

## Form SP020: General Conditions of Contract for the Supply of Goods and Repair Services

1. **Supplies:** The Supplier agrees to provide the Supplies to the Commonwealth and the Commonwealth agrees to purchase the Supplies in accordance with the terms of the Contract.
2. **Contract Documents:** Subject to clause 3, the Contract between the Commonwealth and the Supplier comprises the:
  - a. Special Conditions;
  - b. Purchase Order (other than the Special Conditions); and
  - c. General Conditions of Contract.

If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

3. **Existing Contracts and Standing Offers:** Subject to the terms of the Purchase Order and any Special Conditions, if the Purchase Order is issued under the terms of an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and these General Conditions of Contract (other than this clause 3) will have no effect.
4. **Provision of Supplies:** The Supplier must provide the Supplies and, if applicable, return the Repairable Item, to the Commonwealth at the Delivery Location on or before the relevant 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 the Supplier becomes aware that it will be unable to provide all or part of the Supplies or return the Repairable Item, by the relevant Delivery Date and advise the Commonwealth as to when it will be able to do so.
5. **Repair Services:** 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.
6. **Repairable Item:** The Supplier acknowledges that the Repairable Item at all times remains the property of the Commonwealth. The Supplier must keep the Repairable Item safe and secure and not use the Repairable Item for any purpose other than for the purpose of providing 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. The Supplier must not create or allow to be created any lien, charge, mortgage or encumbrance over the Repairable Item.
7. **Acceptance:** The Commonwealth may accept or reject the relevant Supplies within 14 days after delivery of the Supplies to the Delivery Location. If the Commonwealth does not notify the Supplier of acceptance or rejection within the 14 day period, the Commonwealth will be taken to have accepted the Supplies on the expiry of the 14 day period.

The Commonwealth may reject the Supplies where the Supplies do not comply with the requirements of the Contract including any acceptance tests specified in the Special Conditions. If the Commonwealth rejects the Supplies the Commonwealth may:

- a. require the Supplier to provide, at the Supplier's cost, replacement Supplies which comply with the requirements of the Contract within a period determined by the Commonwealth; or

- b. terminate the Contract in accordance with clause 15.

In either case and at the Commonwealth's request, the Supplier must promptly remove any relevant Goods and, if clause 7.a applies, the Repairable Item (if any), from the Commonwealth's premises at its cost.

8. **Title and Risk:** Title to the Goods transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with clause 7. The risk of any loss or damage to the Goods remains with the Supplier until their delivery to the Commonwealth at the Delivery Location. 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.
9. **Payment:** The Commonwealth must pay the Contract Price to the Supplier within the following period (as applicable) after receiving a correctly rendered invoice in accordance with clause 10:
  - a. 5 days, if the Commonwealth and the Supplier have agreed to use electronic invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework for the purpose of the delivery and receipt of payment claims under the contract; or
  - b. 20 days, if use of the PEPPOL framework has not been agreed by the Commonwealth and Supplier.

Subject to compliance with clause 10, the Commonwealth is deemed to have received a correctly rendered invoice at the following times:

- c. at the time of delivery of the Supplies where the invoice is supplied:
  - (i) prior to delivery of the Supplies; or
  - (ii) at the time of delivery of the Supplies; or
- d. at the time of actual receipt of the invoice, where the invoice is provided by the Supplier after delivery of the Supplies.

If the Commonwealth fails to pay a correctly rendered invoice in accordance with clause 9a or 9b, the Commonwealth must pay interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day that the payment was late.

The Commonwealth must pay interest whether or not the Supplier has submitted a separate invoice for the interest amount. Interest will only be payable in accordance with this clause 9 if the interest amount exceeds A\$100.

10. **Invoice:** The Supplier must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:
  - a. it is correctly addressed and calculated in accordance with the Contract;
  - b. the Commonwealth has not rejected the Supplies under clause 7;
  - c. it is for an amount which does not exceed the Contract Price;
  - d. it includes the Purchase Order number, and the name and phone number of the Contract Officer; and
  - e. it is a valid tax invoice in accordance with the GST Act.

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The Supplier must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Supplier or payment of the Contract Price by the Commonwealth.

**11. Price Basis:** The Contract Price is firm and is inclusive of 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.

**12. Warranty:** The Supplier warrants that:

- a. 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; and
- b. 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.

**13. Intellectual Property:** The Supplier warrants that it has all Intellectual Property (IP) rights and moral rights necessary to provide the Supplies to the Commonwealth and licences those rights to the Commonwealth to allow the Commonwealth to have the full benefit of the Supplies. The Supplier also warrants that the provision of the Supplies in accordance with the Contract will not infringe any third party's IP or moral rights.

