



Procurement contract conditions

*Terms and conditions for supply of goods and services
under \$50,000*

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Contents

Purpose	1
Introduction	1
Procurement contract conditions	2
Supply of goods and services under \$50,000	2
1. DEFINITIONS AND INTERPRETATION	2
1.1 Definitions	2
1.2 Interpretation	3
2. SUPPLY OF GOODS	4
2.1 Application of this clause	4
2.2 Supply of goods	4
2.3 Quality of goods	5
2.4 Packaging	5
2.5 Delivery	5
2.6 Delay in delivery date	5
2.7 Acceptance of goods	5
2.8 Defects in goods	5
2.9 <i>Sale of Goods Act 1895</i>	6
3. SUPPLY OF SERVICES	6
3.1 Application of this clause	6
3.2 Supply of services	6
3.3 Scope and quality of services	6
3.4 Specified personnel	6
3.5 Unsatisfactory services	7
4. PAYMENT	7
4.1 Contract price	7
4.2 Variations to contract price	7
4.3 Invoices	7
4.4 Payment of invoice	7
4.5 Method of payment	7
5. CONTRACTOR'S GENERAL UNDERTAKINGS	8
5.1 Contractor's general warranties	8
5.2 General warranties made continuously	8
5.3 Conflict of interest	8
5.4 Warranties	8
5.5 Premises	9
5.6 Personnel	9

5.7 Awards, workplace agreements	9
5.8 Confidentiality	9
6. INTELLECTUAL PROPERTY RIGHTS	9
6.1 Ownership of intellectual property rights in contract material	9
6.2 Pre-existing material	10
7. INSURANCE	10
7.1. Insurance requirements	10
7.2 Evidence of insurance	10
8. TERMINATION	10
8.1 Termination	10
9. COMPLIANCE WITH DISABILITY ACCESS AND INCLUSION PLAN	11
10. PUBLIC AUTHORITY'S REPRESENTATIVE	11
10.2 Relationships – no partnership	11
10.3 Variations	11
10.4 Governing law.....	11

Purpose

These basic general conditions of contract are to provide the Department of Environment Regulation and its employees with the legal basis to engage private individuals and organisations in the supply of goods and services below \$50,000 whilst limiting the risk for disputes between the contracting parties.

This document details the conditions of contract applicable to both the contractor and customer in regards to the provision of goods and services below \$50,000.

Introduction

These general conditions of contract are for external use and are to be used in conjunction with the DER111 Request for verbal quote form when seeking to procure goods and services below \$50,000 for the Department of Environment Regulation and its employees. The document provides basic terms and conditions for low risk, low value purchases that covers supply of goods, supply of services, payment, contractors' general undertakings, intellectual property rights, insurance, termination and public authority's representative.

It is important for Government entities to have written terms and conditions in place when doing business with private industry. Written terms and conditions help to minimise legal disputes, enforce the agreement, avoid mismatched expectations and assist in complying with the law. The monetary thresholds applied are part of the State Supply Commission's "Open and Effective Competition Policy" which came into effect on 1 July 2014.

Procurement contract conditions

Supply of goods and services under \$50,000

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these general conditions, unless the context otherwise requires:

Acceptance means acceptance in writing by any means appropriate according to the circumstances.

Confidential information means information in respect of the contract that:

- (a) is by its nature confidential; or
- (b) is specified by the public authority or the customer to be confidential; or
- (c) the contractor knows or ought to know is confidential.

Contractor documents means:

- (a) DER111 Request for verbal quote form; or
- (b) these general conditions.

Contractor means the person specified as the contractor.

Customer means the person specified as the customer.

Delivery date means the date for delivery of the products/service specified in writing.

Delivery place means the place for delivery of the Products specified in writing.

Delivery time means the time for delivery of the Products specified in writing.

Discount means any discount in respect of the Price specified in writing.

Faulty goods means any goods that do not comply with these general conditions or are otherwise defective in any manner.

Intellectual property owner means the public authority.

