after the Contractor has, in writing, notified the Principal of:

- (a) the Principal's failure; and
- (b) the Contractor's intention to terminate the Contract if the Principal does not immediately remedy the Principal's failure;

then the Contractor may, without prejudice to any other rights that the Contractor has or may have pursuant to any Laws, terminate the Contract by written notice.

## 3.23 Resolution of Disputes

All disputes or differences between the Contractor and the Principal arising out of the Contract or Goods whether raised before or after the Date of Acceptance which cannot be resolved by negotiation must, unless the parties agree otherwise in writing, be referred to a mediator, who shall be appointed either by:

- (a) the written agreement of the parties; or if agreement cannot be reached
- (b) the Resolution Institute.

## 3.24 Document Retention

Subject to Clause 3.15, the Contractor must, at its own cost, for 7 years following the completion or termination of the Contract, keep and maintain in good condition all documents and records that the Contractor prepared, created or received that relate to the Contract or Goods and, within 7 days of receiving the Principal's written request, permit the Principal to inspect and copy those documents and records.

## 3.25 Entire Agreement

The Contract constitutes the entire agreement between the parties regarding the Goods and Contract Sum. It supersedes any and all previous arrangements, correspondence, quotes, purchase orders, tenders, representations, proposals, understandings and communications between the parties.

## 3.26 Severability

If any provision or part of the Contract becomes void or unenforceable, then that provision or part will be severed from the Contract and the rest of the Contract will remain in full force and effect and will be unaffected by such severance.

## 3.27 Amendment and Waiver

- (a) No term of the Contract or right or obligation of a party arising from or under the Contract is amended, waived, discharged or released without the parties' prior written agreement signed by them.
- (b) A party's waiver of a right arising from or under the Contract does not prejudice that party's rights in respect of any subsequent breach of the Contract.

## 3.28 Joint and Several Obligations and Liabilities

If the Contractor is a partnership or comprised of two or more entities, then each of the partners or entities comprising the Contractor shall be bound to the Contract jointly and severally.

## 3.29 Survival

The following Clauses survive the expiry or termination of the Contract 3.5(b), 3.10(b), 3.11(e), 3.11(f), 3.12, 3.13, 3.14(d), 3.15, 3.19(b), 3.20, 3.21(c) and 3.23 to 3.29.

## 3.30 Access and Inclusion Plan

If the Contract involves the supply of services to the public, then the Contractor will:

- (a) to the extent practicable, implement the Principal's 'Access and Inclusion Plan' prepared under the Disability Services Act 1993, located at [https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_a224.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a224.html); and
- (b) respond to the Principal's request to report on the extent to which the Contractor has implemented the Principal's Access and Inclusion Plan.
- (c) The Principal's 'Access and Inclusion Plan' may be downloaded at: <https://www.swan.wa.gov.au/Your-Community/Access-inclusion>