

# Queensland Health

## Basic Purchasing Conditions

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### 1. The Contract

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#### 1.1 Formation

A Contract will be formed between the Customer and the Supplier:

- (a) when the authorised representatives of both parties have signed the appropriate section of the Details to indicate their acceptance and communicated that acceptance to the other party (if applicable);
- (b) when the Supplier accepts a Basic Order; or
- (c) following receipt of a Basic Order, when the Supplier provides the Goods or Services set out in the Basic Order.

#### 1.2 Documents making up the Contract and hierarchy

A Contract will be made up of the following documents, in order of precedence (highest to lowest) if there is any inconsistency between the documents:

- (a) the Details (if applicable);
- (b) the contract departures section of the Details (if applicable);
- (c) the Basic Order;
- (d) the Basic Purchasing Conditions; and
- (e) any document which either the Details or Basic Order state will form part of the Contract (if applicable).

#### 1.3 Counterparts

- (a) The Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) Where a Contract is formed pursuant to clause 1.3(a):
  - (i) the parties consent to the use of electronic communications as a method for the signing of the Contract; and
  - (ii) the parties may communicate their signature by providing a copy of the signed document by electronic means.

#### 1.4 Expiry

The Contract continues until:

- (a) the Deliverables are delivered without error or defect; or
  - (b) the expiry date specified in the Details or Basic Order (if specified),
- unless terminated earlier in accordance with the Contract.

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## 2. Supplier obligations

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### 2.1 Supplier to provide Deliverables

- (a) The Customer appoints the Supplier to deliver the Deliverables and the Supplier accepts the appointment.
- (b) The Supplier must deliver the Deliverables to the Site in accordance with this Contract and the Customer's delivery instructions including within the timeframes specified in the Basic Order or as otherwise agreed.

### 2.2 Requirements

- (a) The Supplier must meet, and ensure that the Deliverables meet, the Requirements, and meet or exceed the performance measures specified in the Details (if any).
- (b) The Supplier must ensure that the Goods satisfy the description in the Contract, are of a high quality, and fit for their usual purpose and any other purpose disclosed by the Customer before the Contract is formed.
- (c) The Supplier must ensure the work performed for the Services is of a high quality, 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.

### 2.3 Delay

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.

### 2.4 Policies

- (a) The Supplier must comply with all policies (including the Queensland Procurement Policy, Ethical Supplier Threshold, the Ethical Supplier Mandate and workplace health and safety policies), codes of conduct (including the Supplier Code of Conduct), rules, standards and procedures ('policies') which apply to the Deliverables and/or the Supplier's obligations under this Contract.
- (b) If any new policies are introduced, or amendments made to any existing policies, which apply to the Deliverables and/or the Supplier's obligations under this Contract, the Supplier must comply with the new or amended policies. Access to the relevant policies will be provided on request.

### 2.5 Directions

The Supplier must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract.

### 2.6 Laws

The Supplier must comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), *Modern Slavery Act 2018* (Cth), and the *Human Rights Act 2019* (Qld) (where applicable to the Supplier).

### 2.7 Access and inspection

The Supplier must, on reasonable prior written notice from the Customer, give the Customer or its nominated third party reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Customer or a third party nominated by the Customer to verify:

- (a) the completeness and accuracy of information provided by the Supplier in connection with the Contract or the associated Invitation Process; and
- (b) the Supplier's compliance with its obligations under the Contract (including but not limited to the Queensland Procurement Policy, Supplier Code of Conduct, Ethical Supplier Threshold and the Ethical Supplier Mandate),

and must, without limiting the Customer's other rights, promptly address any non-compliances notified by the Customer to the Supplier to rectify.

### 3. Terms and conditions specific to Goods and Deliverables

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#### 3.1 Manufacturer warranties

The Supplier assigns, at no additional cost to the Customer, 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.

#### 3.2 Delivery

- (a) 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.
- (b) If the Supplier enters the Site to deliver the Deliverables, the Supplier must, while on Site, comply with:
  - (i) the reasonable directions of the Customer; and
  - (ii) the Customer's policies, codes of conduct, rules, standards and procedures, and workplace health and safety policies relevant to the Site.

