



## **Part 5B**

# **Default Purchaser Conditions of Contract (Works)**

## **LGA Arrangement**

**Open Spaces, Parks, Play, Sport and Recreation**

**via a**

**Register of Pre-Qualified Suppliers**

**BUS267**

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**Part 5B - Default Purchasers Conditions of Contract (Works)**

**1. CONSTRUCTION OF CONTRACT**

- 1.1 A reference to a party to the Purchaser Agreement includes:
- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
  - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- (a) all of those persons collectively; and
  - (b) each of them as an individual.
- 1.3 The parties to a Purchaser Agreement are:
- (a) the Purchaser issuing the Order; and
  - (b) the Contractor.
- 1.4 The Default Purchaser Conditions of Contract apply to and as between each of the parties as if each of them had executed the Purchaser Agreement.
- 1.5 A reference to:
- (a) the singular includes the plural, and vice versa;
  - (b) a gender includes each other gender;
  - (c) a person includes a corporation, a firm, and a voluntary association;
  - (d) an Act includes an Act that amends, consolidates or replaces the Act;
  - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
  - (f) money is a reference to Australian dollars and cents;
  - (g) a time of day is a reference to Australian Eastern Standard Time;
  - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced; and
  - (i) the Default Purchaser Conditions in this document is a reference to these Default Purchaser Conditions of Contract (Works) which formed Part 5B of Local Buy's Request for Tender; and
  - (j) the words 'include', 'included' or 'including' when those words are used, will be interpreted as if they were followed by the further words 'but not limited to' or the appropriate grammatical derivative.
- 1.6 No rule of construction or interpretation of the Default Purchaser Conditions shall apply to either Local Buy's or the Purchaser's disadvantage solely because Local Buy or the Purchaser prepared the Default Purchaser Conditions or either of them rely on a provision of the Default Purchaser Conditions.
- 1.7 Condition headings exist for convenience only and are to be disregarded when interpreting the Default Purchaser Conditions.
- 1.8 All information delivered as part of the Deliverables supplied under the Purchaser Agreement must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.9 Grammatical variations of a defined word/phrase have the same meaning as the defined word/phrase unless the context otherwise requires.

- 1.10 If a provision of the Purchaser Agreement is found by a court of competent jurisdiction to be void, voidable, illegal or unenforceable, then that provision shall be deemed to be deleted from the Purchaser Agreement and the remaining provisions of the Purchaser Agreement shall continue in full force and effect.
- 1.11 Where a Purchaser is not from Queensland, a reference to a Queensland Act or a Queensland body in the Purchaser Agreement shall be deemed to be a reference to the equivalent legislation or body of the State in which the Purchaser is based.

**2. DEFINITIONS**

- 2.1 Except where the context otherwise requires, the definitions set out in Clause 2.1 of the General Conditions of Contract to Local Buy Contract Number BUS 267 shall apply to these Default Purchaser Conditions.

**'Bank Guarantee'** means one (1) or more irrevocable and unconditional written undertakings of a Licensed Bank:

- (a) in a form satisfactory to the Purchaser; and
- (b) securing payment of the Bank Guarantee Amount to the Purchaser;
- (c) upon demand; and
- (d) without reference to the Contractor.

**'Bank Guarantee Amount'** means the amount of the Bank Guarantee required by the Purchaser from the Contractor as set out in the relevant Purchaser Agreement.

**'Date for Practical Completion'** means:

- (a) the date for practical completion set out in the relevant Purchaser Agreement; or
- (b) if an extension of time is directed or allowed, the date stated in paragraph (a) as adjusted for the extension of time.

**'Date of Practical Completion'** means the date on which the Works reaches Practical Completion.

**'Defects Liability Period'** means the defects liability period set out in the relevant Purchaser Agreement or where not so specified means 52 weeks.

**'Direction'** includes any direction, permission, decision, certification, demand, notice, approval, refusal, requirement or authorization and "Directed" has a corresponding meaning.

**'Licensed Bank'** means a bank, licensed as such under Commonwealth or Queensland legislation regulating banking.

**'Liquidated Damages Amount'** means the amount which is payable by the Contractor to the Purchaser per day for the period between the Date for Practical Completion and the Date of Practical Completion as set out in the relevant Purchaser Agreement.

**'Obligor'** means the Licensed Bank providing the Bank Guarantee the subject of Condition 48.

**'Practical Completion'** means the stage of execution of the Works under the relevant Purchaser Agreement when the Works is complete and ready for use except for minor omissions and defects which will not affect the use or occupation of the Works.

**'Security Account'** means an interest-bearing account with a Licensed Bank.

**'Security Deposit'** means the cash sum of required in the relevant Purchaser Agreement to be delivered by the Contractor to the Purchaser pursuant to Condition 47.

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'Site' means the lands and other places to be made available to the Contractor by the Purchaser for the purpose of the execution and completion of the Works under the relevant Purchaser Agreement.

'Site Access Date' means the date on which Purchaser must provide the Contractor with access to the Site as set out in the relevant Purchaser Agreement.

'Works' means any works supplied under the Local Buy Contract BUS 267 and the relevant Purchaser Agreement.

**3. TERM**

- 3.1 The Purchaser Agreement shall begin on the Order Commencement Date and expire on the Purchaser Agreement Expiry Date or when the provision of the Deliverables has been completed as per the relevant Purchaser Agreement unless terminated earlier in accordance with the terms of the Purchaser Agreement.
- 3.2 Notwithstanding the termination or expiry of the Local Buy Contract, the terms and conditions of the Local Buy Contract shall continue to apply to the Purchaser Agreement until such time as the parties' obligations under that Purchaser Agreement have been completed or the Purchaser Agreement is terminated.

**4. EVIDENCE OF CONTRACT**

- 4.1 The Purchaser Agreement constitutes the entire contract between the relevant Purchaser and the Contractor, is formed when a Purchaser places an Order with the Contractor and is constituted by the following documents:
  - (a) the Order;
  - (b) the Purchaser Requirements (including any variations agreed to in writing by the Purchaser);
  - (c) the relevant Purchaser Conditions;
  - (d) correspondence passing between the relevant Purchaser and the Contractor clarifying any aspect of the RFQ or RFQ response;
  - (e) the RFQ (if any);
  - (f) the RFQ response (if any); and
  - (g) the Local Buy Contract.
- 4.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Purchaser Agreement, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (g) in Condition 4.1.
- 4.3 In consideration of payment pursuant to these Default Purchaser Conditions by the Purchaser, the Contractor agrees to meet its obligations pursuant to and provide the Deliverables in accordance with the requirements of the Purchaser Agreement and at the Order Price.

**5. QUOTATION & ORDER PROCESS**

RFQ Options

- 5.1 A Purchaser may issue an RFQ to one or more suppliers on the LGA Arrangement.
- 5.2 For the avoidance of doubt, the use of an RFQ by the Purchaser is optional and where sufficient information is available in the Contract documents, Purchasers may place an Order directly with the LGA Arrangement supplier of their choice.
- 5.3 Where Local Buy varies the RFQ process pursuant to the Local Buy Contract, the Contractor and Purchaser shall ensure that they comply in all respects with the new RFQ process.

Conditions of Quotation

- 5.4 Where the Contractor wishes to respond to an RFQ, it must comply with any instructions provided by the Purchaser, respond in writing by way of the same medium through which the RFQ was issued and submit its response within the timeframe required by the relevant RFQ.
- 5.5 Unless stated as being not required by a Purchaser, the Contractor shall provide (where relevant to the particular Deliverables) the following information as part of their RFQ response:
  - (a) pricing information taken from the current Pricing Schedule or better price if applicable; and
  - (b) product information and technical specifications;
  - (c) applicable warranty terms for Goods;
  - (d) an expected supply date (and will keep the Purchaser informed of any delays);
  - (e) anything necessary for the supply of the Deliverables that the Contractor expects the relevant Purchaser to supply (where these requirements are not set out, the Contractor is deemed to not require any from the relevant Purchaser for the successful supply of the Deliverables);
  - (f) any free Deliverables which the Contractor nominates to supply, additional to those specified; and
  - (g) if any of the Purchaser's Requirements contained in a RFQ issued by a Purchaser cannot be conformed with, these shall be clearly noted in the Contractor's RFQ response.
- 5.6 A Purchaser may provide further information and technical specifications of its requirements which the Contractor must take into account when preparing its Quote including but not limited to:
  - i. required specifications, customised support and/or training services and the like;
  - ii. if the new Deliverables are replacing existing items,
  - iii. details of their existing systems; and/or
  - iv. details of the anticipated use of the Deliverables;
  - v. required compatibility with existing Purchaser systems;
  - vi. service requirements;
  - vii. service levels;
  - viii. standards;
  - ix. continuous improvement;
  - x. strategy, design, transition and/or operation;
  - xi. policies and procedures; and/or
  - xii. additional insurance requirements.
- 5.7 The Contractor is to ensure RFQ responses issued under their own hand are fully itemised and individually priced. No grouping of the Deliverables and amalgamation of costings is allowed unless specified by the relevant Purchaser.
- 5.8 The Contractor's RFQ response must remain open for acceptance for a minimum of thirty (30) days or such other period as is explicitly set out in the relevant Purchaser's RFQ (or as otherwise agreed in writing between the parties).

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- 5.9 Quotations issued by the Contractor after the closing date nominated by the Purchaser will only be accepted at the relevant Purchaser's discretion.
- 5.10 A Purchaser may request clarifications, enter into post-offer negotiations or require a presentation following receipt of a Contractor's RFQ response.
- 5.11 Purchasers are not bound to accept the lowest or any Quotation supplied by a Contractor.
- 5.12 Where a Purchaser issues Conditions of Quotation with its RFQ, those Conditions of Quotation shall take precedence over any conflicting conditions in this Condition 5.
- 5.13 Prior to entering into a Purchaser Agreement, the Purchaser may require the Contractor to work with the Purchaser to prepare some or all of the Project Schedules set out below which will, once approved by the Purchaser, form part of the Purchaser Agreement:
- (a) Service Level Agreement;
  - (b) Security Management Plan;
  - (c) Implementation Plan;
  - (d) Testing Procedures;
  - (e) Statement of Work;
  - (f) Deployment Plan;
  - (g) Training Plan;
  - (h) Schedule of Commercially Sensitive Information;
  - (i) Confidentiality Agreement;
  - (j) List of Approved Sub-Contractors;
  - (k) Licence Terms;
  - (l) Project Governance;
  - (m) Change Control Procedure;
  - (n) Dispute Resolution Procedure;
  - (o) Record Management;
  - (p) Exit Management;
  - (q) Schedule of Key Personnel;
  - (r) Guarantee;
  - (s) Liquidated Damages Schedule; and/or
  - (t) Such other project specific schedules as may be required by the Purchaser.
- 5.14 It is the Purchaser's responsibility to determine which Project Schedules it requires to have completed. Where the Purchaser does not have the in-house capacity to make this determination, it may seek guidance and assistance from the Contractor. Where the Contractor is asked to provide such guidance and assistance, the Contractor shall provide it promptly and at a cost agreed between the parties.
- 5.15 Local Buy may from time to time issue Purchasers with suggested template RFQs or Project Schedules. Local Buy accepts no liability whatsoever arising from the use or failure to use any template RFQs or Project Schedules so provided.

RFQ Acceptance

- 5.16 If the Contractor is selected following the RFQ process, the Purchaser shall issue an Order which will be subject to the Default Purchaser Conditions and forms part of the Purchaser Agreement.

