

# **ASDEFCON Handbook**

**Form SP020**

**Purchase Order and Contract for the  
Supply of Goods and Repair Services**



## Table of Contents

1	When should you use Form SP020? .....	1
2	Structure of Form SP020 .....	2
3	Summary of key obligations in Form SP020 .....	2
4	Key provisions in Form SP020.....	3
5	Using Special Conditions in Form SP020 .....	5
6	Failure to provide the Supplies .....	5
7	How to complete Form SP020 .....	6
8	Further Information .....	7



## **Form SP020 Handbook - Purchase Order and Contract for the Supply of Goods and Repair Services**

### **1 When should you use Form SP020?**

Form SP020 contains the standard terms and conditions under which simple procurement is normally conducted by Defence.

Simple procurement is a procurement category where the overall level of risk and complexity of the procurement is assessed as being low. Refer to the *Defence Procurement Policy Manual* chapter on simple procurement for further guidance on determining whether a procurement is a simple one.

Form SP020 has been drafted in a manner that makes it suitable for a wide range of simple procurements. However, it will not be suitable for all kinds of simple procurement and procurement officers are required to assess whether the Form SP020 meets all the requirements of their particular simple procurement activity.

Form SP020 is suitable for the procurement of:

- **Goods** - commercially available goods comprising equipment, spares, materials, consumables, etc; and/or
- **Repair Services** - being low risk services for the repair of existing Defence equipment, spares, materials, etc. Form SP020 is also suitable where the Supplier supplies Goods which are incidental to the Repair Services, e.g. the replacement of damaged parts.

Form SP020 must **not** be used for complex or strategic procurements, ie, procurements for which the overall level of risk and complexity is assessed as medium or high. Set out below are **some** examples of factors which will result in the level of risk for a procurement being assessed as medium or high:

- Procurements which involve design, development or integration work;
- Procurements which require detailed planning documentation or the development of a statement of work or other specifications;
- Procurements which do not involve the purchase of commercially available off the shelf (COTS) goods or repair services;
- Procurement which involve certain hazardous substances such as asbestos, beryllium or polychlorinated biphenyl. Form SP020 may be used for the procurement of supplies containing less significant hazardous substances such as paint, certain gases, detergents or cleaning compounds provided that the overall level of risk and complexity of the procurement is assessed as being low;

- Procurements which require substantial amendments to Form SP020 or which alter the risk allocation between the Commonwealth and the Supplier; and
- Procurements which:
  - limit the liability of the Supplier;
  - require the Commonwealth to obtain intellectual property rights from the Supplier; or
  - require the payment of liquidated damages by the Supplier.

## 2 Structure of Form SP020

Form SP020 comprises the following documents:

- **Purchase Order** - this document includes details of the Supplier, Goods being purchased, Contract Price, etc. The Purchase Order must be completed by the Commonwealth. An outline of the information to be included by the Commonwealth in the Purchase Order is detailed below; and
- **General Conditions of Contract for the Supply of Goods and Repair Services (“Conditions of Contract”)** - the Conditions of Contract represent Defence’s standard terms and conditions for simple procurement; and
- **Special Conditions (Optional)** – in some circumstances Special Conditions may be attached to the Purchase Order and will, in accordance with clause 2, take precedence over the General Conditions (see paragraph 5 Using Special Conditions in Form SP020 below).

## 3 Summary of key obligations in Form SP020

This section provides an outline of the key rights and obligations of the Commonwealth and the Supplier under Form SP020.

### Commonwealth’s Key Obligations

The Commonwealth’s key obligations under Form SP020 are to:

- notify the Supplier of its acceptance or rejection of the Supplies within 14 days after delivery of the Supplies to the Delivery Location. If the Commonwealth does not do so, the Commonwealth is taken to have accepted the Supplies (clause 8). Accordingly, procurement officers should ensure that the Supplies are inspected promptly following delivery in order to assess whether the Commonwealth should reject the Supplies. The Supplies may be rejected only if the Supplies do not comply with the requirements of the Contract (including any acceptance tests specified in the Special Conditions);
- deliver or arrange delivery of the Repairable Item (if applicable) to the Supplier; and

- pay the Contract Price within 30 days after receiving a correctly rendered invoice or the delivery of the Supplies, whichever is the later (clause 10).