#### 3.3 Packaging

The Supplier must adequately pack and protect Goods to withstand transit and storage.

#### 3.4 Risk and title

- (a) 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.
- (b) Title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price.

#### 3.5 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.

### 4. Personnel and subcontracting

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#### 4.1 Responsibility

The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements.

#### 4.2 Not Customer employees

The Supplier is not, and Supplier Personnel are not, employees of the Customer.

### 4.3 Vaccine preventable diseases

- (a) The Supplier warrants that its Personnel meet the vaccine preventable disease screening requirements set out in the Vaccine Policy, where applicable.
- (b) If the Vaccine Policy is not applicable at the start date of the Contract, the Customer may require compliance by the Supplier with the Vaccine Policy at any time during the term of the Contract, and the Supplier will promptly comply with the request.
- (c) 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 of its Personnel performing the Services and the Supplier will promptly comply with the request.
- (d) Where the Vaccine Policy applies in relation to the Contract and any individual performing the Services for the Supplier changes, the Supplier must produce documentary evidence of vaccination or proof of non-susceptibility to specified vaccine preventable diseases in relation to that individual prior to any Services being performed by that individual.

### 4.4 Subcontracting

- (a) The Supplier may only subcontract any part of its obligation under this Contract to subcontractors with the Customer's prior written consent. The Customer will not unreasonably withhold consent but may give consent subject to reasonable conditions.
- (b) The Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier from its liabilities and obligations under the Contract.
- (c) If the Customer agrees that the Supplier may subcontract its obligations under the Contract, the Supplier must:
  - (i) take reasonable steps to ensure that its subcontractor complies with the Queensland Procurement Policy, Supplier Code of Conduct, the Ethical Supplier Threshold and the Ethical Supplier Mandate; and
  - (ii) ensure the subcontractor is made aware that:
    - (A) a failure to comply with the contractual, policy and legislation obligations applicable to it in performing its obligations as the subcontractor can result in the imposition of demerit points and/or sanctions under the Ethical Supplier Mandate; and
    - (B) the Customer and/or its nominated representative may publish information about sanctions imposed on the subcontractor under the Ethical Supplier Mandate and that to do so will not give rise to any right or remedy of the subcontractor at law or in equity against the Customer or its nominated representative.

### 4.5 Industrial relations

- (a) The Supplier must comply with all Laws, applicable awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions.
- (b) Subject to the terms of the Contracting Out Policy, 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 clause 6.5 of EB11 – the rates of pay specified in that clause; or
  - (ii) where the type of labour relates to clause 7.2 of BEMS8 – the rates of pay specified in that clause.

- (c) Where the Services include the type of labour in clause 6.5 of EB11, 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 6.5.6 of EB11.

## 5. Invoicing, Price and payment

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### 5.1 Price

The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

### 5.2 Price for Regulated Goods

If the Goods are Regulated Goods:

- (a) the Price must not exceed the Regulated Price applicable at the time; and
- (b) if at any time the Price paid by the Customer exceeds the Regulated Price:
- (i) the difference between the Price and the Regulated Price (the '**Price Difference**') is immediately payable by the Supplier to the Customer as a debt due and owing; and
  - (ii) the Customer may set off the Price Difference against any amounts payable to the Supplier by the Customer.

### 5.3 Invoicing

- (a) The Supplier may invoice the Customer after delivery of Deliverables that comply with the Requirements.
- (b) The Supplier must include adequate information for the Customer to verify that the invoice is accurate and must provide supporting documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause 5.3.

### 5.4 Payment

- (a) The Customer will pay each Correctly Rendered Tax Invoice within 30 days of receipt, except where government policy applies which prescribes a different payment period (such as the Queensland Government On-time Payment Policy, which requires payment of eligible invoices to small business suppliers within 20 days).
- (b) The Customer may:
- (i) 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; and
  - (ii) suspend payments under the Contract during any period that the Supplier is in breach of the Contract.