Intellectual property rights means:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights, but does not include moral rights.

Order means the order placed for the supply of Goods and/or Services.

Price means the GST inclusive price that is specified in the Verbal Quotation Document.

Public authority has the same meaning as in the *State Supply Commission Act 1991*.

Services means the services described in the verbal quotation document.

Specification means the specification of the goods and/or services specified, or referred to, in the verbal quotation document.

Specified personnel means the contractor Personnel.

Term means the initial term for the provision of Goods and/or Services as the context requires and includes any extension of that initial term.

Verbal quotation document means the document used for the procurement of goods and/or services below the GST inclusive value of \$50,000. This is the DER111 Request for verbal quote form.

1.2 Interpretation

In these general conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the contractor consists of a partnership or joint venture, then:
 - (i) an obligation imposed on the contractor binds each person who comprises the contractor jointly and severally;
 - (ii) each person who comprises the contractor is deemed to agree to do all things necessary to enable the obligations imposed on the contractor to be undertaken;
 - (iii) the act of one person who comprises the contractor binds the other persons who comprise the contractor; and
 - (iv) an event of default by one person who comprises the contractor constitutes an event of default by the contractor.
- (g) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, these general conditions;
- (i) all the provisions in any schedule, attachment or appendix to these general conditions are incorporated in, and form part, these general conditions and bind the contract Authority, the customer and the contractor;
- (j) headings are included for convenience and do not affect the interpretation of these general conditions;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (l) no rule of interpretation is to be applied to disadvantage the contract Authority, the customer or the contractor on the basis that it was responsible for preparing the customer contract or Head Agreement;
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (o) a reference to writing or mail includes all means of representing or reproducing words in visible form including by electronic means such as email and facsimile transmission;
- (p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (q) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (s) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (t) a reference to time means the time observed by the general community in Perth, Western Australia;
- (u) a reference to a monetary amount means that amount in Australian currency;
- (v) where the context permits or requires reference to the contractor this includes the contractor Personnel; and
- (w) where the context permits or requires reference to the customer includes the customer’s Personnel.

2. SUPPLY OF GOODS

2.1 Application of this clause

If the contract is for the supply of:

- (a) goods; or
- (b) goods and services,

then this clause forms part of the contract.

2.2 Supply of goods

The contractor must supply the goods during the Term in accordance with the contract.

2.3 Quality of goods

- (a) The contractor must supply the goods in accordance with the specification.
- (b) All goods delivered by the contractor must conform:
 - (v) with all samples provided by the contractor to the public authority or the public authority customer; and
 - (vi) if no standards for the goods are specified in the specification, to all relevant and current standards published by the Standards Association of Australia.

2.4 Packaging

All goods must be properly and securely packaged and accurately labelled for identification and safety before delivery to the customer.

2.5 Delivery

Unless the customer specifies otherwise in the order, the contractor must deliver the goods to the delivery place on the delivery date at the delivery time.

2.6 Delay in delivery date

If delivery of the goods is likely to be delayed until after the delivery date due to an act or omission of the contractor, then the contractor must notify the customer of the likely delay as soon as the contractor becomes aware of it.

2.7 Acceptance of goods

- (a) Neither the delivery of the goods by the contractor to the customer nor payment of the contract price by the customer to the contractor constitutes acceptance of the goods by the customer.
- (b) The customer may reject the goods if:
 - (i) the goods are faulty goods; or
 - (ii) the goods are not supplied in full.

2.8 Defects in goods

- (a) If, before or after acceptance of the goods under clause 2.7, the customer finds that any goods are faulty goods, then the customer may by notice in writing to the contractor reject the faulty goods.
- (b) Upon rejection of the faulty goods, the contractor must:
 - (vii) immediately remove the faulty goods and refund the contract price for the faulty goods, if already paid; or
 - (viii) replace the faulty goods of the same kind and quality; or
 - (ix) repair or rectify the faulty goods.

- (c) Upon rejection of the faulty goods, the customer must provide a reason or reasons for rejection, upon the request of the contractor.