Order Terms

- 5.17 Subject to Conditions 5.18 to 5.20 (inclusive), a Purchaser may include special conditions with any Order which do not materially conflict with the Request for Tender process carried out by Local Buy.
- 5.18 Any special conditions included pursuant to Condition 5.17 shall only be valid where the Contractor agrees to them. The Contractor's supply of Deliverables pursuant to the relevant Purchaser Agreement shall be deemed to constitute acceptance by the Contractor of the special conditions issued by the relevant Purchaser.
- 5.19 If Local Buy finds that the special conditions of an Order materially conflict with the terms and conditions of the Contract or Default Purchaser Conditions, Local Buy shall consult the Purchaser and Contractor to resolve the matter.
- 5.20 If the matter cannot be resolved as set out in Condition 5.19 above, the Order will be deemed to be cancelled and Purchaser Agreement terminated, and with respect to Queensland Local Government, will no longer constitute a valid LGA arrangement exemption for the purposes of the *Local Government Regulation 2012*.
- 5.21 Notwithstanding Conditions 5.19 and 5.20 above, Local Buy provides no warranty whatsoever arising from special conditions issued by a Purchaser which have the effect of invalidating the Purchaser's right to claim an exception from their procurement obligations. Purchasers must satisfy themselves by for instance obtaining their own legal advice before issuing special conditions pursuant to Condition 5.17.

Contractor's Online Ordering Portal

- 5.22 Where the Contractor provides an online ordering portal to Purchasers, it must ensure that the Deliverables offered through the portal comply in all respects with the Local Buy Contract.

Supply of the Deliverables

- 5.23 Where an Order is placed with the Contractor a Purchaser Agreement is formed and the Contractor must supply Deliverables that comply in all respects with the requirements of the Purchaser Agreement and Purchaser Requirements at the Order Price.
- 5.24 The Purchaser may Order:
- (a) any 1 type or item of the Deliverables; and
  - (b) Deliverables in 1 lot or instalments or in such quantities as may be required from time to time.
- 5.25 Where the Contractor receives an Order from a person other than the Authorised Officer the Contractor must:
- (a) refer the Order to the Authorised Officer; and
  - (b) not supply the Deliverables identified in the Order until written confirmation from the Authorised Officer has been received.
- 5.26 The Contractor must not supply other categories of Deliverables to Purchasers under a Purchaser Agreement other than those tendered and appointed for under the Local Buy Contract without the written approval of Local Buy's Category Manager.
- 5.27 Unless otherwise approved by the Authorised Officer in writing, the Deliverables must be fit for the purpose for which Deliverables of the same kind are commonly supplied and for any other purpose which the Purchaser made known to the Contractor.

**Part 5B - Default Purchasers Conditions of Contract (Works)**

**6. EXECUTION AND COMPLETION OF THE WORKS**

- 6.1 The Contractor must, until the Authorised Officer has certified that the Works have reached Practical Completion in accordance with the Purchaser Agreement, execute and complete the Works in accordance with the Purchaser Agreement and any Directions given by the Authorised Officer under the Purchaser Agreement.
- 6.2 The Contractor must execute and complete the Works in accordance with a Quality Assurance System approved by the Purchaser.
- 6.3 Unless otherwise stated in the Purchaser Agreement, the Contractor must supply all things and items required to execute and complete the Works including, without limitation, things and items not expressly mentioned in the Purchaser Agreement.
- 6.4 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority affecting the execution and completion of the Works including, without limitation, paying all fees and obtaining all necessary consents of or incidental to the execution and completion of the Works.
- 6.5 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Works.
- 6.6 The Contractor warrants that it has the necessary skills and expertise to be able to competently provide the Works.
- 6.7 The Contractor must not supply other Categories of Deliverables to Purchasers under a Purchaser Agreement other than those tendered and appointed for under the Local Buy Contract without the written approval of Local Buy's Category Manager.
- 6.8 Unless otherwise approved by the Authorised Officer in writing, the Deliverables must be fit for the purpose for which Deliverables of the same kind are commonly supplied and for any other purpose which the Purchaser made known to the Contractor.
- 6.9 All materials of construction shall be new and all components standardised so that replacements can be installed without structural alteration.
- 6.10 The Goods must be clearly marked with the identification marks when specified in the Purchaser's Request for Quotation or Order. These identification marks must also be shown on drawings and on dispatch documentation.

Time for Supply and Delays

- 6.11 The Contractor must accept all valid Orders for Deliverables placed by a Purchaser during the Term unless it has, at the time an Order is placed by the relevant Purchaser, a genuine reason for being unable to do so.
- 6.12 Where the Contractor has a genuine reason for not being able to supply the Deliverables, the Contractor shall communicate that reason to the Purchaser within twenty-four (24) business hours of receipt of the relevant Order.
- 6.13 The Contractor must supply the Deliverables punctually. However, if a time for supply of the Deliverables is stated in the Purchaser Agreement or the Local Buy Contract (except where it is explicitly stated as being indicative only), the Deliverables must be supplied within the time stated and in such cases time shall be deemed to be of the essence, subject to Condition 28 (Force Majeure).

- 6.14 Upon it becoming evident to the Contractor that supply of the Deliverables is likely to be delayed (for whatever reason), the Contractor must promptly notify the Purchaser in writing advising the Purchaser of:
  - (a) the reasons for the delay;
  - (a) the likely consequences of the delay;
  - (b) any steps suggested by the Contractor to mitigate such consequences; and
  - (c) where the Contractor believes that the delay has been caused by or contributed to by the Purchaser, details of same.
- 6.15 Where the delay referred to in Condition 6.9 is caused or contributed to by the Contractor or the Contractor's sub-contractors, or agents:
  - (a) the Contractor shall not be entitled to any increase in the Order Price or damages, costs or expenses in connection with that delay;
  - (b) the Contractor shall engage with the Purchaser to determine the effect of the delay on the supply of the Deliverables and the way in which the Purchaser wishes to deal with the consequences of the delay;
  - (c) the notification provided pursuant to Condition 6.9 shall not release the Contractor from its obligation to supply the Deliverables by the agreed supply date or from any other obligation under the Purchaser Agreement, subject to Condition 28 (Force Majeure), unless the Purchaser consents to such delay in writing; and
  - (d) if the Contractor fails to supply the Ordered Deliverables by the agreed supply date, the relevant Purchaser may cancel the Order and shall only be liable to pay for the Deliverables supplied to the date of cancellation.
- 6.16 Where the delay referred to in Condition 6.9 is caused or contributed to in a material way by the Purchaser, the Contractor:
  - (a) shall engage with the Purchaser to determine the effect of the delay on the supply of the Deliverables and the way in which the Purchaser wishes to deal with the consequences of the delay;
  - (b) shall not be in breach of the Purchaser Agreement due to the delay;
  - (c) shall be entitled to an extension of time which is reasonable based on the Purchaser's contribution to causing the delay; and
  - (d) may provide details of any verifiable direct losses or expenses that cannot be mitigated (apportioned so as to take into account the Purchaser's contribution to the delay) which the Purchaser may at its sole discretion consider. The Contractor is required to attempt to mitigate its losses and expenses and will provide the Purchaser with such evidence as the Purchaser may require verifying the validity of its claim.
- 6.17 Where the parties are unable to agree on the causes of the delay, the cost implications or any other matter relating to a delay in the supply of the Deliverables, either party may refer the matter to dispute resolution pursuant to Condition 21.
- 6.18 Unless otherwise provided for in these Default Purchaser Conditions, the Contractor shall not be entitled to any extension of time for supply of the Deliverables except with the prior written consent of the Purchaser.

Order Price

- 6.19 Unless otherwise explicitly stated in writing, the Order Price is inclusive of all charges including expenses, insurance and all taxes (excluding GST which shall be itemised separately).

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6.20 The Contractor must not increase the Order Price without the Purchaser's prior written consent. The Purchaser has the right to refuse to give its consent.

(b) affect the Purchaser's rights to claim for any damage or loss the Purchaser may suffer because of the Contractor's breach of warranty or failure to fulfil any of the Contractor's other obligations under this Purchaser Agreement or the Local Buy Contract.

Order Notifications

6.21 The Contractor will provide the following notifications to the Purchaser:

6.32 The Purchaser may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Goods / Deliverables until the Authorised Officer has certified that the resupplied Deliverables are satisfactory.

- (a) receipt of an Order;
- (b) commencement date for the supply of the Deliverables;
- (c) completion date for the supply of the Deliverables; and
- (d) any other requests for notification as specified by the Purchaser in the Purchaser Agreement.

6.33 Unless otherwise agreed by the Contractor and Purchaser, should the Purchaser Order an item or request a service, either through lack of product knowledge or incorrect specifications, no penalty shall apply where the product is returned in its delivery condition with proof of purchase and a full refund shall be issued to the Purchaser.

Obligations of Contractor

6.22 The Contractor must do all things reasonably required by the relevant Purchaser to give effect to the Purchaser Agreement.

6.34 Where stock is unavailable for immediate delivery, an advice must be forwarded to the Purchaser advising that the stock is unavailable and an indicative subsequent delivery time given. The Purchaser then must have the option to cancel this component of the Order or agree to the subsequent delivery time.

6.23 The Contractor shall consult regularly during the term of the Purchaser Agreement with the Purchaser (through the Authorised Officer and the Contractor's representative).

6.24 Where a Purchaser sets out required key performance indicators in its RFQ, by submitting an RFQ response the Contractor is deemed to have accepted those KPIs and agreed to supply the Deliverables in accordance with those KPIs.

6.35 All Goods shall be packaged adequately to reasonably avoid damage and spillage.

6.25 Where the Purchaser sets out milestones for the supply of the Deliverables, the Contractor shall report against those milestones.

6.36 All Goods supplied must comply with all laws relevant to the manufacture, supply, delivery and/or disposal of those Goods.

Delivery, Inspection & Acceptance

6.26 All deliveries of the Goods must be signed for by an authorised officer of the relevant Purchaser.

6.37 The disposal or recycling of any item shall comply with all relevant laws and government guidance and attempt to minimise environmental impact.

6.27 Delivery and receipt of, or payment for, the Goods does not constitute acceptance that the Goods comply with the requirements of the Order or Purchase Agreement by the Purchaser.

6.38 If no sample or standard is stated in the Specification, RFQ or Order, the Goods must be of the highest standard and, in relation to Services, carried out promptly with all due skill, care and diligence.

6.28 The Purchaser will not be deemed to have accepted any Goods until the Purchaser has had a reasonable time to inspect the Goods after delivery. Payment for the Goods or the signing of delivery receipts before inspection does not constitute acceptance of the Goods.

6.39 Goods received damaged or incomplete upon delivery to the Purchaser will not be accepted under the Contract and the Contractors will be required to replace the items and arrange collection of the damaged items at their expense.

6.29 If upon inspection the Purchaser finds any Goods to be defective, the Purchaser may by notice to the Contractor within thirty (30) days (or such other longer period offered by the Purchaser, agreed between the parties or provided by the relevant Warranty Period) of inspection reject the defective Goods by returning them to the Contractor. At the Contractor's option, the Contractor agrees to:

6.40 Notwithstanding acceptance of any Goods, the Goods shall be guaranteed to comply with the relevant Purchase Order in all respects.

- (a) refund to the Purchaser any payments made by the Purchaser in respect of any defective Goods that the Purchaser rejects; or
- (b) replace any defective Goods that the Purchaser rejects.

6.41 Where it is a term of the Local Buy Contract or Purchaser Agreement that Goods must be installed or commissioned, the Purchaser shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed or commissioned within the period stipulated in the Local Buy Contract or Purchaser Agreement or, if no period is stipulated, within a reasonable period (but in no case to exceed thirty (30) days).

6.30 If the Goods are found to be defective more than thirty (30) days (or such other longer period offered by the Purchaser, agreed between the parties or provided by the relevant Warranty Period) after inspection, the relevant Warranty Period shall apply.

6.42 Where the Purchaser determines, acting reasonably, that any Services have not been supplied according to the requirements of the Purchaser Agreement, the Contractor shall, on receipt of written notice from the Purchaser setting out the defects in the Services supplied, either re-supply the defective services or reduce its fees accordingly. Where the parties cannot agree, either party may refer the matter to dispute resolution pursuant to Condition 21.