### **Supplier’s Key Obligations**

The Supplier’s key obligations under Form SP020 are to:

- deliver the Good(s) and/or repair and deliver the Repairable Item to the Delivery Location by the Delivery Date and in accordance with any special instructions for the delivery of the Supplies specified in the Purchase Order. The Supplier must promptly notify the Commonwealth if it becomes aware that it will be unable to comply with this obligation (clauses 1 and 5);
- keep the Repairable Item safe and secure and not use the Repairable Item for any purpose other than for the provision of the Repair Services. The Supplier must not part with possession or control of the Repairable Item except where specified in the Purchase Order or otherwise agreed by the Commonwealth (clause 7);
- comply with any Special Conditions attached to the Purchase Order (clause 3); and
- provide a correctly rendered invoice for the Contract Price to the Commonwealth together with such supporting documentation and other evidence reasonably required by the Commonwealth (clause 11).

## **4 Key provisions in Form SP020**

This section summarises key provisions in Form SP020.

### **Price Basis**

The Contract Price is a firm price and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas. The Contract Price includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges (clause 12).

#### ***Important Note for users of SDSS***

*Users of the Standard Defence Supply System (SDSS) should note that although the Purchase Order generated by SDSS displays only a GST exclusive price, the “Contract Price” is a defined term in Form SP020 and provides that the Contract Price is the “price specified in the Purchase Order plus any GST component”. Thus, while the SDSS Purchase Order shows a “unit” and “subtotal” price which is GST exclusive, the actual Contract Price includes any additional GST payable to the Supplier – this being done at the invoice stage of the transaction.*

## Title and Risk

Form SP020 contains provisions dealing with the timing of transfer of title in the Goods to the Commonwealth and who bears the risk of loss or damage to the Supplies:

- the Repairable Items at all times remain the property of the Commonwealth (clause 7);
- title to the Goods transfers to the Commonwealth upon acceptance of the Goods by the Commonwealth (clause 9);
- the risk of any loss or damage to the Goods remains with the Supplier until their delivery at the Delivery Location following which the Commonwealth bears the risk of any loss or damage to the Goods (clause 9); and
- the Supplier bears the risk of any loss or damage to a Repairable Item from the date upon which the Repairable Item is delivered to the Supplier until delivery of the Repairable Item to the Commonwealth at the Delivery Location. The Commonwealth bears the risk of loss or damage to a Repairable Item at all other times (clause 9).

## Intellectual Property

The Supplier warrants that it has all intellectual property rights and moral rights necessary to provide the Supplies to the Commonwealth and to allow the Commonwealth to have the full benefit of the Supplies and that the provision of the Supplies in accordance with the Contract will not infringe any third party's intellectual property or moral rights (clause 14). ***It should be noted that, except to this limited extent, the Supplier does not transfer or grant a licence of intellectual property rights to the Commonwealth.*** Form SP020 is not suitable where the Commonwealth needs to acquire specific intellectual property rights.

## Quality

Form SP020 contains a number of requirements and warranties in relation to the quality of the Supplies:

- the Supplier warrants that the Goods are new, free from deficiencies in design, manufacture and workmanship and are fit for the purposes for which goods of a similar nature to the Goods are commonly supplied and for any other purposes notified by the Commonwealth to the Supplier (clause 13);
- the Supplier must provide the Repair Services to the satisfaction of the Contract Officer and in accordance with any requirements specified in the Purchase Order (clause 6); and
- the Supplier warrants that in providing the Repair Services, it will use workmanship of a standard consistent with best industry standards for work of a similar nature to the provision of the Repair Services and which is fit for its intended purpose (clause 13).



## **Termination for Convenience**

The Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Supplier in writing. Following termination for convenience, the Commonwealth will be liable for payments to the Supplier for Supplies accepted before the date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination (clause 17).

## **Hazardous Substances**

Unless the Commonwealth otherwise agrees in writing, the Supplier warrants that the Supplies do not contain any hazardous substances as defined in Part 6 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* (Cth). Where the Commonwealth agrees that the Supplies may contain hazardous substances, the Supplier must comply with the Hazardous Substance policy as detailed in the *Defence Procurement Policy Manual* (clause 27).

