

# General Conditions of Contract

## For general goods and services

These General Conditions of Contract shall be used in connection with the Contract Specification.

### I The Contract

#### 1.1 When Contract is formed

A Contract will be formed between the Customer and the Supplier on the earlier of the date when:

- (a) the Customer accepts the Supplier's offer in writing; or
- (b) the authorised representatives of both parties have signed the appropriate section of the Details; or
- (c) if the Contract is formed under any special conditions, the Contract is formed in accordance with the special Conditions.

This Contract may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

#### 1.2 Definitions

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

**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 arising out of the terms of any settlement.

**Closing date and time** means the date and time stated in the Invitation to Offer or Request for Quote, or such later time as may be notified by the Customer.

**Confidential Information** means all information disclosed by or on behalf of the Customer, Principal or the Supplier ("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** includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

**Conforming Offer** means an offer by the Supplier to enter into a Contract to provide the Deliverables to the Customer, which includes all the information requested, is received by the Closing date and time, and meets all other requirements for offers set out in the Invitation to Offer or Request for Quote.

**Contract** means an agreement between the Customer and the Supplier, made up of:

- (a) the Details and either the General Contract Conditions or Comprehensive Contract Conditions, and any document which the Details state will form part of the Contract; or
- (b) the Details, and other specified contract and documents which the Details state will form part of the Contract; or
- (c) for the purchase of Goods or Services under a Basic Order, the Basic Order and Purchasing Conditions and any document which the Basic Order states will form part of the Contract;

**Customer** means the Stormwater Australia (Stormwater Industry Association Ltd) or the entity listed in the Details or Basic Order (as applicable).

**Customer Data** means any information, materials, data, datasets or databases to the extent provided by or on behalf of the Customer or Principal or to the extent created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

**Customer Inputs** means the Customer's Personnel, equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

**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 the Contract Details.

**Discloser** has the meaning given in the definition of Confidential Information.

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

**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).

**Information Privacy Act** means the *Information Privacy Act 2009* (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)); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (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); or
- (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; or
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- (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); or
- (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.

**Intellectual Property Rights** includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeder's 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 Invitation to Offer, 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, invitation to offer 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 (ITO)** means an Invitation to Offer issued by a Customer or Principal.

**Key Personnel** means the people identified in Requirements as 'key personnel'.

**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.

**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 Invitation to Offer, Request for Quote or Contract (as applicable).

**Offer Validity Period** means the period stated in the Invitation to Offer or Request for Quote (as applicable).

**Personal Information** has the meaning given for the purpose of the Information Privacy Act – in that Act.

**Personnel** means officers, directors, employees, agents and subcontractors.

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

**Principal** is the party described in the Details, responsible for administering the Contract.

**Privacy Act** means the *Privacy Act 1988* (Cth)

**Recipient** has the meaning given in the definition of Confidential Information.

**Reliable Information** means information and documents provided by or on behalf of the Customer or the Principal, to the extent that the Customer or Principal (as applicable) has expressly agreed in writing that the Supplier may rely on such information or documents, but only in respect of the purpose and validity period nominated by the Customer or the Principal.

**Request for Quote (RFQ)** means a Request for Quote issued by a Customer.

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

**Services** means the services the Supplier will perform, 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.

**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.

### 1.3 Interpretation

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

- (a) **(agreement)** a reference to an agreement 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 an Invitation to Offer, Request for Quote or Contract is made up of more than one document, the Invitation to Offer, Request for Quote or Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) **(contract departures)** the contract departures section of the Details will take precedence over all other documents.
- (e) **(currency)** all currency amounts are in Australian dollars;
- (f) **(headings)** headings are provided for convenience and do not affect the interpretation of the Invitation to Offer, Request for Quote or documents making up a Contract;
- (g) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (h) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (i) **(governing law)** the laws of Queensland apply to a Contract and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
- (j) **(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;
- (k) **(person)** a person includes the person's executors, administrators, novatees and assignees;
- (l) **(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;

(m) **(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

#### 1.4 Hierarchy

If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:

- (a) the contract departures section of the Details;
- (b) the Schedules to the Details (excluding any document incorporated by reference);
- (c) the General Contract Conditions
- (d) the Details (excluding the contract departures section of the Details);
- (e) any document incorporated by reference.