6.31 The Purchaser's inspection, testing or acceptance of some or all of the Goods does not in any way:

- (a) change or affect the Contractor's obligations under the Local Buy Contract or Purchaser Agreement; or

Title & Risk



**Part 5B - Default Purchasers Conditions of Contract (Works)**

- 6.43 The Contractor warrants that the Contractor has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to the Purchaser on that basis; and the Purchaser will be entitled to clear, complete and quiet possession of the Goods.
- 6.44 Risk in the Goods will pass to the Purchaser as and from the date that the Deliverables are received and signed for by the relevant Purchaser pursuant to Condition 6.21.
- 6.45 Title in the Goods (free of all encumbrances and interests) will pass to the Purchaser on payment.
- 6.46 The Contractor will promptly discharge any Personal Property Securities Register (PPSR) registration following payment by the Purchaser.
- 7. QUALITY OF THE DELIVERABLES**
- 7.1 The Contractor must document its compliance with its obligations under the Purchaser Agreement and where relevant use a Quality Assured System to assist in this compliance.
- 7.2 If so requested, the Contractor shall provide details of the Contractor's Quality Assured policies and procedures to the Purchaser.
- 7.3 Notwithstanding acceptance of any Deliverables, the Deliverables shall be guaranteed to comply in all respects with the Purchaser Agreement including but not limited to the Specification, Purchaser Requirements, Default Purchaser Conditions and accepted Order.
- 7.4 Unless the Specification, Purchaser Requirements, Order or Purchaser Agreement states otherwise, all Deliverables supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist any relevant ISO Standard shall apply.
- 8. ADDITIONAL TERMS & CONDITIONS**
- 8.1 A Purchaser will not be bound by any other terms or conditions of the Contractor, even if a Purchaser has signed an invoice or similar document which incorporates additional terms.
- 8.2 Where a Purchaser is bound by the Queensland Procurement Policy, it may request that the Contractor comply with the requirements of that policy.
- 9. CONTRACTOR'S PERSONNEL**
- 9.1 The Contractor must:
- (a) supply all personnel necessary for the proper supply of the Deliverables;
  - (b) engage and retain staff who are able to competently provide the Deliverables;
  - (c) supply only such personnel as have the skills, experience and qualifications to meet or exceed the Purchaser's requirements as set out in the Purchaser's RFQ and Order;
  - (d) ensure that the staff providing the Deliverables are legally entitled to work in Australia;
  - (e) ensure that the appropriate level of staff member undertakes the work; and
  - (f) ensure that all staff engaged in the supply of the Deliverables have all the skills, experience, licences, memberships and qualifications necessary to supply the Deliverables to a high standard.
- 9.2 The relevant Purchaser may request and the Contractor shall promptly provide, documentation supporting the Contractor's compliance with any of the requirements of Condition 9.1.
- 9.3 The relevant Purchaser shall be entitled to request a change to any of the staff supplying the Deliverables and the Contractor shall to the extent possible attempt to comply with that Purchaser's request.
- 9.4 Where the relevant Purchaser has concerns with the performance of the Contractor's representative that cannot be resolved, that Purchaser may raise those concerns with the officer nominated pursuant to Condition 29.6(a).
- 9.5 The relevant Purchaser shall be entitled at all times, acting reasonably, to refuse admission to the Purchaser's premises of any of the Contractor's staff.
- 9.6 Where the Contractor's staff attend at a Purchaser's premises, they must at all times comply with relevant workplace health and safety legislation, the relevant Purchaser's policies and procedures and any other requirements that the relevant Purchaser may reasonably place on the Contractor's personnel.
- 9.7 The Contractor is responsible for all remuneration payable to the Contractor's personnel and the Order Price must include wages and all relevant awards, statutory charges, workcover payments, superannuation, taxes and the like. The Contractor accepts full liability for and fully indemnifies the Purchaser and Local Buy for any shortfall or failure to correctly calculate or take into account these amounts.
- 9.8 Where Key Personnel have been nominated by the Contractor to provide the Deliverables under a Purchaser Agreement, the Contractor must ensure that the Deliverables under that Purchaser Agreement are performed by those nominated Key Personnel and that there is no substitution of such Key Personnel without the relevant Purchaser's prior written consent (except in circumstances where such Key Personnel resign, are on leave or are unable to work for health reasons).
- 9.9 The relevant Purchaser acting reasonably shall be entitled to request that any Key Personnel nominated by the Contractor be removed from providing the Deliverables under the relevant Purchaser Agreement.
- 9.10 Where there is a change to the Key Personnel pursuant to Condition 9.8 or 9.9, the Contractor shall promptly replace the Key Personnel with someone of similar seniority who is acceptable to the relevant Purchaser.
- 10. WARRANTIES & REPAIRS**
- 10.1 Unless otherwise covered by law or agreed between the parties, the Contractor's and/or manufacturer's standard warranty terms as approved by Local Buy (such approval not to be unreasonably withheld) shall apply to the Goods subject to the requirements of this Condition 10.
- 10.2 Unless otherwise agreed between the parties, requests for repair under warranty are to be handled by the Contractor so that there is only one point of contact required by the Purchaser to arrange warranty repairs.
- 10.3 The remedies provided in this Condition 10 do not exclude any other remedies provided by law.
- 10.4 Where Local Buy has not approved the Contractor's and/or manufacturer's standard warranty conditions pursuant to Condition 10.1, the following minimum warranty provisions shall apply to any Goods supplied by the Contractor:

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- 10.5 if, during the Warranty Period, the Purchaser finds any of the Goods to be defective ("Defective Goods"), the Contractor may, at its option:
- i. ask that the Defective Goods be returned to the Contractor and refund the Purchaser the Order Price; or
  - ii. repair the Defective Goods.
- 10.6 Any replacement Goods provided by the Contractor under this Condition 10 will be subject to the same warranty as the original Goods, from the date of replacement.
- 10.7 The remedies provided in this Condition 10 do not exclude any other remedies provided by law.
- 10.8 The entire Goods shall be warranted against all defects except those arising out of any negligent act or omission by the Purchaser, its servants or agents for a period of not less than twelve (12) months from the date of acceptance, plus any time the Goods are inoperative during that period due to failure.
- 10.9 Any portion of the Goods, except those parts supplied by the Purchaser, requiring replacement because of faulty workmanship, material or design within the Warranty Period shall be replaced at the Contractor's expense, to the satisfaction of the Purchaser. The Purchaser shall not enter into any discussion with sub-contractors regarding the failure of any parts of ancillary equipment.
- 10.10 All warranty services, repairs and modifications shall be carried out in the field unless otherwise agreed by the parties.
- 10.11 Warranty is not to be conditioned on services being carried out by particular servicing agents. Warranty shall remain valid provided services are carried out in accordance with manufacturer's instructions.
- 10.12 Notwithstanding acceptance of any Goods, the Goods shall be guaranteed to comply with the requirements of the Purchaser Agreement in all respects. The Contractor shall support claims made regarding performance with copies of properly documented test results from a recognised testing authority, if so required by a Purchaser.
- 10.13 If the Contractor does not affect repair within a thirty (30) day period post notification, the Purchaser may order the repair work to be carried out by others at the Contractor's expense. The cost of such work may be deducted from any monies due or which may become due to the Contractor under the Local Buy Contract. Before ordering repair work to be carried out by others, the Purchaser shall notify the Contractor in writing of his decision to have such work carried out and afford the Contractor five (5) working days to respond unless there is a genuine safety concern.
- 11. SUSPENSION, ACCELERATION AND VARIATION OF WORK**
- 11.1 The Authorised Officer may instruct the Contractor in writing (a 'Direction Notice') to accelerate, suspend or vary the supply of the Deliverables or any part of the Deliverables under the Purchaser Agreement.
- 11.2 Without limiting the generality of Condition 11.1, the relevant Purchaser may direct the Contractor to:
- (a) increase, decrease or omit any part of the Deliverables; or
  - (b) change the character or content of any part of the Deliverables; or
  - (c) change the direction or dimensions of any part of the Deliverables;
  - (d) accept a change to the Purchaser Agreement due to a change in law; or
  - (e) perform additional work.
- 11.3 The giving of a Direction Notice under Condition 11.1 does not invalidate the Purchaser Agreement.
- 11.4 If the Authorised Officer gives a Direction Notice requiring the Contractor to suspend or vary (by way of addition) the Deliverables or any part of the Deliverables, the Contractor shall be entitled to a reasonable extension of time.
- 11.5 Where the Direction Notice involves a change to the scope of the Deliverables, the parties may agree a variation of the Order Price or, failing agreement, submit the dispute for determination in accordance with Condition 21.
- 11.6 The Contractor must not commence work on any variation to the Deliverables unless and until the variation has been agreed in writing by both the Purchaser and the Contractor.
- 11.7 The relevant Purchaser may consider (but is not obliged to) a variation request relating to the supply of the Deliverables or Order Price submitted by the Contractor where it is accompanied by supporting evidence.
- 12. INSURANCE**
- 12.1 The Contractor must take out and keep current at its own expense insurance policies as required by Clause 8 and Item 5 of Schedule A of the Local Buy Contract along with any additional insurance required by the relevant Purchaser.
- 12.2 Where the Purchaser believes that specific circumstances warrant it, the Purchaser may require that the Contractor increase the level of its insurance cover to the sum nominated by the Purchaser. The requirement for any such increase shall be set out in the relevant RFQ and the Contractor shall be deemed to have agreed to the insurance level increase by submitting a conforming response to that RFQ.
- 12.3 The Contractor must give the Purchaser upon request a certificate of currency for each of the insurance policies it is required to maintain under Condition 12.1 and 12.2.
- 12.4 The Contractor must promptly notify the Purchaser of any cancellation or lapse of any policy of insurance required by Conditions 12.1 or 12.2 above.
- 12.5 If the Contractor fails to discharge an obligation under Conditions 12.1 or 12.2 or issues a notification pursuant to Condition 12.4 above the relevant Purchaser may suspend the supply of the Deliverables until such time as it is satisfied that the required insurance is in place or terminate the Purchaser Agreement.
- 12.6 The Contractor will within five Business Days of any claim arising, notify the Purchaser and keep the Purchaser informed of any claims arising from or relevant to the Deliverables which fall for consideration under any policy of insurance required by Condition 12.1 above.
- 12.7 Nothing in this Condition 12 limits the obligations, liabilities and responsibilities of the Contractor under the Purchaser Agreement.
- 12.8 The Contractor must ensure that at any time while they are engaged in supplying the Deliverables its sub-contractors and agents have in force such levels of insurance cover as may reasonably be expected to be held by a supplier carrying out Deliverables similar to the Deliverables.
- 13. INVOICING**
- 13.1 The Contractor shall submit invoices to the Authorised Officer once the Purchaser has had an opportunity to review and accept the Deliverables, unless otherwise agreed between the parties. The Purchaser will not have any obligation to pay the Contractor for Deliverables until the Authorised Officer has been given a correctly rendered invoice.