## **5 Using Special Conditions in Form SP020**

Procurement officers may attach Special Conditions to the Purchase Order. Special Conditions often relate to matters such as specific packaging requirements, the shelf life of the goods being purchased or special delivery instructions. Special Conditions should only be included where the procurement warrants the inclusion of Special Conditions and the Special Conditions have been pre-approved by Procurement and Contracting Branch.

Care needs to be taken in attaching any Special Conditions to the Purchase Order in order to ensure that they are consistent with the Conditions of Contract or, where they are inconsistent, the inconsistency is intentional and fully understood. This is because the Special Conditions have priority over the Purchase Order and the Conditions of Contract to the extent of any inconsistency. Inconsistencies should be avoided as they could have unintended consequences for the application of important terms contained in the Conditions of Contract.

Before including any Special Conditions, procurement officers should assess if the inclusion of the Special Condition changes the procurement from a simple procurement to a complex or strategic procurement, e.g. where the Special Conditions change the risk allocation under the Contract or alters the nature of the Commonwealth's obligations under the Contract. Where a procurement activity is actually a complex or strategic procurement activity, the appropriate delegations at that level will be required and Form SP020 must not be used.

## **6 Failure to provide the Supplies**

If the Supplier fails to deliver the Supplies in accordance with the terms of the Contract, the Commonwealth may:

- if the Supplies do not comply with the requirements of the Contract (including any acceptance tests specified in the Special Conditions), reject the Supplies within 14 days after delivery of the Supplies to the Delivery Location in which case the Commonwealth may require the Supplier to provide replacement Supplies at the Supplier's cost or terminate the Contract (clauses 8 and 16);
- if the Supplies contain defects, require the Supplier to remedy any defects in the Supplies notified by the Commonwealth to the Supplier within the period of 90 days (or the manufacturer's standard warranty period (if longer)) following acceptance of the Supplies by the Commonwealth. The Supplier will be responsible for any costs of removing the Goods or the Repairable Item and delivering repaired or replacement Supplies or the Repairable Item to the Commonwealth together with any associated or incidental costs (clause 15). Accordingly, procurement officers should ensure that the Supplies are monitored for defects during this 90 day period. Any defects identified during this period should be promptly brought to the attention of the Supplier. If defects are identified in the Supplies after expiry of the 90 day period, there is scope to make a claim against the Supplier for breach of the warranties in relation to quality. Procurement officers should contact the Contracting Help Desk if you are considering making a claim for breach of warranty;
- if the Supplier does not, or notifies the Commonwealth that it will be unable to, deliver the Goods or the Repairable Item to the Delivery Location by the Delivery Date, terminate the Contract (clause 16);
- if the Supplier breaches the Contract and such breach is not capable of remedy, terminate the Contract (clause 16);
- if the Supplier fails to remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth, terminate the Contract (clause 16); and
- if the Supplier becomes bankrupt or insolvent, terminate the Contract (clause 16).

## 7 How to complete Form SP020

In order to complete Form SP020, the following information **must** be included in the relevant sections of the Purchase Order:

- **Supplier** - details of the name and address of the Supplier. Where the Supplier is a company, the full company name and Australian Company Number (ACN) should be included. Avoid using business names which may confuse the actual legal entity involved;
- **Goods** - details of the goods (including the number of each type of good) being purchased (if applicable);

- **Repair Services** - details of the Repairable Item to be repaired by the Supplier and a description of the repair services to be provided by the Supplier (if applicable);
  - **Delivery Date** - the date for delivery of the Goods or the date by which the Repairable Item must be repaired and returned to Defence;
  - **Delivery Location** - details of the location for delivery of the Goods or the Repairable Item to Defence;
  - **Contract Officer** - details of the name, address, phone number and facsimile number of the Defence contact for the procurement; and
  - **Contract Price** (for ROMAN users only) - details of the GST inclusive firm price; or
- Order Total** (for SDSS users only) - details of the GST exclusive order total. Note: The “Contract Price” remains the sum of the amount shown on the Purchase Order and any GST payable (paid at the invoice stage). However, it is recognised that the Purchase Order will not display a GST inclusive amount.

## 8 Further Information

For further information please see the *Defence Procurement Policy Manual* (and its related *Departmental Procurement Policy Instructions*) or contact the Contracting Help Desk on 1800 100 605 or via [contracting@defence.gov.au](mailto:contracting@defence.gov.au) .