## 2 Non-exclusivity

Unless expressly stated otherwise in the Details, the Customer may engage other suppliers to provide goods, services and other deliverables the same as or similar to the Deliverables.

## 3 Term

The Contract starts on the start date in the Details and continues for the period set out in the Details, including any extension options which are exercised.

The Customer must give notice of its intention to exercise any extension option.

## 4 Supplier to provide Deliverables

The Customer appoints the Supplier to provide the Deliverables. The Supplier accepts the appointment.

## 5 Supplier general obligations

The Supplier:

- (a) **(time)** must meet all due dates specified in the Details or otherwise agreed, and perform all other obligations promptly;
- (b) **(delay)** will promptly notify the Customer if it believes it will not be able to meet any due date;
- (c) **(Deliverables)** must provide the Deliverables in accordance with the Contract and all Laws;
- (d) **(Requirements)** must meet, and ensure that the Deliverables meet, the Requirements, and meet or exceed the performance measures specified in the Details (if any);

(e) **(standards)** must ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose and any other purpose disclosed by the Customer;

(f) **(protection)** must protect people and property, avoid unnecessary interference with passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance;

(g) **(policies)** must comply with all Customer policies, codes of conduct, rules, standards and procedures which apply to the Site or the Customer's Personnel or use of the Customer Inputs, all Site policies and workplace health and safety policies applicable to the Site, and all other Customer policies listed in the Requirements. If the Customer introduces new policies relevant to the Supplier's obligations under this Contract, or amends a relevant policy, the Supplier will comply with the new or amended policies. Copies of the relevant policies are available on request;

(h) **(directions)** must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract;

(i) **(Customer Inputs)** must take care of Customer Inputs, and only use Customer Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the Details. If the Supplier loses or damages any Customer Inputs, the Supplier will, at the election of the Customer, promptly replace such Customer Inputs or pay the Customer the reasonable replacement cost of such Customer Inputs. As between the Supplier and the Customer, the Customer retains all right, title and interest (including all Intellectual Property Rights) in Customer Inputs;

(j) **(act reasonably)** must act reasonably in exercising all of its rights under the Contract;

(k) **(cooperation)** must cooperate with the Customer's Personnel and other suppliers to the Customer who provide goods and services relating to the Deliverables;

(l) **(Laws)** must comply with all Laws and ensure that use of the Deliverables by the Customer as contemplated in the Contract will comply with all Laws;

(m) **(records)** must create and maintain records of its performance of this Contract in accordance with usual industry practice for provision of goods and services similar to the Deliverables. The Supplier will give the Customer reasonable access to records on reasonable request;

- (n) **(insurance)** must at its cost, take out and maintain the insurances described in the Details with an insurer authorised and licensed to operate in Australia, on reasonable commercial terms. The Supplier must promptly notify the Customer if any policy is cancelled or there is any significant change in any of those policies. The Supplier must maintain run-off insurance for a minimum period of 6 years after the Contract ends, for all insurance policies which are maintained on a “claims made” basis. The Supplier must provide a certificate of currency for each policy. If the Supplier does not take out or maintain these policies, the Customer may take out those policies and the Supplier will be responsible for the Customer’s cost of doing so;
- (o) **(authorisations)** must obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must provide evidence that it has complied with this clause, if the Customer asks;
- (p) **(security requirements)** must, if specified in the Details, provide a bank guarantee, performance guarantee or other specified security to guarantee the proper performance of the Supplier’s obligations under the Contract. The security must be in a format acceptable to the Customer acting reasonably. The security must meet all additional conditions specified in the Details. The Customer will not have any liability to the Supplier (whether in negligence or otherwise) in connection with the Customer’s enforcement of the security;
- (q) **(further assurances)** do anything and execute any document that the Customer reasonably asks, to give effect to this Contract;
- (r) **(reports)** must provide reports as and when reasonably requested by the Customer;
- (s) **(competitive neutrality)** if the Supplier is a government owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with the competitive neutrality principles of the Supplier’s jurisdiction;
- (t) **(expertise)** warrants that it has the necessary skills and expertise to properly perform the Contract, and all its Personnel performing duties in relation to this Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning this Contract; and
- (u) **(access and inspection)** on reasonable prior written notice from the Customer, must give the Customer 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 to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non-compliances identified by the Customer and notified to the Supplier.