2.9 Sale of Goods Act 1895

The public authority, the customer and the contractor acknowledge that:

- (a) the *Sale of Goods Act 1895* applies to the contract; and
- (b) to the extent that there is any inconsistency between the *Sale of Goods Act* and the contract, and to the extent permitted by law, the contract applies rather than the *Sale of Goods Act*.

3. SUPPLY OF SERVICES

3.1 Application of this clause

If the contract is for the supply of:

- (a) services; or
- (b) goods and services,

then this clause forms part of the contract.

3.2 Supply of services

The contractor must supply the services during the Term provided by the contract.

3.3 Scope and quality of services

- (a) The contractor must supply the services in accordance with the specification.
- (b) If no standards for the services are specified in the specification, then the contractor must supply the services in accordance with the highest standards that usually apply to the supply of the services in accordance with proper skill, care and diligence.

3.4 Specified personnel

- (a) If the customer requires specified personnel, then the contractor:
 - (x) must ensure that all specified personnel carry out the services; and
 - (xi) must not allow the services to be carried out by any other person without the prior written consent of the customer.

3.5 Unsatisfactory services

If any of the services have not been supplied in accordance with this clause, then without limiting any other remedy available to the public authority or the customer, the customer may, by notice to the contractor, require the contractor to re-supply those services at no cost to the customer.

4. PAYMENT

4.1 Contract price

The public authority or the customer must pay to the contractor the contract price in accordance with this clause.

4.2 Variations to contract price

- (a) If a formula or method for variation of the contract price is specified in the contract documents, the contract price may only be varied in accordance with that formula or method.
- (b) If no formula or method for variation of the contract price is specified in the contract documents, then the contract price is fixed for the term and cannot be varied unless agreed by the public authority and the contractor in writing.

4.3 Invoices

An invoice given by the contractor to the customer must:

- (a) be set out in a manner that clearly identifies which goods and/or services the invoice covers and the amount of the contract price payable for those goods and/or services, minus any discount; and
- (b) specify the relevant order or contract number (if applicable).

4.4 Payment of invoice

The public authority must pay the contractor the specified invoice amount, in accordance with the Government's standard payment arrangements (30 days).

4.5 Method of payment

- (a) The customer may pay the amount specified in an invoice:
 - (i) by cheque;
 - (ii) by electronic funds transfer to the account with a financial institution nominated by the contractor; or

- (iii) by credit card.
- (b) The contractor must not impose a surcharge on the customer for payment by credit card.

5. CONTRACTOR'S GENERAL UNDERTAKINGS

5.1 Contractor's general warranties

Except where the contractor has otherwise disclosed in writing to the public authority and the customer, and the public authority and the customer have given their prior written consent to the matter disclosed, the contractor warrants in favour of the public authority and the customer that :

- (a) the contractor has no conflict of interest arising out of the contract;
- (b) there is no litigation or arbitration, and there are no administrative or legal proceedings, taking place, pending or threatened against the contractor which could have a materially adverse effect on the contractor's ability to supply the goods and/or Services in accordance with the contract; and
- (c) there is nothing that prevents the contractor from complying with any obligation under the contract.

5.2 General warranties made continuously

The warranties made by the contractor under clause 5.1 are taken to be made continuously throughout the term.

5.3 Conflict of interest

If a conflict of interest arises in respect of the contractor, the contractor must:

- (a) promptly notify the customer in writing that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with the customer to remove the conflict.

5.4 Warranties

- (a) The contractor must give, or must ensure that the public authority and the customer have the benefit of, any warranties specified in the contract Documents.
- (b) The contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties that are obtained by any subcontractor, and must ensure that the public authority and the customer have the benefit of those warranties.
- (c) The contractor indemnifies the public authority and the customer against any

loss or liability that results from the contractor not complying with clause 5.4 (b)

5.5 Premises

The contractor must:

- (a) comply with all reasonable directions and procedures of the customer and the owner or occupier of the premises relating to occupational health, safety and security in connection with the premises.