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- 13.2 A correctly rendered invoice must: as may be mutually agreed in writing between the parties) after receipt of the additional information.
- (a) identify the Deliverables the subject of the invoice; and
  - (b) specify the title of the Local Buy Contract; and
  - (c) specify the Contract number allocated to the Local Buy Contract and Order number, as well as any other number as the Purchaser may specify in writing to the Contractor for the purposes of the Local Buy Contract or Purchaser Agreement) (if any); and
  - (d) where Deliverables are charged on a time basis, be supported by records of time spent by individual persons on the Deliverables, verified by the Authorised Officer; and
  - (e) specify details of the Order; and
  - (f) specify details of the Order Price requested by the Purchaser; and
  - (g) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Order or the Specification; and
  - (h) specify the Australian Business Number of the Contractor; and
  - (i) specify the address for payment of the Contractor; and
  - (j) specify the date of supply of the Deliverables identified in the invoice; and
  - (k) specify the Contractor's invoice number and invoice date; and
  - (l) specify the Order Price payable by the Purchaser and particulars of any GST payable in respect of the Order Price; and
  - (m) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- 13.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.
- 13.4 The Purchaser shall be entitled to require that all invoices (including for work performed by the Contractor's sub-contractors and agents) be raised and issued directly by the Contractor.
- 13.5 Where a Purchaser accepts invoices from the Contractor's sub-contractors or agents, the Contractor shall ensure that those invoices comply with the requirements of this Condition 13.
- 14. PAYMENT**
- 14.1 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.
- 14.2 Subject to the Authorised Officer's certification that:
- (a) the Deliverables supplied by the Contractor comply with the Purchaser Agreement (including the Purchaser's Requirements); and
  - (b) the Deliverables (or agreed separable portion) supplied by the Contractor are complete; and
  - (c) the Contractor's invoice is in accordance with the Purchaser Agreement; and
  - (d) the Contractor has met any agreed milestones set in relation to the supply of the Deliverables,
- the Purchaser must pay the amount due to the Contractor within thirty (30) days of receipt of an invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, within seven (7) days (or such other period
- 14.3 If the Purchaser pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Purchaser may deduct any overpaid amount owed to the Purchaser from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Local Buy Contract, recover the amount from the Contractor as a debt due and payable to the Purchaser.
- 14.4 Payment of money to the Contractor does not constitute an admission by the Purchaser that Deliverables have been supplied in accordance with the Purchaser Agreement.
- 14.5 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Order Price unless otherwise provided in the Purchaser Agreement.
- 14.6 Unless otherwise agreed with the Contractor, the Purchaser shall be under no obligation to pay the Contractor's sub-contractors or agents individually.
- 14.7 The relevant Purchaser shall be entitled to set-off against the Contractor's invoice any sums which are payable by the Contractor to that Purchaser.
- 15. FINANCIAL VIABILITY**
- 15.1 The Contractor shall advise the Purchaser immediately if the Contractor's financial viability is compromised to the extent that the compromise could reasonably be considered to be a risk to the provision of Deliverables in accordance with the terms and conditions of the Purchaser Agreement.
- 15.2 Where a Purchaser requires a performance guarantee, financial security and/or liquidated damages to apply to the Purchaser Agreement, the Purchaser shall set out such requirements in its RFQ and where so set out, the Contractor shall be deemed to have agreed to such performance guarantee, financial security and/or liquidated damages provisions on the terms set out by the Purchaser by submitting an RFQ response.
- 16. SUPPLIER TRANSITION**
- 16.1 In the event that a Purchaser changes its supplier of Deliverables, and this change of suppliers involves the transfer of infrastructure or information to occur between the previous supplier and the new supplier, the Contractor shall do all things reasonably within its power to ensure the transition is efficient, orderly, prompt and timely. This applies whether the transition occurs from another supplier to the Contractor, or from the Contractor to another supplier under the Local Buy LGA Arrangement.
- 17. MARKETING AND PROMOTION**
- 17.1 No information relating to a Purchaser Agreement for the provision of any Deliverables under the Local Buy Contract may be published in any advertising medium without the prior written approval of the Purchaser. The written approval must clearly indicate the precise material to which the information is to be provided.
- 17.2 The Contractor may only use the Purchaser's logo in the Contractor's marketing strategy upon receipt of the Purchaser's written confirmation to do so. Such use of the Purchaser's logo shall be solely limited to the marketing of the Contractor's Deliverables as they apply to the Deliverables of the Local Buy Contract, and for the period of the Purchaser Agreement.
- 17.3 The Contractor must not issue any information, publication, document or article for publication in any

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media which includes details of the Deliverables under the Purchaser Agreement without the prior written approval of the Purchaser.

**18. BEST TERMS TO BE PROVIDED**

- 18.1 The price offered to a Purchaser by the Contractor in any RFQ response or other quotation under the Local Buy Contract shall not in any circumstances exceed the price set out in the Pricing Schedule unless a Purchaser has requested higher levels of insurance than those set out in Clause 8 of the Local Buy Contract.
- 18.2 Where a Purchaser requests from the Contractor a more favourable price, fee, term or condition than those specified in the Local Buy Contract, the Contractor may at its sole and absolute discretion, offer the Purchaser a more favourable price, fee, term or condition under the terms of the Local Buy Contract.
- 18.3 Where a Contractor offers a Purchaser a more favourable price, fee, margin, term, condition or discount than those specified in the Pricing Schedule, it will make the more favourable price, fee, margin, term, condition or discount available to all Purchasers entitled to the benefit of the Local Buy Contract (subject to the Purchaser orders being comparable).
- 18.4 The Contractor shall not offer a more favourable price, fee, margin, term, condition or discount under this Condition 18 outside of the terms and conditions of the Local Buy Contract to any Purchaser unless the Contractor is able to demonstrate to Local Buy that the Purchaser has undertaken a separate, legally valid procurement process.
- 18.5 The Contractor agrees that a failure to comply with this Condition 18 will entitle Local Buy to Suspend the Contractor in accordance with the terms and conditions of the Local Buy Contract.
- 18.6 Where the Contractor is found to have charged a Purchaser a rate higher than that set out in the Pricing Schedule, that Purchaser shall be entitled to a refund of the difference between the amount it was charged and the rate set out in the Pricing Schedule. The Contractor shall refund any such amount within fourteen (14) days of it being brought to the Contractor's attention.

**19. GOODS AND SERVICES TAX**

- 19.1 Words and phrases defined in the GST Act have the same meaning in this Condition 19 unless the context indicates otherwise.
- 19.2 The Order Price shall include the Purchaser's liability for GST on the supply of the Deliverables. The Purchaser is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Deliverables.
- 19.3 The Contractor must ensure that all invoices rendered to the Purchaser under the Purchaser Agreement are in a format that identifies any GST paid, and which permits the Purchaser to claim an input tax credit. However, this Condition 19.3 does not apply if the supply of the Deliverables is not a taxable supply.
- 19.4 Where the Contractor is not registered for GST and does not have an ABN, the Purchaser is entitled to withhold from any payment tax calculated and to be held in accordance with the Pay As You Go withholding system.
- 19.5 The Contractor indemnifies the Purchaser fully from any claims, damages, costs (including legal costs), losses and the like arising in any way from the Contractor's failure to comply with its obligations under the GST Act.

**20. TERMINATION**

- 20.1 A Purchaser may terminate its Purchaser Agreement on thirty (30) days' notice in writing to the Contractor.
- 20.2 Without prejudice to its rights at common law, the Purchaser may immediately terminate a Purchaser Agreement, by written notice to the Contractor (a Notice of Termination for Cause):
  - (a) where the Contractor makes (or has made – including as part of the RFQ process) any statement, fact, information, representation or provides material which is fraudulent, false, untrue, or incorrect in a way which adversely affects the Purchaser;
  - (b) where a finding is made by the Independent Commission Against Corruption, Australian Competition and Consumer Commission, any Court or similar public body against the Contractor including for corrupt conduct, bribery, collusive pricing, anti-competitive practices and any other similar conduct;
  - (c) where the Contractor commits a substantial breach of the Purchaser Agreement that is not capable of remedy;
  - (d) where the Contractor commits a substantial breach of the Purchaser Agreement in a manner that is capable of remedy and does not remedy the breach within seven (7) days of receiving a notice from the Purchaser requiring it to do so (Notice of Breach), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Purchaser may reasonably allow;
  - (e) where the Contractor is removed from the LGA Arrangement or has been Suspended from the Local Buy Contract for more than thirty (30) days;
  - (f) where the Contractor does anything to bring the Purchaser into disrepute;
  - (g) on the occurrence of an Insolvency Event; or
  - (h) as otherwise explicitly provided for in the Purchaser Agreement.
- 20.3 In addition, or as an alternative to termination of the Purchaser Agreement in accordance with Condition 20.2, the Purchaser may at its sole discretion, in circumstances which would otherwise entitle the Purchaser to terminate the Purchaser agreement in accordance with Condition 20.2:
  - (a) provide the Contractor with a notice (a "Rectification Notice") setting out the details of the Contractor's default and giving the Contractor a timeframe within which to rectify that default to the Purchaser's satisfaction; and/or
  - (b) let such contracts as the Purchaser decides are necessary to perform that part of the obligations of the Contractor under the Local Buy Contract as are yet to be performed or any of them; and/or
  - (c) suspend or cease all payments otherwise due to the Contractor.
- 20.4 Upon termination of the Purchaser Agreement pursuant to Condition 20.1 or 20.2, all money which has been paid and all money to be paid for Deliverables supplied to the date of termination will be in full and final satisfaction of all payment claims by the Contractor under the Purchaser Agreement.
- 20.5 Notwithstanding the termination or expiry of the Local Buy Contract, the terms and conditions of the Local Buy Contract shall continue to apply to the Purchaser Agreement until such time as the Purchaser Agreement is completed to the satisfaction of the Purchaser or is terminated.

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**21. DISPUTE RESOLUTION**

- 21.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Purchaser Agreement.
- 21.2 If a dispute arises between the parties regarding the Purchaser Agreement, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 21.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.
- 21.4 Within seven (7) days of the giving of the Dispute Notice (or such other timeframe as the parties may agree), the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 21.5 Where the dispute cannot be resolved by the panel pursuant to Condition 21.4, either party may refer the Dispute Notice to Local Buy for resolution.
- 21.6 Where a dispute is referred to Local Buy for resolution, Local Buy shall attempt to resolve the dispute in accordance with the Dispute Resolution provisions of the Local Buy Contract.
- 21.7 If the dispute has not been resolved within twenty-eight (28) days of the dispute being referred to Local Buy (or such other timeframe as the parties may agree), either party may commence legal action.
- 21.8 Nothing in this Condition 21 shall prejudice the right of a party to institute proceedings to enforce payment due under the Purchaser Agreement or to seek injunctive or urgent declaratory relief in respect of a dispute under this Condition 21 or any matter arising under the Purchaser Agreement.
- 21.9 The parties must continue to perform their obligations under this Purchaser Agreement despite the existence of a dispute.

**22. CONDITIONS TO SURVIVE EXPIRATION OR TERMINATION**

- 22.1 Conditions 1, 2, 4, 6.24, 6.25, 6.27, 8, 10, 12, 16, 19.5, 20.4, 20.5, 22 to 24, 26, 32 to 35, 37 (inclusive) and any provisions relating to warranties provided by the Contractor shall survive the expiry or termination of the Purchaser Agreement.

**23. INTELLECTUAL PROPERTY**

- 23.1 Subject to Condition 23.2 or unless otherwise agreed between the parties, a Purchaser Agreement does not affect ownership of any Intellectual Property Rights.
- 23.2 The intellectual property rights in any reports, advice, plans, designs and the like prepared by the Contractor for a Purchaser or data collected pursuant to a Purchaser Agreement shall vest in that Purchaser upon payment and the Contractor shall promptly undertake all actions that are necessary to ensure full and valid transfer of the intellectual property to the Purchaser.

Third Party Rights

- 23.3 The Contractor warrants that the supply of the Deliverables by the Contractor to the relevant Purchaser under the Purchaser Agreement will not infringe the Intellectual Property Rights of any third party.
- 23.4 Where it becomes apparent that a third party's intellectual property rights are infringed by the Deliverables supplied by the Contractor, the Contractor shall use its best

endeavours to provide a version of the Deliverables which excludes the infringing material. It shall be at the sole discretion of the Purchaser whether the Purchaser is willing to accept the modified version of the Deliverables.