## 6 Terms and conditions specific to Goods and Deliverables

The following terms and conditions apply to the supply of Goods and to Deliverables which the Supplier develops or creates in performing the Services:

- (a) **(condition)** all Goods must be new, unused and of recent origin;
- (b) **(test)** the Supplier must inspect and test all Goods and other Deliverables that will be delivered in a material form to ensure that they comply with the Requirements, before delivery;
- (c) **(manufacturer warranties)** the Supplier must assign 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;
- (d) **(delivery)** 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;
- (e) **(acceptance)** acceptance of the Goods by the Customer does not relieve the Supplier of any of its obligations under the Contract;
- (f) **(packaging)** the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- (g) **(rejected Goods)** if the Customer rejects Goods for non-conformity with Requirements, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Customer may sell or dispose of the Goods, at the Customer’s cost. The Customer is under no obligation to pay for rejected Goods and the Supplier will promptly refund any amounts pre-paid for rejected Goods within 10 Business Days of the Customer’s rejection;
- (h) **(risk)** risk in Goods and any other Deliverables which are provided in a material form will transfer to the Customer when delivered to the delivery address set out in the Details in accordance with the Customer’s delivery instructions;

- (i) **(title)** title in Goods and any other Deliverables which are provided in a material form will transfer on the earlier of the delivery or payment of the applicable Price;
- (j) **(no encumbrance)** the Supplier warrants that the Goods and any other Deliverables 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; and
- (k) **(associated information)** the Supplier will provide with the Goods any information, data or manuals required for the Customer to use, maintain, repair, install or operate the Goods.

## 7 Subcontracting and Personnel

### 7.1 Subcontracting

The Supplier may only subcontract any part of its obligations under this Contract to subcontractors identified in the Details or with the Customer's prior written consent. The Customer will not unreasonably withhold consent, but may give consent subject to reasonable conditions.

### 7.2 Personnel

- (a) **(responsibility)** the Supplier must ensure that its Personnel comply with all the obligations of the Supplier under this Contract, and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier.
- (b) **(not Customer employees)** the Supplier is not, and Supplier Personnel are not, employees of the Customer.
- (c) **(removal)** if the Customer reasonably requests, the Supplier will promptly remove from Customer premises and/or the performance of this Contract, any Personnel used in performance of the Contract, and replace them with other Personnel acceptable to the Customer, at no additional cost to the Customer.

### 7.3 Key Personnel

In providing the Services the Supplier must:

- (d) ensure that the Key Personnel perform the roles allocated to them in the Details;
- (a) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death;
- (b) promptly notify the Customer if any Key Personnel is unavailable to perform his or her allocated role for any reason; and

- (c) ensure that any replacement Key Personnel have equivalent or superior skills, qualifications and experience, and promptly provide information reasonably requested about any Key Personnel or proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.

The Customer may reject any proposed replacement Key Personnel, in which case the Supplier must promptly propose an alternative.

## 8 Price

### 8.1 Pricing all inclusive

Unless otherwise stated in the Details, the Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If this Contract requires the Supplier to do or provide anything, and there is no separate Price for performing that obligation, the Supplier will comply with the obligation at no additional cost. The Supplier must not invoice the Customer, and the Customer is not required to pay, any amount except for the Price.