**14. Defects:** Notwithstanding acceptance of the Supplies by the Commonwealth in accordance with clause 7, the Supplier must remedy at its cost any defects in the Supplies notified by the Commonwealth to the Supplier at any time within the period of 90 days or the Supplier's or manufacturer's standard warranty period (whichever is the longer) following acceptance of the Supplies by the Commonwealth. The Supplier will be responsible for any costs of removing the Goods and, if applicable, the Repairable Item and delivering repaired or replacement Supplies or the Repairable Item to the Commonwealth together with any associated or incidental costs. If the Supplier does not remedy the defect, the Commonwealth may remedy the defect and the costs incurred by the Commonwealth in remedying the defect will be a debt due from the Supplier to the Commonwealth.

**15. Termination:** The Commonwealth may terminate the Contract if:

- a. the Supplier:
  - (i) does not deliver all of the Supplies and, if applicable, the Repairable Item to the Delivery Location by the relevant Delivery Date; or
  - (ii) notifies the Commonwealth that it will be unable to deliver the Supplies and, if applicable, the Repairable Item to the Delivery Location by the Delivery Date in accordance with clause 4;
- b. the Commonwealth rejects any of the Supplies in accordance with clause 7;
- c. the Supplier breaches the Contract and the breach is not capable of remedy;
- d. the Supplier does not remedy a breach of the Contract which is capable of remedy within the

period specified by the Commonwealth in a notice of default issued by the Commonwealth to the Supplier requiring the Supplier to remedy the breach;

- e. the Supplier becomes bankrupt or insolvent, except to the extent the exercise of a right under this clause 15.e is prevented by law; or
- f. the Supplier breaches any of its obligations under clauses 18 or 26.

If the Commonwealth has provided a Repairable Item to the Supplier in relation to the Contract which has been terminated, the Supplier must immediately return that Repairable Item to the Commonwealth at the Supplier's cost.

**16. Termination for Convenience:** In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract by notifying the Supplier in writing. If the Commonwealth issues such a notice, the Supplier must stop work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts.

The Commonwealth will only be liable for payments to the Supplier for Supplies accepted in accordance with clause 7 before the effective date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Commonwealth.

The Supplier will not be entitled to profit anticipated on any part of the Contract terminated.

**17. Commonwealth Access:** At the Commonwealth's request (acting reasonably), the Supplier must permit the Commonwealth and its nominees timely and sufficient access to the Supplier's premises, records or accounts relevant to the Contract to:

- a. undertake quality audits and quality surveillance (as defined in AS/NZ ISO 9000 current at the date the Purchase Order is issued) of the Supplier's quality system and/or the production processes related to the Supplies; and
- b. monitor the Supplier's work health and safety and environmental compliance in connection with the provision of the Supplies.

In addition, if the value of the Contract (by itself or cumulatively with previous changes to the Contract) is equal to or greater than A\$100,000, the Supplier must permit the Commonwealth and its nominees timely and sufficient access to the Supplier's premises, records or accounts relevant to the Contract to conduct audits under the Auditor-General Act 1997. The Commonwealth and its nominees may copy any records or accounts relevant to the Contract and retain or use these records and accounts for the purposes of this clause.

**18. Security and Safety:** If the Commonwealth provides the Supplier with access to any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Commonwealth or of which the Supplier is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.

Where the Supplies are designed, manufactured, supplied, installed, commissioned or constructed by the

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Supplier within Australia or the Supplier imports the Supplies into Australia (and is an importer for the purposes of the WHS Legislation), the Supplier must:

- a. comply with, and must ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract in Australia; and
- b. where applicable, comply with, and must ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth, the Supplier or the subcontractors (as the case may be) and any other person who, concurrently with the Commonwealth, the Supplier or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.

Subject to any relevant foreign government restrictions, the Supplier must provide to the Commonwealth Representative at the time the Supplier provides the Supplies to the Commonwealth adequate information concerning:

- c. each purpose for which the Supplies were designed or manufactured;
- d. the results of any calculations, analysis, testing or examination carried out concerning the safety of the Supplies (and the risks to the health and safety of persons), including any hazardous properties identified by the testing; and
- e. any conditions necessary to ensure the Supplies are without risks to health and safety when used for a purpose for which it was designed or manufactured.

Subject to any relevant foreign government restrictions, the Supplier must, so far as is reasonably practicable, provide to the Commonwealth Representative within 14 days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any current relevant information concerning the matters referred to in clauses 18c to 18e above.

The Supplier must ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who use the Supplies for a purpose for which they were designed or manufactured.

Without limiting the Supplier's obligations under the Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Supplier must, in connection with or related to the Supplies or the work performed under the Contract, provide, and must use its reasonable endeavours to ensure that a subcontractor provides, to the Commonwealth within 14 days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any information or copies of documentation requested by the Commonwealth and held by the Supplier or subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.