5.6 Personnel

The contractor must ensure that all Personnel:

- (a) are properly qualified and suitable for the tasks that they are to carry out;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

5.7 Awards, workplace agreements

The contractor must ensure that the remuneration and terms of employment of all personnel for the duration of the contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry to which the personnel belong.

5.8 Confidentiality

The contractor must keep the public authority's and the customer's confidential information confidential. The contractor must not use or disclose to any person the public authority's or the customer's confidential information except:

- (a) where necessary for the purpose of supplying the goods and/or Services; or
- (b) as authorised in writing by the public authority.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of intellectual property rights in contract material

The contractor automatically assigns the entire future intellectual property rights in all contract material to the public authority upon their creation.

6.2 Pre-existing material

- (a) Nothing in clause 6.1 affects the ownership of any intellectual property rights in any pre-existing material.

7. INSURANCE

7.1. Insurance requirements

- (a) The contractor must take out and maintain insurance in relation to all liabilities of the contractor under contract as specified in the contract documents.
- (b) The insurance required under clause 7.1(a) must be on the terms, for the period of time and for the amounts specified in the contract documents

7.2 Evidence of insurance

The contractor must give to the public authority sufficient evidence of the insurance required under clause 7.1 and provide a certificate of currency insurance copy if requested.

8. TERMINATION

8.1 Termination

- (a) The contractor shall continue to perform the services until the date of termination specified in the acceptance notification or until otherwise determined by any other forms of notice as issued by the public authority.
- (b) Notwithstanding anything herein contained to the contrary, the public authority may terminate the services of the contractor at any time and without prior notice should the contractor, its employees or agents be guilty of any dishonesty, serious misconduct or serious neglect of duty or be in breach of any terms or conditions herein or in any acceptance notification provided, or refuse to comply with any reasonable instructions or directions given by the public authority.
- (c) The public authority may terminate the contractor's engagement upon the happening of any one or more of the following events, namely:
 - (i) if the contractor enters into a deed of arrangement or an order is made for it to be wound up;
 - (ii) If a receiver/manager is appointed to the contractor; or
 - (iii) If the contractor is placed under official management.

9. COMPLIANCE WITH DISABILITY ACCESS AND INCLUSION PLAN

The contractor will ensure that the execution of its contract will comply with the public authority's [Disability Action and Inclusion Plan](#).

A guide to compliance with DAIPs by agents and contractors is available from the [Disability Services Commission's website](#).

10. PUBLIC AUTHORITY'S REPRESENTATIVE

- (a) Any person described in the contract documents as the public authority's representative may act as the representative of the public authority in relation to the contract.
- (b) The public authority's representative can be described as the customer in relation to the contract.

10.2 Relationships – no partnership

- (a) The contractor is an independent contractor, and nothing in the contract may be construed to make the contractor a partner, agent, employee or joint venturer of the public authority or the customer.
- (b) The contractor must not represent that the contractor or any of its personnel are the employees, agents, partners or joint venturers of the public authority or the customer.

10.3 Variations

The contract may only be varied in writing executed by the public authority and the contractor.

10.4 Governing law

- (a) These conditions and the agreement between the public authority and the contractor will be governed by and construed according to the law for the time being in force in the State of Western Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.
- (b) These conditions and any acceptance notifications constitute the entire agreement between the parties for the provisions of the goods and or services by the contractor. Any prior arrangements, agreements, representations or undertakings are superseded and any modification or alteration of any clause of these conditions will not be valid except if made in writing and signed by the parties to the contract.

- (c) If any provision of these conditions should be held invalid, unenforceable or illegal for any reason the agreement between the public authority –and the contractor shall remain otherwise in full force apart from such provision, which shall be deemed deleted.
- (d) Any dispute arising in connection with the acceptance notification of these conditions which cannot be settled by negotiation between the parties or their representatives shall be submitted to Arbitration in accordance with the *Commercial Arbitration Act 2012*.