### 8.2 Expenses

The Customer will not reimburse any travel or accommodation expenses except where:

- (a) the Customer requests that the Supplier travel away from the agreed service location;
- (b) the Supplier complies with the Customer's travel policy (a copy of which will be provided on request);
- (c) the Customer has approved the expenses in writing before they are incurred; and
- (d) the Supplier provides satisfactory evidence of payment.

### 8.3 Price review

The Supplier may review the Prices in accordance with any Price review mechanism in the Details. No other Price change or new Price will be effective unless the Customer agrees in writing.

## 9 Invoicing and payment

The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in the Details. The Supplier will ensure that each invoice includes adequate information for the Customer to verify that the invoice is accurate, and will provide supporting documentation reasonably requested by the Customer. The Customer is not required to pay any invoice that does not comply with this clause.

Unless expressly stated otherwise in the Details, the Supplier may not:

- (a) invoice the Customer (and the Customer is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
- (b) charge or pass through any fees, costs or charges associated with a payment method.

The Customer will pay each correctly rendered tax invoice within 30 days of receipt.

The Customer may set off any amounts payable by the Supplier to the Customer against amounts payable to the Supplier by the Customer.

The Customer may 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.

## 10 GST

- (a) **(construction)** In this clause 10, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) **(GST exclusive)** Unless expressly stated, all moneys or other sums payable or consideration to be provided under this Contract are exclusive of GST.
- (c) **(payment of GST)** If GST is payable on any supply made under this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under this Contract.
- (d) **(tax invoice)** The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 10(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
- (e) **(adjustment event)** If an adjustment event arises in respect of a taxable supply made by a supplier under this Contract, the amount payable by the recipient under clause 10(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) **(reimbursements)** Where a party is required under this Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
  - (i) the amount of the expense or outgoing less

any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

- (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## 11 Liability

- (a) **(contribution)** neither party will be liable to the other, (whether in contract, tort including negligence or otherwise) in connection with the Contract, for loss or damage to the extent that the other party contributed to the loss or damage.
- (b) **(cap on liability)** the maximum aggregate liability of a party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the amount of the cap on liability in the Details.
- (c) **(exclusions from cap)** the cap on liability does not apply to liability in relation to:
  - (i) personal injury, including sickness, injury or death;
  - (ii) loss of, or damage to, tangible property;
  - (iii) Intellectual Property Rights or Moral Rights infringement; or
  - (iv) an indemnity,

and any payments in relation to those forms of liability will not deplete the cap on liability.

- (d) **(mitigation)** a party who suffers loss or damage must mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (e) **(binding scheme)** despite any other condition of the Contract, the Supplier's liability under the Contract is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the *Professional Standards Act 2004* (Qld) as specified in the Details.

## 12 Indemnity

The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any Claim that may be brought against or made upon or incurred by any of them (whether in contract, tort including negligence, or otherwise) in connection with any:

- (a) failure to comply with applicable Law by, the Supplier or its Personnel;
- (b) Wilful Default or Wilful Misconduct;
- (c) claim of Intellectual Property Rights or Moral Rights infringement relating to this Contract or the Deliverables;
- (d) breach of any warranty given in this document; or
- (e) any Claim by a third party relating to this Contract,

except to the extent that the Customer or its Personnel caused or contributed to the Claim.

## 13 Information

- (a) The Supplier is responsible for making its own investigation and assessment about all matters relevant to the Contract, including the Requirements, the accuracy of all information and documents provided by or on behalf of the Customer, and all other matters relevant to the Supplier's decision to enter the Contract, and will not have any Claim against the Customer if any information or documents provided by the Customer is incomplete, inaccurate out of date or misleading in any way.
- (b) The Supplier may only rely on Reliable Information, and only for the nominated purpose and nominated validity period.
- (c) The Customer must inform the Supplier if it becomes aware of any material inaccuracies or omissions in any information provided to the Supplier, including Reliable Information.
- (d) The Supplier must ensure that all representations, warranties, declarations, statements, information and documents ("information") made or provided by the Supplier (including its representatives) in connection with the Contract are complete, accurate, up to date and not misleading in any way. The Supplier must immediately tell the Customer if any information is or becomes incomplete, inaccurate, out of date or misleading in any way.