## 6. GST

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- 6.1 Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.
- 6.2 If GST is payable on a supply under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the 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.
- 6.3 Terms in this clause 6 have the same meanings as in the GST Law.

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## 7. Insurance

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- 7.1 The Supplier warrants that it holds, or is covered as an insured under, insurance policies (including any policies required by Law) that:
- (a) are held with a Reputable Insurer; and
  - (b) cover the Supplier's insurable liabilities arising as a result of providing the Goods and/or Services under this Contract.
- 7.2 With respect to each of the insurance policies held in accordance with clause 7.1, the policies must be:
- (a) an annual insurance policy held for the entire term of the Contract at a minimum; or
  - (b) if the policy is a 'claims made' based policy, an annual insurance policy or include run off cover such that insurance policy coverage is maintained for a minimum period of 6 years after the term of the Contract ends.
- 7.3 The Supplier warrants that any endorsements and deductibles that may be applicable to the Supplier's insurance policies pursuant to clause 7.1 will not detract from the Supplier's ability to meet any Claim or otherwise prejudice the Customer's rights under this Contract.
- 7.4 On request from the Customer, the Supplier must provide sufficiently detailed evidence of the Supplier's insurances required under this clause 7 to the satisfaction of the Customer acting reasonably, or such other satisfactory evidence the Customer may reasonably require, within the timeframe specified in that request.
- 7.5 The Supplier will promptly notify the Customer if any of its insurance policies pursuant clause 7.1 is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under the Contract.
- 7.6 The Supplier acknowledges and agrees that its compliance with any insurance obligation under this Contract does not limit the Supplier's liabilities or obligations under this Contract.

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## 8. Liability

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- 8.1 Subject to clause 8.2, 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.
- 8.2 The cap on liability does not apply to liability in relation to:
- (a) personal injury, including sickness, injury or death;
  - (b) loss of, or damage to, tangible property;
  - (c) Intellectual Property Rights or Moral Rights infringement;
  - (d) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel;
  - (e) any breach by the Supplier or its Personnel of any obligation under clause 11 (Confidentiality) or clause 12 (Privacy); or
  - (f) any Claim by a third party:
    - (i) arising out of any negligent act or omission of the Supplier or its Personnel; or
    - (ii) relating to breach of a third party's Intellectual Property Rights or Moral Rights.

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## 9. Intellectual Property Rights

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- 9.1 The Supplier grants (and must ensure that relevant third parties grant) the Customer an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferable and sub-licensable licence to exercise all Intellectual Property Rights in the Deliverables, for any purpose of the Customer, the State of Queensland or other Queensland Government Body.
- 9.2 The Supplier warrants that it is authorised to grant the rights in this clause and that the Deliverables and their use as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

## 10. Customer Data

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- 10.1 The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, will vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause.
- 10.2 The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel or to others as specified in the Contract on a need to know basis to perform the Contract.
- 10.3 The Supplier must comply with clauses 11 (Confidentiality) and 12 (Privacy) and all applicable Laws in relation to Customer Data which is Personal Information or Confidential 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, Confidential Information, public records, right to information and information standards.

## 11. Confidentiality

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- 11.1 Each party must not use or disclose or otherwise make available any Confidential Information of the other party to any person except:
- (a) to its Personnel on a need to know basis to perform the Contract;
  - (b) with consent of the other party;
  - (c) to its professional advisors; or
  - (d) to the extent required by Law.
- 11.2 The Customer may disclose information about the Contract and the Supplier:
- (a) on the Queensland Government Arrangements Directory, where required or recommended by government policy;
  - (b) to the Minister, their advisors, or Parliament on request;
  - (c) to its Personnel for Queensland Government reporting purposes; or
  - (d) as required under the Right to Information Act and/or the Information Privacy Act.

## 12. Privacy

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If the Supplier collects or has access to any Personal Information in order to perform the Contract, when performing the Contract, the Supplier must:

- (a) comply with Parts 2 and 3 of Chapter 2 of the Information Privacy Act as if the Supplier were the Customer; and
- (b) immediately notify the Customer on becoming aware of a breach of this clause or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information.

## 13. Warranties

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### 13.1 Medical devices

Where the Goods are medical devices as defined in section 41BD of the TGA, the Supplier warrants that the Goods:

- (a) have been tested, and certified as having been tested, in accordance with acceptance testing required for new medical devices before they are released for clinical use according to AS 3551 or equivalent;
- (b) meet, and will continue to meet, all regulatory requirements for medical devices, including the requirements under the TGA; and
- (c) may be used in accordance with the documentation relevant to the Goods without risk to health or safety of persons.

### 13.2 Conflict of interest

- (a) The Supplier warrants that it and, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, do not have a Conflict of Interest in the performance of the Contract, except as previously disclosed in writing to the Customer and which has been and can continue to be appropriately resolved to the satisfaction of the Customer.
- (b) If a Conflict of Interest or risk of it arises during the Contract Term, the Supplier must notify the Customer immediately. Upon receipt of such a notice, or upon the Customer otherwise identifying a Conflict of Interest or a risk of it, the Customer may, without limiting its rights under clause 18, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

### 13.3 Anti-competitive conduct

The Supplier warrants that neither it, nor to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated Invitation Process or any actual or potential contract with any entity for goods and services similar to the Goods and Services. 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 engaged in collusive or anti-competitive conduct.

### 13.4 Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

### 13.5 Supplier information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Contract or the associated Invitation Process are complete, accurate, up to date and not misleading in any way.



### 13.6 **Modern Slavery**

- (a) The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain, have not been convicted of any offence involving Modern Slavery.
- (b) The Supplier must immediately notify the Customer if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain.
- (c) The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

### 13.7 **Warranties are ongoing**

- (a) The warranties in this clause 13 are provided as at the date of the Contract and on an ongoing basis.
- (b) The Supplier will immediately notify the Customer if it becomes aware that any warranty made in this clause 13 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.

## 14. **Ethical Supplier Mandate**

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The Supplier acknowledges and agrees that:

- (a) it and its subcontractors are subject to the Ethical Supplier Mandate and that a failure to comply with any contractual, policy or legislative obligations in connection with the Contract can result in the imposition of demerit points and/or sanctions under the Ethical Supplier Mandate, in addition to any other remedies available to the Customer under the Contract; and
- (b) the Customer and/or its nominated representative may publish information about sanctions imposed on the Supplier and/or its subcontractors under the Ethical Supplier Mandate and that to do so will not constitute a breach of this Contract by the Customer nor give rise to any other right or remedy of the Supplier at law or in equity against the Customer or its nominated representative.

## 15. **Therapeutic Goods Act - recall, suspension, cancellation or alert**

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- 15.1 This clause applies in each event of a TGA Notice being issued in relation to the Goods under any of the TGA or the *Uniform Recall Procedure for Therapeutic Goods*.
- 15.2 For the purposes of the remainder of this clause, on and from the date of issue of a TGA Notice and for the remainder of the term of the Contract in respect of the purchase of Affected Goods, the functional and technical specifications corresponding to the minimum requirements necessary to Remedy the Issue in relation to the Affected Goods are included in the Requirements.
- 15.3 Notwithstanding any other clause of the Contract, and without limiting any other rights that the Customer that purchased Affected Goods under the Contract has or may have under the Contract, the Supplier must, solely at the Supplier's cost and within 30 calendar days, or as otherwise agreed by the parties, of the TGA Notice being issued, deliver to the Customer Alternative Goods or Remedied Goods in an equivalent number of units as the Affected Goods. For this clause 15.3:
  - (a) the requirements of this clause are not contingent on the doing of any act by the Customer, including delivering up the Affected Goods for substitution;
  - (b) provisions of the Contract that relate to acceptance of Goods apply to acceptance of the Alternative Goods or Remedied Goods; and

- (c) remedies and consequences available to the Customer in the event of non-acceptance of Goods are available to the Customer for non-acceptance of Alternative Goods or Remedied Goods.
- 15.4 Subject to clause 15.5, notwithstanding any other clause of the Contract, and without limiting any other rights of the Customer under the Contract, if the Supplier fails to meet its obligations under clause 15.3 the Customer may, in its absolute discretion, within 10 Business Days of the Supplier's failure to meet its obligations under clause 15.3, by written notice to the Supplier, reject the Affected Goods and the Supplier must promptly fully refund to the Customer the Price paid for the Affected Goods.
- 15.5 The Customer may only exercise its rights under clause 15.4 if the Customer has returned to the Supplier or has made available for collection by the Supplier, at the Customer's absolute discretion, any Remedied Goods or Alternative Goods that:
- (a) fail acceptance in accordance with the Contract;
  - (b) subsequently prove not to be TGA compliant; or
  - (c) do not meet the Requirements.
- 15.6 The Supplier must indemnify the Customer for all reasonable costs of, and incidental to, the discharge of its obligations in accordance with this clause 15.

## 16. Where Requirements are not met

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- 16.1 If any Requirements for the Deliverables are not met, the Supplier must promptly (at the Customer's option):
- (a) refund the Customer any monies paid for the Deliverables; or
  - (b) resupply the relevant Goods or re-perform the relevant Services so that the Deliverables comply with the Requirements,
- and the Customer may exercise any other right or remedy that it has under this Contract or otherwise.
- 16.2 If the Supplier fails to comply with its obligations under clause 16.1, the Customer may have the Deliverables re-supplied or re-performed by others, and the Supplier must pay the Customer on demand any costs incurred by the Customer in doing so.
- 16.3 Acceptance of the Deliverables by the Customer does not relieve the Supplier of any of its obligations under the Contract.
- 16.4 If the Customer rejects Goods, and the Supplier does not repossess the rejected Goods within 30 calendar days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer's cost.

## 17. Disputes

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The parties agree that they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation.

## 18. Termination

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### 18.1 For cause

- (a) The Customer may terminate the Contract immediately on written notice if:

- (i) the Customer is satisfied that the Supplier has breached any warranty in this Contract;
  - (ii) a Conflict of Interest exists or arises and has not been, or in the Customer's view cannot be, appropriately resolved to the Customer's satisfaction;
  - (iii) the Supplier ceases business or indicates that it is unwilling or unable to complete the Contract;
  - (iv) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Customer; or
  - (v) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies.
- (b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 18.1, the Supplier must pay or reimburse the Customer's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

## 18.2 For convenience

- (a) The Customer may terminate this Contract at any time in its absolute discretion without giving reasons by written notice to the Supplier.
- (b) The Customer will pay the Supplier for work performed and Deliverables supplied but not yet invoiced on a pro rata basis and the Supplier's reasonable and documented expenses directly relating to the termination. The Customer will have no other liability to the Supplier relating to the termination under this clause.
- (c) In no case will the compensation payable as a consequence of termination exceed the Price that would have been payable if the Contract had not been terminated.
- (d) The Supplier must comply with any directions given by the Customer in the notice in connection with the termination and take all reasonable steps to minimise its expenses relating to the termination.

## 19. Notices

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19.1 The parties will send all notices relating to the Contract to the other party at the address listed in the Details or Basic Order (as applicable), with a copy to the nominated contact person in the Details or Basic Order (or as updated by the parties).

19.2 A notice will be deemed to be given:

- (a) if posted within Australia to an Australian postal address – 5 Business Days after the date of posting;
- (b) if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia – ten (10) Business Days after the date of posting;
- (c) if delivered by hand during a Business Day – on the date of delivery; or
- (d) if emailed – on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

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.