**24. RELEASE AND INDEMNITY**

- 24.1 To the extent permitted by law, the Contractor indemnifies each Purchaser and their respective employees (collectively referred to as the "Purchaser Indemnified Parties") against, and must pay the Purchaser Indemnified Parties on demand, the amount of any damages, losses, claims, expenses (including reasonable legal costs) or liabilities which the Purchaser Indemnified Parties suffer or incur in respect of the wilful, wrongful, negligent or unlawful acts or omissions of the Contractor or the Contractor's personnel, agents or sub-contractors caused by or resulting in:
  - (a) loss of, or damage to, or loss of use of, any real or tangible personal property; or
  - (b) the personal injury, disease or illness (including mental illness) to, or death of, any person;
  - (c) any wilful misconduct, fraudulent, unlawful and/or negligent act or omission; and/or
  - (d) a failure to comply with a Purchaser's procurement obligations in respect to the engagement of sub-contractors for an entire project engagement as required by Clause 47 of the Local Buy Contract; and/or
  - (e) any infringement or alleged infringement of any third party Intellectual Property Rights in respect of the provision of the Deliverables or anything used or supplied by the Contractor in connection with the Deliverables.
- 24.2 The liability of the Contractor to indemnify the Purchaser Indemnified Parties will be reduced proportionally to the extent that an act or omission of the Purchaser Indemnified Parties contributed to the damage, expense, loss or liability.
- 24.3 A Purchaser and the Contractor may expressly agree in writing to agree to a liability cap level. In no case shall the Contractor's liability to a Purchaser in respect to a specific Purchaser Agreement be limited to less than three (3) times the total relevant Purchaser Agreement value and any attempt to cap liability to a lesser amount shall be void and unenforceable.
- 24.4 Any liability cap agreed pursuant to Condition 24.3 shall not apply to:
  - (a) liability for fraud or other criminal conduct; and/or
  - (b) liability for any unlawful act or omission; and/or
  - (c) liability in relation to personal injury or death; and/or
  - (d) liability in relation to damage to real or tangible property; and/or
  - (e) liability in relation to any breach of a party's obligations with respect to confidential or personal information; and/or
  - (f) liability in relation to any third party intellectual property claim; and/or
  - (g) liability for Wilful Misconduct.
- 24.5 Unless otherwise agreed in writing between the parties, neither the relevant Purchaser nor the Contractor shall be liable to the other (whether under contract, tort, statute or in equity) arising out of or in connection with this Contract, for any indirect or consequential loss including loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or cost of finance.
- 24.6 Any indemnity granted under this Contract is in addition to a Purchaser's rights under the Contract, legislation and/or

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common law and does not in any way restrict any Purchaser's right to take legal action.

**25. CONFLICTS OF INTEREST, COLLUSION & INCENTIVES**

- 25.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the Order Commencement Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Purchaser Agreement. If, during the term of the Purchaser Agreement, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Purchaser, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 25.2 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the term of the Purchaser Agreement, engage in any activity or obtain any interest, which is in conflict with providing the Deliverables to the Purchaser. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 25.3 Where the Purchaser receives notice of a conflict of interest or risk of such conflict pursuant to Condition 25.2, the Purchaser may at its sole discretion, suspend the supply of the Deliverables until such time as the conflict has been resolved to the Purchaser's satisfaction or terminate the Purchaser Agreement immediately.
- 25.4 The Contractor warrants that in responding to any RFQ issued by the Purchaser it has not colluded unlawfully with any competitor.
- 25.5 The Contractor must ensure that it and its staff, sub-contractors and agents do not offer or give to any of the Purchaser's members, officers, employees, sub-contractors, agents or their relations any commission, gift, inducement, incentive or reward that may be perceived to be intended to be for the purpose of influencing the Purchaser's actions in relation to the Purchaser Agreement.
- 25.6 Where the Contractor breaches this Condition 25, the relevant Purchaser shall be entitled to immediately terminate the Purchaser Agreement, report the Contractor's actions to the relevant authority (where necessary) and claim damages for breach of Contract.

**26. CONFIDENTIALITY**

- 26.1 The Contractor must, and must ensure that its employees, agents and approved sub-contractors, keep confidential any information obtained in the course of performing the Purchaser Agreement.
- 26.2 However, the Contractor may disclose any information:
  - (a) which it is legally required or entitled to disclose (but only to the extent of such required disclosure);
  - (b) to its professional advisers for the purposes of obtaining advice in relation to the Purchaser Agreement or any matter arising from the Purchaser Agreement;
  - (c) to Local Buy for the purposes of complying with its obligations under the Local Buy Contract; and
  - (d) to the extent necessary to perform its obligations under the Purchaser Agreement.
- 26.3 When the Purchaser Agreement comes to an end, the Contractor shall return to the relevant Purchaser all confidential information and destroy any copies held. Where the relevant Purchaser so agrees in writing, the Contractor may retain copies of confidential information for internal purposes subject to any terms and conditions placed on such retention by that Purchaser.

- 26.4 Where the Purchaser is a Queensland local government, the Contractor accepts and acknowledges that while acting under a Purchaser Agreement it is a "local government employee" for the purposes of sections 199 and 200 of the *Local Government Act 2009* and is fully aware (and has made its employees, sub-contractors and agents engaged in the supply of the Deliverables aware) of the restrictions and penalties imposed in relation to improper conduct and use of information.

**27. ASSIGNMENT AND SUB CONTRACTING**

- 27.1 The Contractor must not assign, novate or sub-contract, or allow any sub-contractor to subcontract, any of the rights or obligations of the Contractor under the Purchaser Agreement (either for the supply of the Deliverables or otherwise) without the Purchaser's prior written consent.
- 27.2 The Contractor remains liable to the Purchaser for the acts and omissions of its sub-contractors and agents as if they were the acts or omissions of the Contractor.

**28. FORCE MAJEURE**

- 28.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Purchaser Agreement (whether at common law or pursuant to the Purchaser Agreement) if that default is caused by a Force Majeure Event.
- 28.2 Without limitation, where the Force Majeure Event continues for a period of more than fourteen (14) days, the Purchaser may terminate the Purchaser Agreement by giving written notice to the Contractor.

**29. REPRESENTATIVES**

- 29.1 Each party shall, by giving written notice to the other, appoint a representative (for the Purchaser it is the "Authorised Officer") who shall be responsible for administering the Purchaser Agreement on behalf of that party.
- 29.2 A party may change the identity of its representative from time to time by written notice to the other. The appointment of a representative does not prevent a party from exercising any of its rights under the Purchaser Agreement.
- 29.3 Unless expressly delegated to do so, an Authorised Representative does not have the power to vary the terms and conditions of the Purchaser Agreement.
- 29.4 The Contractor's representatives must have a detailed knowledge of all activities associated with the supply and performance of the Deliverables and be authorised by the Contractor to make decisions and act on behalf of the Contractor.
- 29.5 The Contractor's representatives must:
  - (a) liaise with and report to the Authorised Officer;
  - (b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer;
  - (c) reply promptly to any correspondence from the Authorised Officer dealing with the Purchaser Agreement; and
  - (d) if required, provide written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.
- 29.6 The Contractor must also provide contract details for:
  - (a) a senior officer to whom the Contractor's representative reports; and
  - (b) a senior officer who is authorised to deal with and agree contractual matters (including variations of the Purchaser Agreement).

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**30. SECURITY AND ACCESS**

- 30.1 The Contractor must and must ensure that its employees, sub-contractors and agents, when accessing any premises or facilities of the Purchaser, comply with all reasonable directions, policies, procedures or the like as notified by the Purchaser or an Authorised Officer, including those relating to security and workplace health and safety which are in effect at the premises, site or facility.

**31. WORKPLACE HEALTH AND SAFETY**

- 31.1 The Contractor shall at all times comply with its obligations under the *Work Health and Safety Act 2011 (Qld)*, all workplace health and safety requirements of the relevant Purchaser (including directions from designated Purchaser staff) and hold all relevant licences and authorities (including where required a valid QBCC licence).
- 31.2 The Contractor agrees to notify as soon as practicable the relevant Purchaser's Authorised Officer of any incident or accident arising from the supply of the Deliverables including those involving the public.
- 31.3 The Contractor shall promptly provide the relevant Purchaser with evidence of its compliance with Condition 31 on request.
- 31.4 A Purchaser shall be entitled to supplement the workplace health and safety provisions set out in this Condition 31 with additional project specific terms and conditions issued as part of their RFQ. Where the Contractor responds to the RFQ and the Contractor's RFQ offer is accepted by a Purchaser, the Contractor shall be deemed to have accepted those additional workplace health and safety terms and conditions.

**32. INDUSTRIAL DISPUTES**

- 32.1 The Contractor must not involve the Purchaser in any industrial dispute arising between the Contractor and/or any employee, sub-contractor or agent of the Contractor.

**33. REPORTING – REQUESTED BY PURCHASER**

- 33.1 The Contractor shall promptly provide the Purchaser with such reports relating to the Deliverables as may be reasonably requested from time to time by the Purchaser (including such information as may be required by a Purchaser for Right to Information and public records legislation compliance purposes).

**34. RIGHT TO INFORMATION AND DISCLOSURE**

- 34.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 34.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 34.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 34.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information, this should be indicated by the Contractor. The Purchaser cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

- 34.5 The Contractor acknowledges and accepts that Purchasers may have an obligation to publish details of the contracts that they enter into including the value of the contract to the public and/or on a website(s). In particular:

- (a) Queensland local government Purchasers have an obligation pursuant to section 237 of the *Local Government Regulation 2012 (Qld)* to publish details of any contract entered into worth \$200,000 or more; and
- (b) State Government Purchasers have publication obligations under the Queensland Procurement Policy.

**35. INFORMATION PRIVACY**

- 35.1 Where the Contractor's Personnel, the Contractor or its sub-contractors have access to or are responsible for holding Personal Information, the Contractor must:

- (a) comply with parts 1 and 3 of chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
- (b) if applicable to a specific Purchaser, comply with parts 2 and 3 of chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
- (c) if applicable to a specific Purchaser, comply with the Privacy Act 1988 (Cth) as if the Contractor were the Principal; and
- (d) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
- (e) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
- (f) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
- (g) not transfer the Personal Information outside Australia without the consent of the Principal; and
- (h) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
- (i) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
- (j) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
- (k) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.

- 35.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this Condition 35 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

**36. CARE OF WORK**

- 36.1 From the date of commencement of the Works until the Date of Practical Completion, the Contractor will be responsible for the care of the Works.
- 36.2 The Contractor must:
- (a) liaise and collaborate with all persons performing work on the Site; and

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- (b) not damage any work on the Site being undertaken by persons other than the Contractor.
- 36.3 The Contractor must promptly give written notice to the Purchaser if the Contractor damages:
- (a) any of the Works; or
- (b) any property of the Contractor or any other person on the Site or any land or property (including private property) adjoining the Site.
- 36.4 If damage under Condition 36.3 occurs, the Contractor must, at the Contractor's expense, promptly repair and reinstate, as the case may be, the damaged Works or property.
- 36.5 The damage referred to in Condition 36.3 above shall include vandalism to the Works. The Contractor must have protection on-site to guard against damage/vandalism occurring during the construction period.
- 36.6 This Condition 36 does not apply to loss or damage caused by the negligence or other wrongful act or omission of the Purchaser or any officer, servant or agent of the Purchaser.
- 36.7 The Purchaser reserves the right to reject the use by the Contractor of any equipment which in the opinion of Purchaser's representative is not suitable and which by its use could cause damage to existing construction.
- 36.8 The Works are to be undertaken in a manner that minimises disruption to adjacent businesses and residents. In this regard, the Contractor is to consult with and negotiate a satisfactory agreement with each business and resident.
- 36.9 In addition, the Contractor is to provide a minimum of 48 hours written notice whenever access to businesses and residents needs to be restricted by the work. A copy of these notices is to be provided to the Purchaser.
- 37. DIRECTIONS**
- 37.1 The Purchaser or the Authorised Officer may give a Direction to the Contractor orally or in writing.
- 37.2 If a Direction is given orally, the person giving the Direction must promptly confirm the Direction in writing.
- 37.3 The Contractor and its employees must comply with any Direction within the time set out in the Direction or, if no time is stipulated, promptly after receipt of the Direction, unless otherwise specified in the Purchaser Agreement.
- 37.4 However, no Direction can alter or change the Contractor's fundamental rights under the Purchaser Agreement.
- 38. SITE**
- 38.1 The Purchaser must use reasonable endeavours to provide the Contractor with access to the Site:
- (a) from the Site Access Date; and
- (b) as is necessary to enable the Contractor to execute and complete the Works.
- 38.2 The Purchaser may defer the Site Access Date by giving written notice to the Contractor.
- 38.3 If the Purchaser defers the Site Access Date under Condition 38.2 for a specified period, the Date for Practical Completion must be deferred for the specified period.
- 38.4 If the Purchaser defers the Site Access Date by giving written notice under Condition 38.2:
- (a) the Contractor may claim a variation of the Order Price; and
- (b) the deferral of the Site Access Date under Condition 38.2 is not a breach of the Purchaser Agreement by the Purchaser.
- 38.5 If the Contractor claims a variation of the Order Price under Condition (a), the variation of the Order Price must be:
- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date; and
- (b) an amount mutually agreed between the Purchaser and the Contractor or, failing agreement, as determined in accordance with Condition 21 and the Order Price must be varied accordingly.
- 38.6 In any event, the Contractor must use its best endeavours to mitigate any loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date.
- 38.7 The Contractor may only access the Site so far as is necessary to enable the Contractor to execute and complete the Works.
- 38.8 The Contractor shall be deemed to have satisfied itself of and be responsible for the physical condition of the Site and in particular the suitability of the Site for the execution and completion of the Works.
- 38.9 The Contractor shall not be entitled to any extension of the Date for Practical Completion or any increase in the Order Price by reason, directly or indirectly, of the physical condition of the Site.
- 39. TIME**
- 39.1 The Contractor must substantially commence the execution of the Works at the Site within 14 days after the Site Access Date.
- 39.2 The Contractor must execute the Works in a manner and according to a program so that the Works reach Practical Completion on or before the Date for Practical Completion.
- 39.3 Each party must promptly give to the other written notice of any delay of or incidental to the execution of the Works.
- 39.4 If the Contractor determines that execution of the Works will be delayed by any act or omission of the Purchaser or any agent or employee of the Purchaser, other than an employee of the Contractor, the Contractor must give written notice to the Purchaser within 7 days after the delay occurs and provide details of the delay and its cause.
- 39.5 If the Contractor gives written notice to the Purchaser's Authorised Officer the Contractor shall be entitled to an extension of time for execution and completion of the Works (including the reaching of Practical Completion) as determined by the Authorised Officer acting reasonably.
- 39.6 In any event, the Contractor must take all reasonable steps to prevent and minimise delays.



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- 39.7 If the Authorised Officer determines that the Contractor is entitled to an extension of time for execution and completion of the Works, the Authorised Officer must give written notice to the Contractor evidencing the extension of time so determined by the Authorised Officer.
- 39.8 If the Authorised Officer does not give written notice to the Purchaser's Authorised Officer, the Contractor shall not be entitled to an extension of time for the delay claimed.
- 39.9 If the Authorised Officer gives the Contractor written notice of an extension of time, the Contractor may give written notice to the Purchaser of the Contractor's claim for a variation of the Order Price.
- 39.10 For the purposes of Condition 39.9 the variation of the Order Price must be:
- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the delay; and
  - (b) an amount mutually agreed between the Purchaser and the Contractor or, failing agreement, as determined in accordance with Condition 21 and the Order Price must be varied accordingly.

**40. COMPLETION**

- 40.1 The Contractor must execute the Works to the stage of Practical Completion to the satisfaction of the Authorised Officer on or before the Date for Practical Completion.
- 40.2 Promptly after receipt of a written request from the Contractor for the issue of a Certificate of Practical Completion, the Authorised Officer must inspect the Works and give to the Contractor:
- (a) a Certificate of Practical Completion evidencing the Date of Practical Completion; or
  - (b) written reasons for not doing so.
- 40.3 The Authorised Officer must not issue a Certificate of Practical Completion unless he/she is satisfied that Practical Completion of the Works has been reached.
- 40.4 The issue of the Certificate of Practical Completion under the Purchaser Agreement:
- (a) is not evidence that the Works has been executed satisfactorily; and
  - (b) does not release or discharge the Contractor from any present or prospective liability of the Contractor either under the Purchaser Agreement or otherwise.

**41. SUSPENSION, ACCELERATION AND VARIATION OF WORK**

- 41.1 The Authorised Officer may give a Direction to the Contractor requiring the Contractor to accelerate, suspend or vary the Works or any part of the Works under the Purchaser Agreement.
- 41.2 The giving of a Direction under Condition 41.1 does not invalidate the Purchaser Agreement.
- 41.3 If the Authorised Officer gives a Direction under Condition 41.1 requiring the Contractor to suspend or vary (by way of addition) the Works or any part of the Works, the Contractor shall be entitled to a reasonable extension of time for execution and completion of the Works (including the reaching of Practical Completion) as determined by the Authorised Officer acting reasonably.

- 41.4 Subject to clauses 41.5 and 41.6, if the Authorised Officer gives the Contractor a Direction under Condition 41.1, the Contractor shall be entitled to reasonable compensation for loss, damage or expense suffered by the Contractor resulting from compliance with the requirements of the Direction as mutually agreed between the Purchaser and the Contractor or, failing agreement, as determined in accordance with Condition 21 and the Order Price must be varied accordingly.
- 41.5 In any event the Contractor must take all reasonable steps to minimise any loss, damage or expense suffered by the Contractor.
- 41.6 The reasonable compensation provisions of Condition 41.4 shall not apply where the Contractor has itself requested the acceleration, suspension or variation to the supply of the Works or where the Direction to accelerate, suspend or vary the supply of the Works is based on the Purchaser's reasonably held belief that the Contractor has breached or is likely to breach any provision of the Local Buy Contract or the Purchaser Agreement.

**42. LIQUIDATED DAMAGES**

- 42.1 If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor must pay to the Purchaser the Liquidated Damages Amount (if any) for every day between the Date for Practical Completion and the Date of Practical Completion.
- 42.2 The parties agree that the liability of the Contractor calculated in accordance with Condition 42.1 is a genuine pre-estimate of liquidated damages suffered by the Purchaser and not a penalty.
- 42.3 The liability of the Contractor calculated in accordance with Condition 42.1 may be set off by the Purchaser against any monies owing by the Purchaser to the Contractor.

**43. MATERIALS AND WORKMANSHIP**

- 43.1 In the execution and completion of the Works under the Purchaser Agreement, all materials used and the standard of workmanship must comply with the requirements of the Purchaser Agreement. In the absence of such provisions, in the execution and completion of the Works under the Purchaser Agreement, the material or standard of workmanship, as the case may be, must be of a kind which is suitable for its purpose and consistent with the nature and character of the Works.
- 43.2 Unless stated otherwise in the Specification or the Purchaser Agreement:
- (a) all materials used in the execution and completion of the Works must be new; and
  - (b) all workmanship must be in accordance with the relevant manufacturer's recommendations or, if there are no relevant manufacturer's recommendations, the relevant Australian Standard where applicable.
- 43.3 The Contractor warrants that it has all the licences, memberships, approvals, registrations set out in the Local Buy Contract and Purchaser Agreement and/or necessary to carry out the Works (including where appropriate BSA registration). The Contractor shall immediately notify Local Buy and the Purchaser should any of its licences, memberships, approvals and/or registrations expire, lapse, be withdrawn or for any other reason no longer be current.

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**44. EXAMINATION AND TESTING**

- 44.1 The Authorised Officer may, at any time, give a Direction that any materials or workmanship executed or completed under the Purchaser Agreement by the Contractor be examined or tested.
- 44.2 The Contractor must provide all such assistance and samples and make accessible such parts of the Works under the Purchaser Agreement as may be required by the Authorised Officer.
- 44.3 If the Authorised Officer, acting reasonably, determines that any materials or workmanship do not comply with the requirements of the Purchaser Agreement, the Contractor must remedy the non-compliance within a period of time stipulated in writing in a Direction given by the Authorised Officer acting reasonably, failing which, the Purchaser may have such materials or workmanship remedied by persons other than the Contractor at the Contractor's expense. Alternatively, the Purchaser may accept the materials or workmanship and deduct any reduced value or additional costs from payments due to the Contractor or recover the reduced value or additional costs as a debt due and payable by the Contractor to the Purchaser.

**45. DEFECTS LIABILITY PERIOD**

- 45.1 The Defects Liability Period commences on the date on which the Authorised Officer gives a Certificate of Practical Completion to the Contractor under Condition 40 and expires at the end of the Defects Liability Period.
- 45.2 At any time during the Defects Liability Period, the Authorised Officer may give the Contractor a Direction requiring the Contractor to remedy any omission, defective workmanship or materials, damage, loss or injury of or incidental to the Works occasioned by faulty workmanship or materials.
- 45.3 The Contractor must, at the Contractor's expense, comply with the requirements of any Direction given to the Contractor under Condition 40.
- 45.4 If the Contractor does not comply with the requirements of a Direction given under Condition 45.2, the Purchaser may have the omission, defect, damage, loss, or injury or that part of the omission, defect, damage, loss or injury as remains outstanding remedied by other persons and the costs so incurred shall be a debt due and payable by the Contractor to the Purchaser which may be deducted from payments otherwise owing by the Purchaser to the Contractor under the Purchaser Agreement.

**46. CLEANING OF SITE**

- 46.1 At all times during the execution of the Works the Contractor must clear away and remove from the Site all surplus material and rubbish arising from the execution of the Works.
- 46.2 On completion of the Works, the Contractor must clear away and remove from the Site all constructional plant, surplus material, rubbish and temporary works of every kind and leave the whole of the Site and the Works in a clean and tidy condition.

**47. SECURITY (CASH DEPOSIT)**

- 47.1 The Contractor must deliver the Security Deposit (if any) to the Purchaser not later than 14 days after the Purchaser delivers the Order to the Contractor.
- 47.2 The Purchaser may apply the Security Deposit to:

- (a) remedy Contractor defaults under the Purchaser Agreement; and
  - (b) compensate the Purchaser for loss or expense resulting from Contractor defaults under the Purchaser Agreement.
- 47.3 The Purchaser must place the Security Deposit in a Security Account in the Purchaser's name with a Licensed Bank.
  - 47.4 The Security Account must be operable by persons nominated from time to time by the Purchaser.
  - 47.5 If the Contractor defaults under the Purchaser Agreement, the Purchaser may draw from the Security Account, without limiting or waiving an entitlement under the Purchaser Agreement:
    - (a) the money, including accrued interest (if any), owing by the Contractor (where the default is constituted by non-payment of money);
    - (b) the money the Purchaser has expended to remedy the default, rectify the damage resulting from the default and reimburse itself money otherwise lost or expended because of the default (where the default is failure to discharge a non-money obligation).
  - 47.6 The Purchaser must apply the money drawn from the Security Account under Condition 47.5, so far as the money will extend, to:
    - (a) discharging outstanding obligations of the Contractor under Purchaser Agreement; and
    - (b) doing anything else that the Purchaser reasonably considers necessary to mitigate the damaging effects of incomplete or improperly completed Works performed by the Contractor; and
    - (c) compensating itself for damages suffered as a result of the Contractor's breach of covenant.
  - 47.7 The Purchaser must ensure that the money in the Security Account is only withdrawn and applied in accordance with this Condition 47.
  - 47.8 Where the Purchaser lawfully withdraws and forfeits money from the Security Account, the Contractor must pay the Purchaser upon demand the lesser of:
    - (a) the amount withdrawn by the Purchaser; and
    - (b) the Security Deposit then required to be maintained pursuant to Condition 47.1.
  - 47.9 If:
    - (a) the Purchaser Agreement requires the Contractor to deliver a Security Deposit to the Purchaser; and
    - (b) the Purchaser Agreement does not require the Contractor to deliver a Bank Guarantee to the Purchaser under Condition 48; and
    - (c) the requirements of this Condition 47 are met,
 the Purchaser must give to the Contractor a cheque for the money in the Security Account in excess of 2.5% of the Order Price not later than 14 days after the date on which the Authorised Officer gives a Certificate of Practical Completion to the Contractor under Condition 40.
  - 47.10 Subject to Condition 47.9, if the requirements of this Condition 47 are met, the Purchaser must give to the Contractor a cheque for the balance of the money in the

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- Security Account not later than fourteen (14) days after the end of the Defects Liability Period.
- 47.11 The Contractor irrevocably appoints the Purchaser the Contractor's attorney, to execute whatever documents the Purchaser reasonably considers necessary or desirable to secure payment or retention of the Security Deposit.
- 47.12 Where the Contractor is a corporation, the documents the subject of Condition 47.11 include those necessary to secure registration, with the Australian Securities and Investments Commission, of particulars of the charge over the property of the Contractor (but limited to the cash comprising the Security Deposit) created by this Condition 47.
- 47.13 The Contractor must:
- (a) ratify whatever is done by the attorney appointed under Condition 47.11 in lawfully exercising the power of attorney; and
  - (b) reimburse the Purchaser upon demand whatever costs the attorney reasonably and properly incurs in lawfully exercising the power of attorney.
- 48. SECURITY (BANK GUARANTEE)**
- 48.1 The Contractor must deliver the Bank Guarantee (if any) to the Purchaser not later than 14 days after the Purchaser delivers the Order to the Contractor.
- 48.2 However, if the Bank Guarantee Amount is more than 2.5% of the Order Price, the Contractor must deliver to the Purchaser not later than 14 days after the Purchaser delivers the Letter of Acceptance to the Contractor:
- (a) One (1) Bank Guarantee for an amount equal to 2.5% of the Order Price; and
  - (b) One (1) Bank Guarantee for an amount equal to the difference between the Bank Guarantee Amount and 2.5% of the Order Price.
- 48.3 The Purchaser may apply the Bank Guarantee to:
- (a) remedy Contractor defaults under the Purchaser Agreement; and
  - (b) compensate the Purchaser for loss or expense resulting from Contractor defaults under the Purchaser Agreement.
- 48.4 If the Contractor defaults under the Purchaser Agreement, the Purchaser may demand from the Obligor under the Bank Guarantee:
- (a) the money, including accrued interest (if any), owing by the Contractor (where the default is constituted by non-payment of money);
  - (b) the money the Purchaser has expended to remedy the default, rectify the damage resulting from the default and reimburse itself money otherwise lost or expended because of the default (where the default is failure to discharge a non-money obligation).
- 48.5 The Purchaser may demand payment under the Bank Guarantee by delivering to the Obligor a notice, signed by the Purchaser or 1 or more of its Officers:
- (a) certifying that the sum specified in the notice is owing by the Contractor to the Purchaser under the Purchaser Agreement; and
  - (b) requesting payment of that sum without reference to the Contractor.
- 48.6 If the Purchaser receives payment upon a demand made under the Bank Guarantee, subject to Condition 48.2 the Contractor must deliver to the Purchaser, in exchange for the Bank Guarantee under which the payment was made, a new Bank Guarantee securing payment of the whole of the Bank Guarantee Amount.
- 48.7 The Purchaser may exercise its entitlements under this Condition 48 against either or both of the Contractor and the Obligor.
- 48.8 The Purchaser must apply the money received from the Obligor in response to a notice under Condition 48.5, so far as the money will extend, to:
- (a) discharging outstanding obligations of the Contractor under Purchaser Agreement; and
  - (b) doing anything else that the Purchaser reasonably considers necessary to mitigate the damaging effects of incomplete or improperly completed Works performed by the Contractor; and
  - (c) compensating itself for damages suffered as a result of the Contractor's breach of covenant.
- 48.9 If money received from the Obligor in response to a notice under Condition 48.5 is insufficient to permit full discharge of the outstanding Contractor obligation/s, the Purchaser may:
- (a) discharge the obligation/s to the extent the money received from the Obligor permits; or
  - (b) discharge fully the outstanding obligations, and recover from the Contractor as a liquidated debt the difference between the money actually expended by the Purchaser and the money received from the Obligor.
- 48.10 If Condition 48.2 does not apply and the requirements of this Condition 48 are met, the Purchaser must return to the Contractor the Bank Guarantee identified in Condition 48.1 not later than 14 days after the end of the Defects Liability Period.
- 48.11 If:
- (a) Condition 48.2 applies; and
  - (b) the Purchaser Agreement does not require the Contractor to deliver a Security Deposit to the Purchaser under Condition 47; and
  - (c) the requirements of this Condition 48 are met,
- the Purchaser must return to the Contractor the Bank Guarantee identified in Condition (b) not later than 14 days after the date on which the Authorised Officer gives a Certificate of Practical Completion to the Contractor under Condition 40.
- 48.12 Subject to Condition 48.11, if the requirements of this Condition 48 are met, the Purchaser must return to the Contractor the Bank Guarantee identified in Condition (a) not later than fourteen (14) days after the end of the Defects Liability Period.
- 49. PROGRESS PAYMENT**
- 49.1 Subject to Condition 20, from each reference date under the Purchaser Agreement, the Contractor is entitled to a progress payment if the Contractor has undertaken to carry out construction work, or supply related goods and services, under the Purchaser Agreement.
- 49.2 The amount of the progress payment to which the Contractor is entitled under Condition 49.1 is the amount

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calculated on the basis of the value of the construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the Contractor under the Purchaser Agreement.

49.3 The Purchaser and the Contractor must value:

- (a) construction work carried out or undertaken to be carried out under the Purchaser Agreement; and
- (b) related goods and services supplied or undertaken to be supplied under the Purchaser Agreement,

in accordance with section 14 of the *Building and Construction Industry Payments Act 2004*.

49.4 A progress payment under the Purchaser Agreement becomes payable 14 days after a payment claim for the progress payment is made under Condition 49.5.

49.5 If the Contractor claims to be entitled to a progress payment, the Contractor may serve a payment claim on the Purchaser. The payment claim must:

- (a) state the information mentioned in section 17(2) of the *Building and Construction Industry Payments Act 2004*; and
- (b) be served within the period stated in section 17(4) of the *Building and Construction Industry Payments Act 2004*.

49.6 If the Purchaser is served with a payment claim, the Purchaser may:

- (a) reply to the payment claim by serving a payment schedule on the Contractor in accordance with section 18 of the *Building and Construction Industry Payments Act 2004* (and pay the scheduled amount on or before the due date); or
- (b) pay the whole of the progress payment identified in the payment claim to the Contractor on or before the due date for the progress payment.

49.7 If the Purchaser has served a payment schedule on the Contractor under Condition 49.6(a), the Purchaser may serve a later payment schedule on the Contractor to correct an error or mistake in the earlier payment schedule.

49.8 For the purposes of the calculation of progress payments under the Purchaser Agreement, the Purchaser and the Contractor must take into account the deduction of:

- (a) retention monies (if any); and
- (b) any amount which the Purchaser is or may be entitled to deduct under the Purchaser Agreement; and
- (c) any amount which is due and payable by the Contractor to the Purchaser under the Purchaser Agreement or any other contract entered into between the Purchaser and the Contractor.

49.9 If the total of the monies to be deducted under Condition 49.8 exceeds the liability of the Purchaser to the Contractor, the Purchaser may have recourse to any Security Deposit or Bank Guarantee held by the Purchaser under the Purchaser Agreement.

49.10 The payment of monies by the Purchaser to the Contractor under this Condition 49 is not:

- (a) evidence of the value of the construction work carried out or undertaken to be carried out under the Purchaser Agreement; or

- (b) evidence of the value of the related goods and services supplied or undertaken to be supplied under the Purchaser Agreement; or

- (c) an admission of liability of the Purchaser; or

- (d) evidence that the Works has been executed or executed and completed to the satisfaction of the Purchaser.

49.11 For the purposes of this Condition 49:

- (a) the expressions "construction contract", "construction work", "due date", "progress payment" and "related goods and services" have the meaning given in the *Building and Construction Industry Payments Act 2004*; and

- (b) "reference date" means the last day of the month in which the construction work was first carried out, or the related goods and services were first supplied, under the Purchaser Agreement and the last day of each subsequent month.

**50. SET OFF**

50.1 The Purchaser may deduct from moneys due to the Contractor under the Purchaser Agreement or on any other account, any moneys due from the Contractor to the Purchaser under the Purchaser Agreement or on any other account, and if those moneys are insufficient, the Purchaser may have recourse to any Security Deposit or Bank Guarantee held by the Purchaser under the Purchaser Agreement. Nothing in this Condition 50 shall affect the right of the Purchaser to recover from the Contractor any moneys due from the Contractor to the Purchaser or any balance that remains owing after the deduction of moneys due from the Contractor to the Purchaser.

**51. PORTABLE LONG SERVICE LEAVE**

51.1 In this Condition 51, the expressions "approved form", "authority", "building and construction work" and "levy" have the meaning given in the Building and Construction Industry (Portable Long Service Leave) Act 1991 ("the BCI (PLSL) Act") unless the context indicates otherwise.

51.2 If building and construction work is carried out under the Purchaser Agreement:

- (a) an approved form will be filed by the Purchaser with the authority or its agent; and

- (b) the Purchaser will pay the authority or its agent the amount of levy at or before the time for its payment,

in accordance with the requirements of Part 8 of the *BCI (PLSL) Act*.

**52. DISTURBANCE**

52.1 The Site may be occupied during the currency of the Purchaser Agreement. The Contractor must ensure minimal inconvenience and disturbance to the occupants of the Site.

**53. WORK NOT INCLUDED**

53.1 The Purchaser Agreement may exclude certain work from the Works which is to be carried out concurrently (or otherwise) by others.

53.2 Where any work is excluded pursuant to clause 53.1 by the Purchaser, the Contractor shall co-operate in good faith with any other contractor(s).

**Part 5B - Default Purchasers Conditions of Contract (Works)**

**54. DOCUMENTS GENERALLY, DRAWINGS AND SPECIFICATION**

- 54.1 Where the Contractor requires copies of documents in addition to its entitlement as allocated by the Purchaser, such additional copies of the documents will be available to the Contractor at the charge current at the time of request.
- 54.2 The drawings comprise the detail drawings (including drawing numbers and titles) set out in the Purchaser Agreement and any additional drawings supplied to the Contractor during the progress of the Works.

**55. ENVIRONMENTAL PROTECTION**

- 55.1 The Contractor must, at all times, take adequate measures to control noise on the Site.
- 55.2 The Contractor must comply with all statutory requirements relating to the control of noise levels on the Site and take all necessary precautions to minimise nuisance from noise and vibration and ensure that all subcontractors observe similar care.
- 55.3 The Contractor must arrange its operations and provide silencing equipment to its plant, at its own expense, to whatever extent is necessary to satisfy the applicable statutory requirements in relation to the sound level arising from the Contractor's operations near the boundaries of the Site.
- 55.4 The Contractor must at all times:
  - (a) comply with the requirements imposed by the Authorised Officer relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other statutory requirements applicable to the Site; and
  - (b) comply with all statutes, regulations and local laws relating to the protection of the environment; and
  - (c) obtain the prior written approval of the Authorised Officer for the formation of any temporary roads, the erection of temporary structures or any Site clearing not specifically documented; and
  - (d) ensure that no trees or shrubs are removed or destroyed without the prior written approval of the Authorised Officer; and
  - (e) ensure that no fire is lit without the prior written approval of the Authorised Officer; and
  - (f) store flammable or explosive products in accordance with the relevant statutes and to the approval of the Authorised Officer.
- 55.5 The Contractor must take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the Works under the Purchaser Agreement.
- 55.6 The Contractor must prevent any nuisance occurring through the discharge of dust dirt, water, fumes and the like onto persons or property.
- 55.7 All debris, spoil, rubbish and materials must be suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage or contamination of adjoining and other areas or property.

- 55.8 The Contractor must maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas.
- 55.9 All Site refuse (including foodstuffs) must be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Authorised Officer.

**56. CONTRACTOR'S REPRESENTATIVE**

- 56.1 The Contractor's representative must have sufficient command of the English language and of Australian construction and technical terminology, to be able to read, converse and receive instructions in English.

**57. EXISTING IMPROVEMENTS**

- 57.1 Where, within the Site, there are a range of existing improvements, roads, drainage and other services, the Contractor must protect and maintain the same throughout the execution of the Works under the Purchaser Agreement.
- 57.2 The Contractor must implement traffic control measures so as to maintain all roads on the Site in a safe trafficable condition.

**58. WORKMENS' AMENITIES**

- 58.1 The Contractor must provide all statutory and necessary amenities and sanitary facilities for workmen and other persons lawfully upon the Site and remove them on Practical Completion of the Works.
- 58.2 Occupation of any part of the Works and Site for the provision of workmens' amenities shall not be permitted without the prior written approval of the Authorised Officer.

**59. TRADE NAMES**

- 59.1 Where a trade name, brand or catalogue number is referred to in the Purchaser Agreement, the Contractor may substitute equivalent material or equipment provided that in the opinion of the Authorised Officer the characteristics of type, quality, finish, appearance, method of construction and performance are not less than that specified, and are approved by the Authorised Officer.
- 59.2 The approval of the Authorised Officer must not be anticipated because the Authorised Officer has given a similar approval previously.

**60. SAFETY MANAGEMENT PLAN**

- 60.1 The Contractor must, throughout the execution of the Works, implement and maintain a "Safety Management Plan".
- 60.2 The Contractor must prepare the Safety Management Plan in conjunction with a person suitably experienced and qualified in safety matters.
- 60.3 Prior to the commencement of the Works, the Contractor must supply to the Authorised Officer in writing, its Safety Management Plan.

**61. INDUCTION TRAINING**

- 61.1 Employees of the Contractor and its subcontractors and employees of subcontractors must not commence work on the Site until they have been inducted.
- 61.2 Upon commencement of work on the Site, the Contractor must further induct each employee with regard to all significant hazards associated with their particular activity and area of employment on the Site and, where relevant,

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must include the use of powered plant, tools and equipment.

**62. PRE-JOB PLANNING**

62.1 Where legislation or codes of practice identify particularly hazardous activities including but not limited to work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights, the Contractor must supply to the Authorised Officer a Safe Works Procedure ("SWP") prior to commencing such activity or type of work on the Site.

62.2 The Contractor must induct its employees and its subcontractors and employees of its subcontractors with regard to the SWP and must prepare "Training Session Attendance" sheets signed by each attendee verifying that such induction has occurred.

**63. SITE AND PUBLIC SECURITY**

63.1 Notwithstanding the Contractors' obligations to Site and public security as stated elsewhere in this Purchaser Agreement, the Contractor must monitor and control wherever practical, the access of all persons to the Site.

63.2 The Contractor, employees of the Contractor and its subcontractors and employees of sub-contractors must ensure that no persons, including without limitation friends and relatives (particularly children) of employees and the representatives of organisations unrelated to the Contractor, enter the Site without the express permission of the Contractor.

**64. OCCUPIED SITES**

64.1 In the event of the Site being a partially occupied Site, the Contractor must liaise with the occupier regarding safety and health requirements.

64.2 The Authorised Officer will arrange a safety co-ordination meeting between the occupiers and the Contractor. The occupiers will provide to the Contractor their occupation requirements on and/or adjacent to the Site to assist the Contractor in the development of a Site specific Safety Management Plan addressing the Contractors and occupiers operational interface requirements. The Safety Management Plan must incorporate the Contractor's own operations and interface with the occupiers' operations.

64.3 The Contractor shall be responsible for the implementation of the safety and health standards on the occupied Site for the duration of the Purchaser Agreement and must co-ordinate and integrate the Works.

**65. MATERIALS TO BE SUPPLIED BY THE PURCHASER**

65.1 The materials stated in the Specification to be supplied by the Purchaser will be supplied free of charge to the Contractor for use only in the execution of the Works under the Purchaser Agreement. The Contractor shall take delivery of the materials under the conditions set out in the Purchaser Agreement.

**66. SERVICES INSTALLATION & PROTECTION OF UTILITIES**

66.1 The mechanical, electrical, plumbing, and similar service installations, equipment and their associated services must be installed in an order that will ensure that they are located as shown on the drawings and that all essential components and parts are accessible for the purposes of maintenance and replacement.

66.2 The Contractor shall be responsible for co-ordination between the various service installers in attaining the required locations and tolerances.

66.3 Before commencing work, the Contractor shall ascertain the location of underground services likely to be affected by its operations using the Dial Before You Dig service ([www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)) and from the relevant authorities. The Contractor must notify the relevant authority immediately its operations cause (or are reasonably likely to cause) any damage to the particular service.

66.4 The Contractor shall meet the cost of damage to public utilities.

66.5 Where public utility services such as Telstra conduits are above excavation level, the Contractor shall notify the Purchaser's representative immediately and the Contractor shall arrange for the alteration of such services.

66.6 The Contractor in carrying out the Works shall co-operate at all times with the various services authorities.

66.7 The Contractor shall notify the Authorised Officer as soon as the Works are sufficiently complete for service authorities to inspect and/or commence alteration where necessary.

**67. WORKING DAYS AND HOURS**

67.1 Working days and hours shall be taken as Monday to Friday inclusive between the hours of 7.00 a.m. and 6.00 p.m. (excluding public holidays). These shall be the "Standard Days and Hours" for the purposes of the Purchaser Agreement. No work shall occur on Christmas Day, Boxing Day, New Year's Day or Good Friday.

67.2 Unless provided for elsewhere in the Purchaser Agreement or approved by the Authorised Officer no Works shall be executed outside of the Standard Days and Hours except in emergent circumstances or where a particular construction activity dictates that Works is necessary outside the Standard Days and Hours. Where Works is executed outside of the Standard Days and Hours by reason of necessity, the Contractor must obtain the written approval of the Authorised Officer prior to executing the Works.

67.3 The Authorised Officer may approve the execution of Works outside the Standard Days and Hours if he considers that it will not cause undue interference, disturbance or other nuisance to residents in the vicinity of the Site.

67.4 The Purchaser may recover all costs properly incurred by the Purchaser in respect of providing any necessary supervision of construction operations undertaken outside the Standard Days and Hours as a debt due from the Contractor. However, no such cost shall be recoverable from the Contractor where:

- (a) working outside the Standard Days and Hours is specifically provided for elsewhere in the Purchaser Agreement; or
- (b) working outside the Standard Days and Hours (for the relevant Works) has been approved by the Authorised Officer prior to commencement of the relevant Works; or
- (c) the relevant Works is of an emergent nature, for safety of the public or protection of the Works, resulting from an event beyond the control of the Contractor.

**Part 5B - Default Purchasers Conditions of Contract (Works)**

**68. SCHEDULE OF WARRANTIES**

68.1 The Contractor must obtain and ensure that the Purchaser will have the benefit of all warranties specified in the Purchaser Agreement.

**69. BRANDS OF MATERIAL SCHEDULES**

69.1 The Contractor must, within 14 days of the Order Commencement Date, notify the Authorised Officer of the brand or make of materials it intends to use for which the Contractor has a choice of brand or make and which can affect the colour selections such as paint, fabrics, vinyl sheets and tiles, ceramic tiles, laminated plastics and like materials.

69.2 The Contractor must not depart from the brands or makes nominated in its advice to the Authorised Officer unless authorised by the Authorised Officer so to do.

69.3 If the Contractor fails to notify the Authorised Officer within the specified time of the brand or make of materials he intends to use, the Authorised Officer may nominate the brand or make of materials to be used and the Contractor must then use the brand or make nominated by the Authorised Officer and must add no claim for any extra costs incurred.

**70. ADVERTISEMENTS AND PROMOTIONS ON SITE**

70.1 The Contractor may erect on the Site, or permit to be erected on the Site, only those signs:

- (a) required by law; or
- (b) specified in the Purchaser Agreement.

70.2 The Contractor must not erect on the Site, or permit to be erected on the Site, any other sign, advertisement, promotion or other display without the prior written approval of the Authorised Officer.

**71. TRAFFIC MANAGEMENT**

71.1 Unless otherwise set out in the Purchaser Agreement or agreed with the Purchaser, a site specific Traffic and Pedestrian Management Plan must be submitted within two weeks of acceptance of an Order (or such other timeframe as may be agreed in writing with the relevant Purchaser) and at least one week prior to commencement of the Works. This plan shall comply with the Manual of Uniform Traffic Control Devices and be appropriate to the location and usage requirements. The Contractor shall make such provision that the traffic flow will be interfered with as little as possible during the progress of the Works and that pedestrian safety is maintained at all times.

71.2 Any changes to the Traffic and Pedestrian Management Plan must be approved by the Purchaser.

71.3 The Contractor shall provide and maintain all necessary warning signs and lights as specified in Part 3 of the Manual of Uniform Traffic Control Devices (Qld), or amendments and addenda thereto. Should any such sign and/or lights become inadequate in the opinion of the relevant Purchaser, that Purchaser will have the right to replace and/or add to those signs and/or lights placed by the Contractor, and the costs thus incurred shall be deducted by the Purchaser from monies due, or which may become due to the Contractor.

71.4 The Contractor is to arrange for any necessary permits.

**72. INSPECTION OF THE WORKS**

72.1 The Purchaser shall be entitled to carry out inspections of the Works from time to time.

72.2 Any defects, non-compliances or breaches noted at an inspection pursuant to Condition 72.1 are to be rectified by the Contractor within 14 Business Days. The Contractor is to notify the Purchaser immediately after the defects have been rectified. Notwithstanding, if the defects are deemed unsafe defects are to be made safe and rectified immediately.

**73. PURCHASER AGREEMENT VARIATIONS**

73.1 No agreement or understanding that varies or amends the Purchaser Agreement will bind either party unless and until agreed to in writing by the relevant Purchaser and the Contractor.

73.2 Variations to the Default Purchaser Conditions shall not be valid until forty eight (48) working hours after being submitted to Local Buy's Category Manager in writing (including by email).

73.3 All variations that take away from a Purchaser's rights and benefits under the Default Purchaser Conditions or which materially vary from the Request for Tender documentation issues to establish this LGA Arrangement shall be deemed to be rejected by the relevant Purchaser and are void and invalid.

**74. MISCELLANEOUS**

74.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Deliverables.

74.2 The parties to the Purchaser Agreement are independent contractors and nothing in the Purchaser Agreement will appoint the Contractor as an agent or employee of the Purchaser.

74.3 The Contractor (including its employees, sub-contractors and agents) must not represent itself or allow itself to be represented as being an employee or agent of the Purchaser.

74.4 None of the conditions of the Purchaser Agreement will be waived or deemed waived, except by notice in writing signed by the party waiving the right.

74.5 The Purchaser Agreement is governed by and construed in accordance with the laws of the Australian State in which the Purchaser is based, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals there from.

74.6 The Purchaser Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Purchaser Agreement.