## 14 Intellectual Property Rights

### 14.1 Existing Intellectual Property Rights

Each party retains all its Intellectual Property Rights which existed at the Contract start date, or which are developed independently of the Contract.

The Supplier grants (and must procure that relevant third parties grant) the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to exercise all such Intellectual

Property Rights which are incorporated into any Goods, Services and Deliverables provided to the Customer under the Contract, for any purpose of the Customer, as part of those Goods, Services and Deliverables and future development of those Goods, Services and Deliverables.

### 14.2 New Intellectual Property Rights

Subject to clause 15 ("Customer Data") new Intellectual Property Rights created or developed in performing the Contract will be owned by the Customer.

### 14.3 Warranty of authorisation

The Supplier warrants that it is authorised to grant the rights in this clause.

The Supplier warrants that the Deliverables and the use of the Deliverables as permitted by this Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

## 15 Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, shall vest in the Customer on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the Contracts and in accordance with all Laws.

The Supplier must comply with clauses 16 & 17, and all applicable Laws in relation to Customer Data which is Personal Information. The Supplier 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) identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Personal Information, public records, right to information and information standards.

## 16 Confidentiality

- (a) Each party will keep confidential all Confidential Information which it obtains from the Discloser, or creates in relation to the Contract, not use it except for the purposes of the Contract, and not disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract, or with the Discloser's consent, or to the extent required by Law, or to its professional advisors.
- (b) Where the Recipient discloses the Confidential Information to a third party as permitted under this Contract, the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible

for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.

- (c) If the Customer requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to the Customer.
- (d) The Supplier must not make any public announcements or advertisement relating to the Contract except where the Customer has approved the proposed announcement or advertisement in writing.
- (e) If requested by the Customer, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer, and a copy of all documents and records created by the Supplier in the performance of the Contract, and will confirm to the Customer when this has been done.
- (f) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

## 17 Privacy

- (a) If the Supplier collects or has access to Personal Information in order to perform the Contract, when performing this Contract the Supplier must
  - (i) if the Customer is an 'agency' for the Information Privacy Act, other than for chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Customer, as if the Supplier were the Customer; or
  - (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.
- (b) The Supplier must:
  - (i) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except with the prior written consent of the Customer; and
  - (ii) take any steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with the Contract that are reasonably notified by the Customer.

## 18 Anti-competitive conduct,

### conflict of interest and criminal organisations

#### 18.1 Anti-competitive conduct

The Supplier warrants that neither it, nor 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.

#### 18.2 Conflict of Interest

The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed in the Details.

If the Customer requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Customer.

#### 18.3 Criminal organisation

The Supplier warrants that neither it nor its Personnel:

- (a) have been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the *Criminal Code*; or
- (b) are subject to an order under, or have been convicted of an offence under, the *Criminal Organisation Act 2009* (Qld).

#### 18.4 Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 18 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.

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 breached any warranty in this clause.

## 19 Where Requirements not met

If any Requirements for Goods or Services are not met, the Supplier must promptly (at the Customer's option):

- (a) refund to the Customer any monies paid for the relevant Goods or Services; or
- (b) resupply the relevant Goods, or re-perform the relevant Services, so that the Goods and or Services comply with the Requirements.

This does not limit the Customer's other rights or the Supplier's responsibility if there is any non-compliance with the Contract, and the Customer may exercise any other right or remedy that it has under this Contract or otherwise

If the Supplier fails to comply with its obligations under this clause, the Customer may have the Goods supplied or the Services performed by others, and the Supplier shall pay to the Customer on demand any costs incurred by the Customer in doing so.