## 20. General

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The parties agree that:

- (a) (**Updates to Basic Purchasing Conditions**) Queensland Health may amend these Basic Purchasing Conditions from time to time by posting a new version of the Basic Purchasing Conditions on [[www.health.qld.gov.au/healthsupport/businesses/strategic-procurement-and-supply/doing-business-with-sps](http://www.health.qld.gov.au/healthsupport/businesses/strategic-procurement-and-supply/doing-business-with-sps)]. Any Contracts in place prior to the amendments being made will continue to be governed by the version of the Basic Purchasing Conditions in place at the time the Contract was formed. The amended Basic Purchasing Conditions will apply to new Contracts formed after the amendments were made. The Supplier agrees that it is the Supplier's responsibility to review and understand the applicable Basic Purchasing Conditions relevant to each Contract it enters into;
- (b) (**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;
- (c) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (d) (**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;
- (e) (**relationship**) their relationship is of Customer and Supplier. The 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, agent, joint venturer, officer or employee of the Customer;
- (f) (**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; and
- (g) (**survival**) the following clauses will survive termination or expiry of the Contract for any reason:
  - (i) clause 1.2 (Documents making up the Contract and hierarchy);
  - (ii) clause 5 (Invoicing, Price and payment);
  - (iii) clause 6 (GST);
  - (iv) clause 7 (Insurance);
  - (v) clause 8 (Liability);
  - (vi) clause 9 (Intellectual Property Rights);
  - (vii) clause 10 (Customer Data);
  - (viii) clause 11 (Confidentiality);
  - (ix) clause 12 (Privacy);
  - (x) clause 21 (Definitions and interpretation); and
  - (xi) any other clause which is expressed to survive or by its nature survives.

## 21. Definitions and interpretation

### 21.1 Definitions

The following definitions apply to this Contract:

**Affected Goods** means Goods that are supplied under this Contract that are subject to a TGA Notice.

**Alternative Goods** means Goods that are compliant with the requirements of the TGA and TGA Notice and meet or exceed the Requirements.

**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.

**Authority** means an Australian, State or local government authority.

**Basic Order** means any form of order from the Customer for the provision of Deliverables which incorporates or refers to the Basic Purchasing Conditions.

**Basic Purchasing Conditions** means this document.

**BEMS8** means the Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 8) 2022 (BEMS8) (CB/2023/54).

**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 from third parties, those arising out of the terms of any settlement, and any kind of investigation and includes the allegation of a claim.

**Confidential Information** means all information disclosed by or on behalf of one party ("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** means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflicts, may reasonably have the potential to conflict, or may reasonably be perceived as conflicting, with the ability of the Supplier or its Personnel to perform its obligations under the Contract fairly and objectively.

**Consumer** means an individual or entity in Queensland that is the end user, final consumer or final beneficiary of Regulated Goods.

**Contract** means an agreement between the Customer and the Supplier, made up of the documents specified in clause 1.

**Contract Details** means a document titled 'Contract Details' that contains information about a specific contract between the Customer and Supplier.

**Contract Term** means the period of the Contract (including any extensions).

**Contracting Out Policy** means the Queensland Government Policy on the Contracting-out of Services issued by the Department of Premier and Cabinet.

**Correctly Rendered Tax Invoice** means a tax invoice as intended by the GST Law:

- (a) in which the amount claimed is due for payment and correctly calculated either in Australian dollars or in the currency specified in the Details;
- (b) which is set out as an itemised account, identifying the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) which includes an ABN or ACN number; and
- (d) which includes adequate information for the Customer to verify that the invoice is accurate, and which is accompanied by supporting documentation reasonably requested by the Customer.

**Customer** means the State of Queensland (acting through Queensland Health) 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, material, data, dataset or database:

- (a) provided by or on behalf of the Principal or Customer to the Supplier for use, processing, storing or hosting by the Supplier in performing the Contract; and
- (b) created, processed, produced or derived from using, processing, storing or hosting that information, material, data, dataset or database in the Supplier's performance of the Contract or the use by the Customer of the Goods or Services or Deliverables the subject of the Contract,

and includes Metadata.

**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.

**EB11** means the Queensland Public Health Sector Certified Contract (No.11) 2022 (EB11) (CB/2023/41).

**Ethical Supplier Threshold** means Ethical Supplier Threshold referred to in the Queensland Procurement Policy and described in the document titled "Guidelines: Ethical Supplier Threshold" as may be amended or replaced from time to time.

**Ethical Supplier Mandate** means the Queensland Government policy titled "Ethical Supplier Mandate 2021" or any policy that replaces that policy.

**Goods** means the goods the Supplier will provide, described in the Details or the Basic Order (as applicable).

**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).

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));
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (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);
- (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;
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
- (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);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

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

**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** or **ITO** means an Invitation to Offer issued by a Customer seeking offers for the provision of goods, services and/or deliverables.

**Issue** means the defect, fault or issue raised in the TGA Notice.

**Laws** means all:

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

**Metadata** means any system-generated data that is created or generated in connection with the Customer's use of the Goods or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Goods or Services and includes any descriptive, structural and administrative metadata.

**Modern Slavery** is as defined under the *Modern Slavery Act 2018* (Cth).



**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 in the Information Privacy Act.

**Personnel** means:

- (a) officers, directors, employees, agents, temporary contractors; and
- (b) in the case of the Supplier includes:
  - (i) any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors; and
  - (ii) any other person employed or engaged in the performance of the Contract.

In the definition of Confidential Information, the Customer's Personnel includes Associated Health Agency Personnel.

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

**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.

**Regulated Goods** means Goods in respect of which the price is regulated, subsidised or subject to rebates of any kind anywhere in the supply chain by any Authority.

**Regulated Price** means the lowest price at which Regulated Goods can be lawfully acquired by a Consumer, from time to time, taking into account:

- (a) the price (or maximum price) set by an Authority; and/or
- (b) any subsidy paid or payable by an Authority; and/or
- (c) any rebate paid or payable by an Authority.

**Remedied Goods** means Affected Goods that have been Remedied so that they are TGA compliant and meet or exceed the Requirements.

**Remedy** means to repair or correct the defect, fault or Issue raised in the TGA Notice.

**Reputable Insurer** means one or more of the following:

- (a) an insurer authorised and licensed to operate in Australia;
- (b) Unimutual;
- (c) a treasury managed fund;
- (d) an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation);
- (e) workplace health and safety regulator and workers compensation authorities; or
- (f) an insurer as otherwise agreed by the Customer in writing.



**Request for Quote** or **RFQ** means a document issued by a Customer seeking quotes or offers for the supply of Deliverables.

**Requirements** means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's 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 under the Contract, 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:**

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

**Supplier Code of Conduct** means the supplier code of conduct available at <https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/supplier-code-conduct> and as updated and amended from time to time.

**TGA** means the *Therapeutic Goods Act 1989* (Cth), its regulations or orders.

**TGA Notice** means a notice issued under the TGA or the *Uniform Recall Procedure for Therapeutic Goods* for any of the following reasons:

- (a) a recall action (including a recall, product defect correction, hazard alert or product defect alert) relating to the Goods;
- (b) a suspension or cancellation of the registration or listing of the Goods on the Australian Register of Therapeutic Goods; or
- (c) a safety alert being issued in relation to the Goods such that the Goods do not conform to the Requirements.

**Vaccine Policy** means Human Resources Policy B1: Recruitment and Selection or Health Service Directive # QH-HSD-047:2016 and Protocol # QH-HSD-047-1:2016 Vaccine Preventable Disease Screening for Contractors, Students and Volunteers.

**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.

## 21.2 Interpretation

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

- (a) **(agreement)** a reference to an agreement, including to the Contract, 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 the Contract is made up of more than one document, the Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;

- (d) (**plural**) words in the singular include the plural and vice versa;
- (e) (**grammatical forms**) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (f) (**currency**) all currency amounts are in Australian dollars unless otherwise expressly stated;
- (g) (**headings**) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;
- (h) (**includes**) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
- (i) (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (j) (**governing law**) the laws of Queensland apply to the Contract. Each party submits to the jurisdiction of the courts of Queensland;
- (k) (**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;
- (l) (**party**) a reference to ‘party’ means the Customer and/or the Supplier;
- (m) (**person**) a person includes the person’s executors, administrators, novatees and assignees;
- (n) (**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; and
- (o) (**consent**) any reference to the Customer’s consent is a reference to the prior written consent of the Customer.