The Supplier must not provide Supplies containing Asbestos Containing Material and must not take any Asbestos Containing Material onto Commonwealth premises in connection with providing the Supplies.

If a Notifiable Incident occurs in connection with work carried out under the Contract:

- f. on Commonwealth premises;

- g. which involves Commonwealth personnel; or
- h. which involves a Commonwealth specified system of work,

the Supplier must:

- i. immediately report the incident to the Commonwealth;
- j. promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
- k. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
- l. provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.

**19. Insurance:** The Supplier must procure and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain.

**20. Set Off:** If the Supplier owes any debt to the Commonwealth in connection with the Contract, the Commonwealth may deduct the amount of the debt from payment of the Contract Price.

**21. Indemnity:** The Supplier indemnifies the Commonwealth, its officers, employees and agents against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- a. a default or any unlawful, wilful or negligent act or omission on the part of the Supplier, its officers, employees, agents or subcontractors; or
- b. any action, claim, dispute, suit or proceeding brought by any third party in respect of any infringement or alleged infringement of that third party's IP rights or moral rights in connection with the Supplies.

The Supplier's liability to indemnify the Commonwealth under clause 21a is reduced to the extent that any wilful, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or agents contributed to the liability, loss, damage, cost, compensation or expense.

**22. Notices:** A notice is deemed to be delivered:

- a. if delivered by hand – on delivery to the address set out in the Purchase Order;
- b. if sent by registered post – on delivery to the address set out in the Purchase Order; or
- c. if transmitted by email or other electronic means – when it becomes capable of being retrieved by the addressee at the email set out in the Purchase Order or other electronic address.

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A notice received after 5:00pm, or on a day that is not a working day in the place of receipt, is deemed to be delivered on the next working day in that place.

- 23. Assignment:** The Supplier must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.
- 24. Subcontracting:** Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract. Upon request the Supplier must make available to the Commonwealth the details of all subcontractors engaged to provide the Supplies under the Contract. The Supplier acknowledges that the Commonwealth may be required to disclose such information.
- 25. Approvals and Compliance:** The Supplier must obtain and maintain in force any necessary export licences, licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the delivery of the Supplies or the work performed under the Contract and arrange any necessary customs entry for the Supplies. The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth policies relevant or applicable to the Contract.

Subject to any relevant foreign government restrictions, where the Supplier provides the Supplies to the Commonwealth in Australia and the Supplies include plant which requires registration of design under the WHS Legislation (see Part 1 of Schedule 5 of the *Work Health and Safety Regulations 2011* (Cth)) or an OHS Law (in the case of an OHS Law, as a result of a licence being granted to the Australian Defence Organisation - see Regulation 743 of the *Work Health and Safety Regulations 2011* (Cth)), the Supplier must:

- a. obtain the registration of design from a relevant regulator (or where this is not possible, from the Australian Defence Organisation pursuant to a licence granted under the OHS Law) and provide this to the Commonwealth at the time the Supplier provides the Supplies to the Commonwealth;
- b. attach a data plate to the relevant item (or items) of plant with the design registration details (or in a circumstance where it is not practicable to attach the data plate to the relevant item of plant, the data plate is to be affixed in a prominent place in the vicinity of the plant), which includes:
  - (i) the Design Registration Number (DRN);
  - (ii) the date of issue of the DRN; and
  - (iii) the name of the Commonwealth, State or Territory regulator that issued the DRN; and
- c. provide maintenance documentation that details all mandatory maintenance activities and inspections required to ensure the plant is without risks to health and safety, including those required by an OHS Law or the WHS Legislation at the time the Supplier provides the Supplies to the Commonwealth.

Subject to any relevant foreign government restrictions, where the Supplier provides the Supplies to the Commonwealth outside Australia and the Supplies include plant which requires registration of design under the WHS Legislation (see Part 1 of Schedule 5 of the

*Work Health and Safety Regulations 2011* (Cth)) or an OHS Law (in the case of an OHS Law, as a result of a licence being granted to the Australian Defence Organisation - see Regulation 743 of the *Work Health and Safety Regulations 2011* (Cth)), the Supplier must, at the time the Supplier provides the Supplies to the Commonwealth, provide to the Commonwealth all information sufficient for the Commonwealth to register the design of the plant in Australia. Such information may include:

- d. a statement signed by the designer of the plant specifying the published technical standards and engineering principles used in the design;
- e. design verification statement in a format supplied by the Commonwealth;
- f. representational drawings of the design; and
- g. a statement in a format supplied by the Commonwealth concerning compliance with the designer obligations of the WHS Legislation.

**26. Problematic Substances:** Unless the Commonwealth otherwise agrees in writing, the Supplier must:

- a. not deliver Supplies that contain or emit a Problematic Substance where:
  - (iii) the Problematic Substance may affect the health or safety of persons who may be exposed to the Problematic Substance; or
  - (iv) a persons health or safety may be affected by the Problematic Substance when (A) using the Supplies for a purpose for which they were designed or manufactured; (B) handling or storing the Supplies; or (C) carrying out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; and
- b. not use, handle or store a Problematic Substance on Commonwealth premises in connection with work carried out under the Contract.

Where the Commonwealth agrees that the Supplies may contain a Problematic Substance or that the Supplier may use, handle or store a Problematic Substance on Commonwealth premises, the Supplier must, subject to any foreign government restrictions, ensure that:

- c. full details of the Problematic Substance are provided to the Commonwealth in the format of a Safety Data Sheet (SDS), except where the applicable SDS exists within the Australian ChemAlert database and the Supplier identifies that SDS to the Commonwealth by reference to its unique record within that database; or
- d. if the Supplier provides the Supplies to the Commonwealth outside Australia and the Supplier demonstrates to the satisfaction of the Commonwealth it is unable to comply with the requirements of clause 26c, the Supplier must provide all information necessary to facilitate the Commonwealth complying with the requirements of clause 26c prior to or at the time the Supplies are provided to the Commonwealth.

In addition, the Supplier must, subject to any foreign government restrictions, ensure that:

- e. at the time of provision to the Commonwealth the Problematic Substance is correctly labelled and

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packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Supplies clearly identifies the nature of the substance and its associated hazards; or

- f. if the Supplier provides the Supplies to the Commonwealth outside Australia and the Supplier demonstrates to the satisfaction of the Commonwealth it is unable to comply with the requirements of clause 26e, the Supplier must provide all information necessary to facilitate the Commonwealth complying with the requirements of clause 26e prior to or at the time the Supplies are provided to the Commonwealth.

**27. Workplace Gender Equality:** The Supplier must comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act), if any. If the Supplies constitute a procurement that is at or above the relevant procurement threshold in the Commonwealth Procurement Rules, the Supplier must notify the Contract Officer if it becomes non-compliant with the WGE Act.

**28. Indigenous Procurement Policy:** The Supplier must use its reasonable endeavours to increase its:

- a. purchasing from Indigenous enterprises; and
- b. employment of Indigenous Australians,

in the performance of the Contract. For the purposes of this clause "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business. Supply Nation maintains a list of enterprises that meet the definition of "Indigenous enterprises" ([www.supplynation.org.au](http://www.supplynation.org.au)).

**29. Governing Law:** The laws of the Australian Capital Territory apply to the Contract.

**30. Entire Agreement:** The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

**31. Definitions:** In the Contract:

**'Asbestos Containing Material'** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

**'Commonwealth'** means the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312.

**'Contract Officer'** means the contract officer specified in the Purchase Order.

**'Contract'** has the meaning given in clause 2.

**'Contract Price'** means the contract price specified in the Purchase Order, including any GST component payable.

**'Delivery Date'** means the date or dates for provision of the Supplies specified in the Purchase Order.

**'Delivery Location'** means the location or locations for the provision of the Supplies specified in the Purchase Order.

**'General Interest Charge Rate'** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

**'Goods'** means the goods specified in the Purchase Order (if any) to be provided by the Supplier and any goods or component parts supplied by the Supplier as part of providing the Repair Services.

**'GST'** means a Commonwealth goods and services tax imposed by the *GST Act*.

**'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**'Notifiable Incident'** has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

**'OHS Law'** means the *Occupational Health and Safety Act 1991* (Cth) and the *Occupational Health and Safety (Safety Standards) Regulations 1994* (Cth).

**'Problematic Substance'** means:

- a. any substance identified as having ozone depleting potential, or any gas identified as a *Synthetic Greenhouse Gas, in the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) or any regulations made under that Act;
- b. any dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (extant edition and as amended); or
- c. any hazardous chemicals as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

**'Purchase Order'** means the purchase order attached to these General Conditions of Contract.

**'Relevant Employer'** means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer for the period of the Contract until the number of its employees falls below 80.

**'Repair Services'** means the repair services in respect of the Repairable Item specified in the Purchase Order (if any).

**'Repairable Item'** means any item or items provided by the Commonwealth to the Supplier for the purpose of the Repair Services.

**'Safety Data Sheet' or 'SDS'** means a safety data sheet prepared in accordance with the Code of Practice, *Preparation of Safety Data Sheets for Hazardous Chemicals*, approved under section 274 of the *Work Health and Safety Act 2011* (Cth).

**'Supplier'** means the supplier specified in the Purchase Order.

**'Supplies'** comprise the Goods and the Repair Services and, for the avoidance of doubt, do not include the Repairable Item.

**'WHS Legislation'** means:

- a. the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
- b. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).