## 20 Termination

### 20.1 For cause – by Customer

The Customer may terminate the Contract immediately on written notice if:

- (a) the Customer is satisfied that any of the declarations and warranties provided by the Supplier were inaccurate, incomplete, out-of-date or misleading in any way when made, or become inaccurate, incomplete, out-of-date or misleading in any way;
- (b) a Conflict of Interest arises and has not been, or in the Customer's view cannot be appropriately managed, to the Customer's satisfaction;
- (c) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
- (d) 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
- (e) the Supplier is or becomes Insolvent.

If the Customer terminates under this clause 20.1, the Supplier will pay or reimburse the Customer's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

### 20.2 For cause – by Supplier

The Supplier may terminate the Contract immediately on written notice only if the Customer has not paid any amount which is undisputed and properly payable, the Supplier has notified the Customer of the outstanding amount stating that it will terminate the Contract if the Customer does not pay such amount within a reasonable time set out in the notice, and the

reasonable time expires without the Customer disputing the amount or making payment.

### 20.3 For convenience

The Customer may terminate the Contract in its absolute discretion by giving at least 30 days' written notice. If the Customer does so, the Customer will pay the Supplier for the work performed and Goods supplied but not yet invoiced on a pro rata basis. The Customer will have no other liability to the Supplier relating to the termination.

### 20.4 If a contract is terminated

Unless otherwise specified in the Details, all the terms and conditions of this Contract (including this clause) will survive termination or expiry of the Contract, for any reason.

### 20.5 Suspension

In addition to the Customer's termination rights, the Customer may suspend the Contract immediately on written notice in its absolute discretion, or in any circumstances when it is entitled to terminate under this clause 20. The Customer may end the suspension on written notice. The Supplier will promptly re-commence performance after receiving the Customer's notice ending the suspension.

If the Customer suspends the Contract for any reason which is not due to the act, default or omission of the Supplier, the Customer will pay the Supplier's reasonable and documented expenses incurred prior to the suspension. The Customer will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

### 20.6 Consequences

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

In no case will the compensation payable as a consequence of termination (for any reason) exceed the Price that would have been payable if the Contract had not been terminated.

## 21 Assignment

The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Customer's prior written consent.

The Customer may assign, transfer or novate any of its rights or obligations under the Contract:

- (a) with the Supplier's prior written consent; or
- (b) on written notice to the Supplier.

Both parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

For clarity, transfer of the Customer's rights and obligations within the same legal entity is not an assignment.

The Contract is for the benefit of, and will bind the parties and their successors and permitted assigns.

## 22 General

The parties agree that:

- (a) **(communication)** they will direct all enquiries relating to the Contract to the other party's nominated contact person in the Details, or to another person if the other party directs.
- (b) **(notices)** they will send all notices relating to the Contract to the other party at the address listed in the Details, with a copy to the nominated contact person in the Details (or as updated under the above clause).
- (c) **(disputes)** they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation.
- (d) **(variation)** the Contract may only be varied by written agreement of authorised representatives of the parties.
- (e) **(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.
- (f) **(severability)** if any part of this Contract is

invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract (and any parts of the Contract which are dependent on those parts) will not apply but the other parts of the Contract will not be affected.

- (g) **(waiver)** clauses and rights in this Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.
- (h) **(relationship)** their relationship is of principal and contractor. This 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, joint venturer, officer or employee of the Customer.
- (i) **(exclude implied terms)** that the Sale of Goods (Vienna Convention) Act 1986 (Qld) does not apply, to the extent that the parties are permitted by Law to exclude it.
- (j) **(survival)** clauses 1.2, 1.3, 5(n), 10, 11, 12,14, 15, 16, 17, 22(e), (f), (g), (h), (i) and (j) will survive termination or expiry of the Contract for any reason.
- (k) **(costs)** each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations.