



# **Conditions: Tendering and Contract Supply of Goods Period Contract**

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# 1 Conditions of Tendering

## 1.1 General

Unless the contrary intention is indicated this RFT is to be interpreted in the same manner and words have the same meaning as in the Conditions of Contract.

In these Conditions of Tendering the following definitions apply:

**'Addendum'** means any document expressly stated to be an Addendum, which is issued by the Principal varying some provision in the original RFT prior to the stated closing time and date.

**'RFT'** means the request for tender inviting offers and includes all annexures, schedules, drawings, attachments and addenda.

**'Tender'** means all documents lodged by the Tenderer in response to the RFT.

**'Tenderer'** means the person lodging a Tender in response to the RFT.

## 1.2 Lodgement of Tenders

For the Tender to be considered, the Tenderer shall complete and submit one copy of the documents listed in the section of the Annexure to the Conditions of Tendering and Contract titled "Documents to be Lodged" (ie. all Response Schedules):

- a) in English;
- b) in the form required; and
- c) to be fully received by the stated time and date for closing of the Tender.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may be declared ineligible for consideration.

Oral Tenders or Tenders submitted electronically (other than via the Quotations and Tenders Online eLodgement Service or by facsimile), shall be declared ineligible for consideration.

The Principal will not be liable for any expense or loss, which may be incurred by any Tenderer in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

### 1.2.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of the RFT.

### 1.2.2 Lodged by Hand

Tenders delivered by hand (including by a commercial courier service) are **not permitted**. Any Tender submitted by hand or commercial courier service shall be declared ineligible for consideration.

### 1.2.3 Lodged by Post

Tenders sent by prepaid post must be directed to the postal address stated on the cover of the RFT.

### 1.2.4 Lodged by Facsimile

Tenders sent by facsimile must be directed to the facsimile number stated on the cover of the RFT.

### 1.2.5 Lodged by Electronic Lodgement

Where electronic lodgement has been allowed, Tenders sent by electronic lodgement must be:

- a) submitted using the eLodgement button via the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT; and
- b) in the electronic format as specified (ie .arf, .doc, .docx, .jpg, .pdf, .rtf, .tif, .txt, .xlsx, .xls, .zip).

Tenders lodged in an unspecified electronic format will be invalid and declared ineligible for consideration.

Where selected Tenders have been sought and access to the RFT is provided from a link contained in the covering email sent inviting the submission of an offer, Tenders must be submitted electronically using the same link.

The Tender may be admitted for consideration on the basis that the transmission of the Tender is acknowledged by the Tenderer as being the true and legal version and is completed, submitted and acknowledged by the stated time and date for closing of Tenders.

In choosing to use the eLodgement option, Tenderers agree to comply with the conditions of use, of the Quotations and Tenders Online eLodgement Service.

If, for any reason, the electronic Tender (except pricing schedule[s]) submitted becomes corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. a hard copy or a further electronic copy of the Tender must be provided by the Tenderer on request from the Principal. Pricing schedule(s) submitted electronically that become corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. will result in the Tender being declared ineligible for consideration.

### 1.2.6 Late Tenders

Tenders received (in full or part) after the stated time and date for closing of Tenders are ineligible for consideration.

Notwithstanding the preceding paragraph Tenderers may appeal such decisions however:

- a) Tenders submitted by prepaid post received after the stated time and date for closing of Tenders may be considered only if it can be established to the satisfaction of the Procurement Review Board that the Tender was posted or despatched before the stated time and date for closing of Tenders and in the ordinary course of business would not have been received late. Impressions of company owned franking machines are not acceptable evidence of timely posting or despatch.
- b) Tenders submitted via the Quotations and Tenders Online eLodgement Service may be considered only if it can be established to the satisfaction of the Procurement Review Board that they were submitted before the stated time and date for closing of Tenders, as evidenced in the acknowledgment of receipt from the NT Government Tender Lodgement host server.
- c) The Procurement Review Board may, but is not obliged to, consider Tenders that appear to its satisfaction to have been submitted prior to the stated time and date for closing of Tenders where those Tenders were not received before the stated time and date for closing of Tenders because of a fault or failure of Quotations and Tenders Online eLodgement Service.
- d) Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

### 1.3 Tenderers to Inform Themselves

Tenderers at their own expense, shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to supply of the Goods, an inspection of the Site if applicable, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Procurement Framework including the NT Procurement Code is available from the web address:

[www.dob.nt.gov.au/business/tenders-contracts/legislative\\_framework/Pages/default.aspx](http://www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/Pages/default.aspx)

### 1.4 Compliance with NT Procurement Code

- a) In preparing its Tender, submitting its Tender and throughout the tendering period and process the Tenderer shall comply with the Northern Territory Procurement Code ('Code').
- b) A copy of the Code is available at the web address specified in the clause entitled "Tenderers to Inform Themselves".
- c) If the Principal:
  - i. has evidence that the Tenderer has not complied with the Code; or
  - ii. is of the reasonable opinion that the Tenderer has not complied with the Code,

the Principal may, at its absolute discretion, deem the Tender submitted by the Tenderer to be ineligible for consideration.

### 1.5 Enquiries

Should the Tenderer

- a) have any doubts as to the meaning of any part of the RFT; or
- b) find any discrepancy or error; or
- c) find any omission in the RFT (for example all pages are not numbered consecutively and that all drawings, attachments or supplements referred to are not included, etc.);

the Tenderer shall seek clarification in writing (which may be by means of electronic transmission) from the person specified in the Annexure, as early as possible but in any event before the stated time and date for closing of Tenders.

Where attachments or supplements have been referred to in any section of the RFT these should be read in conjunction with the section to which they refer.

Any clarification given pursuant to this clause may also be issued to all other prospective Tenderers. No explanation or amendment to the RFT shall be recognised unless in the form of a written addendum issued by the Principal.

It is the sole responsibility of Tenderers to ensure that their contact details held by Quotations and Tenders Online Service are correct and up-to-date in order for them to receive any written addendum issued by the Principal.

Any Tenderer who believes the RFT to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing to [CAPSAssist@nt.gov.au](mailto:CAPSAssist@nt.gov.au) as early as possible, but in any event before the stated time and date for closing of Tenders.

### 1.6 Site Inspection

Arrangements for a Site Inspection are as stated in the Annexure.

**Applicable If Specified In Annexure – Anytime**

Prior to submitting a Tender it is recommended the Tenderer inspect the Site.

**Applicable If Specified In Annexure – By Arrangement – Not Mandatory**

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site. Inspection of the Site is **not mandatory**. However permission to visit the Site must be first obtained by contacting the person nominated in the Annexure.

**Applicable If Specified In Annexure – Set Time – Not Mandatory**

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site. Inspection of the Site is **not mandatory**.

The Site inspection will be held at the location, date and time specified in the Annexure. Any additional information provided at the Site Inspection will be distributed to Tenderers by issue of an addendum.

Any subsequent Site Inspections will be solely at the Principal's discretion and, where subsequent Site Inspections are organised, Tenderers will be advised and invited to attend by issue of an addendum.

**Applicable If Specified In Annexure – Set Time – Mandatory**

Prior to submitting a Tender, the Tenderer **must attend a Mandatory Site Inspection**. The Site Inspection shall be held at the location, date and time specified in the Annexure.

**All prospective Tenderers must attend the Mandatory Site Inspection regardless of any previous knowledge or familiarity with the Site.** Subsequent or alternative inspections for individual Tenderers will not be permitted. Any additional information provided at the Mandatory Site Inspection will be distributed to Tenderers by issue of an addendum.

In addition to attending the Mandatory Site Inspection the Tenderer is required to lodge the Schedule of Attendance at the Mandatory Site Inspection (**'Schedule'**) (which is included in the Response Schedules) with its Tender. The completed Schedule must contain a record of the name of the Tenderer's authorised representatives/s who attended the Mandatory Site Inspection.

A Tenderer may authorise a third party to attend the Mandatory Site Inspection as its authorised representative, however, it remains the responsibility of the Tenderer to have the Schedule of Attendance at the Mandatory Site Inspection completed and attendance on its behalf noted in the Principal's record of attendees at the Mandatory Site Inspection.

Failure to attend the Mandatory Site Inspection will result in the Tenderer's Tender being declared ineligible for consideration.

Failure to lodge the signed Schedule where attendance at the Site Inspection is expressed as mandatory will result in the Tenderer's Tender being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.



## 1.7 Signing of Documents

The Tenderer shall sign its Tender as indicated below.

- a) In the case of a corporation:
  - i. with its common seal, and the fixing of the seal witnessed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - ii. without its common seal, if signed by:
    - two (2) directors of the company; or
    - a director and a company secretary of the company; or
    - for a proprietary company that has a sole director who is also the sole company secretary – that director; or
  - iii. by signature of two (2) persons (other than the persons described in clause [ii]) authorised by the corporation to bind it in contract. In such circumstances a copy of the authorisation duly executed by the corporation in accordance with clause (i) or (ii) must be submitted with the Tender.
- b) In the case of a firm (including a firm trading under a business or trading name and a partnership):
  - i. by signature of each proprietor of the firm; or
  - ii. in the case of firms having more than five (5) proprietors, by signature of the proprietors authorised to bind the firm in contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal; or
  - iii. any proprietor who is a corporation must sign the Tender in the manner indicated in paragraph (a) above.

Where the Tenderer is lodging its Tender via the Quotation and Tenders Online eLodgement Service, there is no requirement to complete the "signature" block on the Declaration by Tenderer form.

Where the Tender is from a:

- a) person or persons, full given names are to be provided; or
- b) firm or business or trading name, full given names of each member of the firm are to be provided; or
- c) company, the full name and registered address are to be provided.

Each Tender shall contain the Tenderer's unique business identifier required by law (eg ACN/ARBN/ABN) and an address for service of any notices necessary or required to be or which may be served on or given to the Tenderer in connection with its Tender and any subsequent contract arising out of acceptance of the Tender.

## 1.8 Tender Validity

Tenders shall remain valid for the period stated in the Annexure. If a Tender is not formal in accordance with these Conditions of Tendering, the Tender validity period shall commence from the date on which the Tender is formalised to the satisfaction of the Principal. A Tenderer may withdraw its Tender at any time after the expiration of the tender validity period, but shall not withdraw its Tender prior to the expiration of such period unless such withdrawal is accepted by or on behalf of the Principal.

## 1.9 Alternative Tenders

Tenderers may submit alternative Tenders where the Annexure states that alternative Tenders are allowed. Where the Annexure specifies that an alternative Tender must be accompanied by a conforming Tender, a conforming Tender must be submitted with the alternative Tender.

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

## 1.10 Part Offer and Part Acceptance

Unless otherwise stated in the Annexure, Tenderers may tender for a portion or for all of the Goods.

Where part offers are allowed, the Principal reserves the right to accept a portion or all of any Tender at the price or prices tendered unless the Tenderer specifically states to the contrary in its offer.

## 1.11 Taxes, Duties and Fees etc.

The Tenderer shall ensure that the Tender is inclusive of all taxes fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

## 1.12 Pricing

All prices shall be stated in Australian dollars and where applicable be inclusive of GST. Unless otherwise indicated prices shall allow for labour, materials, transport, freight, overheads, profits and all other costs applicable.

Any Schedule of Rates, which is included in the Response Schedules shall be completed and lodged with the Tender. Unless otherwise required pricing shall be submitted for each item in the Schedule against which a price is offered. Any Tender in which the Schedule is not fully completed as required may result in the Tender being declared ineligible for consideration.

Unless otherwise stated, any quantities given in the RFT are not guaranteed as to the amount of Goods to be ordered under the Contract, but shall be used for Tender assessment purposes only. The Principal will only be liable for the acceptance, subject to Contract, of the quantities ordered.

## 1.13 Competitive Neutrality

Government owned businesses, Local, Territory, State and Federal Government agencies and authorities responding to public tenders must submit two prices against each item in the pricing schedule provided. One price is to be the tendered price offered and the other being the adjusted competitively neutral price. The competitively neutral price is to be prepared in accordance with the “Northern Territory Government Competitive Tendering Guidelines”. A copy of the Guidelines is available from the place of issue of the RFT documents or from the following web address: [www.dob.nt.gov.au/business/tenders-contracts/legislative\\_framework/tendering-contract/Pages/competitive-neutrality.aspx](http://www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/tendering-contract/Pages/competitive-neutrality.aspx)

### **1.14 Panel Period Contract**

If so stated in the Annexure, the Principal will establish Panel Period Contracts for the Goods specified in the RFT. The Contracts will be for either:

- a) specific requirements at fixed unit Rates; and/or
- b) for a general scope of requirements without any unit Rates, and for which firm offers will be periodically sought from the Panel Contractors.

For practical reasons the Principal reserves the right to fix the size of the panel to a limited number of Contractors who best meet the selection criteria.

The Panel Period Contracts will be administered in accordance with the provisions of the sub-clause titled "Panel Period Contract" of the Conditions of Contract.

### **1.15 Common Use Contract**

If so stated in the Annexure, the Principal will establish a common use contract for the Goods specified in the RFT.

If the Contract is designated common use, it is expected that all Agencies will utilise the Contract for the provision of Goods of the nature and type specified in the Contract.

If the Contract is not designated common use, Agencies (other than the Agency(s) nominated) are not bound to use the Contract but may utilise the Contract subject to agreement with the Contractor.

### **1.16 Local Development**

The NT Government is committed to supporting businesses that use local contractors and suppliers and hire and train Territorians. Assessment will take into consideration businesses that demonstrate a commitment to employing Territorians including Indigenous Territorians, accredited training of their employees and sourcing goods and services from local businesses.

Tenderers must include in the Response Schedules provided and submit with its Tender, details of sub-contractors/suppliers to be used (where applicable) Indigenous employees and all employees undertaking accredited training.

Employees listed as undertaking accredited training through an apprenticeship or trainee pathway will only be recognised as being compliant for Tender purposes if:

- a) a signed contract of training for the apprentice or trainee is currently with the Australian Apprenticeships NT Office; or
- b) the apprentice or trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Business; or
- c) the training being undertaken is a recognised accredited training course.

Further information on NT Government Policy on the use of apprentices or trainees on Government Contracts and accredited training programs can be obtained from:

Training Operations Unit,  
Department of Business  
11th Floor, Mitchell Centre  
55 – 59 Mitchell Street  
Darwin NT 0800  
Telephone: (08) 8935 7707  
Facsimile: (08) 8901 1326

email: [govtcontracts@nt.gov.au](mailto:govtcontracts@nt.gov.au)

Or

GPO Box 3200  
Darwin NT 0801

Further information regarding the employment of apprentices or trainees can be obtained from:

Australian Apprenticeships NT,  
6 Searcy Street  
Darwin NT 0800  
Telephone: 1300 137 130 or (08) 8935 8200  
email: [Darwin@aacnt.com.au](mailto:Darwin@aacnt.com.au)

Or

GPO Box 3049  
Darwin NT 0801

Or

19 Hartley Street  
Alice Springs NT 0870  
Telephone: (08) 8953 3311

## 1.17 Industry Participation Plan

Where stated in the Annexure that an Industry Participation Plan is required, Tenderers **must submit** an Industry Participation Plan Proposal for the Goods to be provided. Failure to submit an Industry Participation Plan Proposal with the Tender will result in the Tender being declared ineligible for consideration.

Information on Building Northern Territory Industry Participation and an information guide about Industry Participation Plans are included with the RFT.

Further information and assistance in relation to Industry Participation Plans is available from:

Department of Business  
Development House, 76 The Esplanade  
Darwin NT 0800  
Telephone: (08) 8999 5201  
Facsimile: (08) 8999 5106  
email: [industry participation@nt.gov.au](mailto:industry participation@nt.gov.au)

Or

GPO Box 3200  
Darwin NT 0801

## 1.18 Change to the Conditions of Contract

### 1.18.1 Conditions of Tendering

Tenderers **are not permitted** to request changes or propose alternatives to the Conditions of Tendering applicable to the RFT. Any Tenderer who attempts to do so will have their Tender declared ineligible for consideration.

### **1.18.2 Conditions of Contract**

Tenderers may request changes to the Conditions of Contract applicable to the RFT, or propose alternative Conditions of Contract **only** if stated in the Annexure that this is allowed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions, they must clearly specify in the appropriate section of the Response Schedules the changes to the Conditions that are being requested or the alternative Conditions that are being proposed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions of Contract, they do so at their own risk, as the changes will be deemed to have formed part of their offer and their Tender will be assessed on that basis. If the requested changes or the alternative Conditions included in a Tender are not acceptable to the Principal, the Tender will not be successful.

If the RFT states that the changes to the Conditions of Contract or alternative Conditions are not allowed, then Tenderers may not request changes to the Condition of Contract applicable to the RFT, or propose alternative Conditions of Contract. If a Tenderer does so, its Tender will be declared ineligible for consideration.

Nothing in this clause affects the Principal's right to negotiate with one or more tenderers as provided for in this RFT.

### **1.19 Impartiality of Requirements**

If an item is specified as being similar or equivalent to a particular brand in the Scope of Requirement this is to set an acceptable standard only and no preference is given to that brand.

Any Goods offered must be at least of the same standard and potential as specified in the Scope of Requirement, or as is inherent in the equivalent brand. The Principal may accept Goods of higher standard than specified if the Goods offer better value-for-money outcomes.

### **1.20 Samples and Literature for Assessment**

Tenderers may submit with their Tender specifications and/or brochures to enable full assessment of the product offered.

To assist in product evaluation the Principal may call on the Tenderer to provide samples of the Goods offered.

Samples shall be forwarded to the address, and within the time, specified in writing by the Principal at the Tenderer's risk and expense. Failure to provide samples may result in the Tender being declared ineligible for further consideration.

The Principal shall be entitled to test the sample to ensure compliance with the supply requirements. Where specified, samples may be tested to destruction at the Tenderer's expense unless agreed otherwise in writing.

If requested in writing by the Tenderer, samples will be returned to the Tenderer at their risk and expense.

### **1.21 Treatment of Low or Aberrant Prices**

Where a Tender price (or a key element of a Tender price) is considered well below the median price and/or the projects estimated value, the Tenderer, as a part of the assessment process, may be requested to confirm the tendered price and/or respond to questions regarding particular aspects of the Tender. The Tenderer may also be asked to provide written confirmation that the

scope of requirement and contractual obligations are fully understood. Where the price submitted is confirmed the Principal will, at its discretion, either:

- a) proceed with the evaluation of the Tender; or
- b) where there is evidence that acceptance of the Tender may pose a substantial risk to the provision of the Goods and the sustainability of the Tenderer, give consideration to passing over that Tender.

## 1.22 Disclosure of Weightings

The assessment criteria and percentage weightings applicable to the RFT are detailed in the Annexure.

Although Tender assessment criterion may include sub-criteria percentage weightings shall only be published as a cumulative percentage against the tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given percentage weightings, the weightings applying to the sub-criteria shall not be disclosed or published.

The clause titled "Tender Assessment Criteria" in the Conditions of Tendering provides examples of the types of consideration that may form part of each criterion if not stated as sub-criteria.

The Principal reserves the right to apply percentage weightings to each criterion in its total discretion, having regard to the required outcomes of the Tender.

## 1.23 Tender Assessment Criteria

Tender responses will be scored against the assessment criteria. Selection of the successful Tenderer will be based on a best value for money assessment of Tenders against the Tender Assessment Criteria as requested in the specific Response Schedules.

The elements under each criterion are offered for the purpose of providing Tenderers examples of the types of consideration that may form part of each criterion. These elements as stated under each criterion are not to be considered exclusive to any specific Tender.

- a) Past Performance:
  - i. Performance history including experience in proving similar Goods and extent to which previous undertakings were achieved.
  - ii. Product quality and support.
  - iii. Extent of supervision of the Contractor required.
  - iv. Previous disputes and claims history.
  - v. References.
  - vi. Safe and fair workplace record.
- b) Timeliness:
  - i. Delivery time offered ie how soon the Goods are available OR compliance with timeframe specified.
  - ii. Length or vulnerabilities to the completion timeframe.
- c) Capacity:
  - i. Ability to supply the Goods (eg. physical and technical capacity).
  - ii. Number, details and value of Contracts in progress.
  - iii. Legal action pending.
  - iv. Financial capacity (including current credit rating).
  - v. Risk.
- d) Local Development and Value Adding:
  - i. Enhancement of industry and business capability in the Northern Territory.
  - ii. Improved capacity and quality in supply and/or service response.

- iii. Accredited training programs currently supported by the Tenderer and/or will be supported or utilised in providing this requirement.
  - iv. Proposed level of usage of apprentices and/or trainees that will be supported or utilised in providing this requirement.
  - v. Proposed number of jobs for Territorians that will be supported or utilised in providing this requirement.
  - vi. Proposed number of jobs for Indigenous Territorians that will be supported or utilised in providing this requirement.
  - vii. Proposed level of involvement of local Indigenous enterprise.
  - viii. Any regional development opportunities.
  - ix. Any Northern Territory research and development proposals being undertaken or proposed by the Tenderer.
  - x. Building Northern Territory Industry Participation Plans (where applicable).
- e) Innovation:
- i. New technology.
  - ii. Alternative solution.
- f) Scope Specific Criteria:
- i. Scope Specific Criteria are those criteria that are considered relevant to the nature of the Supplies being procured. Scope Specific Criteria could include, but are not limited to, any one or more of the following: environmental issues or requirements, technical requirements (ie compatibility with existing equipment/reliability), and specific experience and expertise applicable to the Goods required.
- g) Price:
- i. Upfront costs; or
  - ii. Through-life costs, eg:
    - Cost and potential for upgrade.
    - Cost of ongoing training of Agency staff, operating and or maintaining the Goods over a specific time.
    - Cost and life of any extended warranties.
  - iii. Any other factors that would impact on costs to the Government.

Tenderers should provide all relevant factors addressing the selection criteria specified in the Response Schedules, which may assist the Principal in making an assessment of the Tender.

The Principal, at its sole discretion, reserves the right to apply weightings to each criterion, having regard to requirements contained in the NT Government Procurement Framework.

## 1.24 Clarification and Additional Information

The Tenderer may be called upon to clarify information contained in their Tender or to supply information additional to that provided in their Tender to demonstrate to the satisfaction of the Principal that the Tenderer has the ability to supply in accordance with the requirements of the RFT.

The Tenderer shall within the time specified comply with any such requests. Failure to submit any or all of the information required, in the time stipulated, may result in the Tender being declared ineligible for further consideration.

## 1.25 Negotiations

- a) The Principal may engage in detailed discussions and negotiations with one or more Respondents.
- b) Without limiting sub-clause 1.25a) the selection of Respondents under this clause does not bind the Principal to a contractual relationship and is not a representation that a contract will be entered into between the Principal and the Respondent.

- c) The selection of a preferred Respondent is subject to the successful conclusion of negotiations. The result of any negotiations will be incorporated into the final Contract.
- d) If the parties fail to complete satisfactory negotiations, the Principal may, at its sole discretion, terminate negotiations with that Respondent and commence negotiation with another Respondent or to terminate this Quotation Process or to exercise any other right reserved to the Principal under law or elsewhere in this RFT.

### 1.26 Performance Report

The Tenderer will, if awarded the Contract, agree to the preparation and use of the Performance Report in the manner set out in the Conditions of Contract.

### 1.27 Privacy Notice

The Principal is collecting the information on the Response Schedules to determine eligibility to contract with the Principal. This is required by Procurement Regulation 6(7)(h). The Principal may give some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in the Tender being declared ineligible for consideration.

Personal information provided in the Response Schedules can be accessed by the Tenderer on request. Any queries should be directed to the Officer stated in the Annexure as the contact point.

### 1.28 Notification of Acceptance

The Principal shall not be bound to accept the lowest or any Tender.

The Notice of Acceptance of the Tender shall constitute a binding contract between the Principal and the successful Tenderer (hereinafter called the '**Contractor**'). The Notice of Acceptance will, at the Principal's discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender.

If a Notice of Acceptance has not been given there shall be no agreement between the Principal and the Tenderer and the Tenderer shall not act on any representations or statements made by the Principal or its employees or agents prior to the issue of the Notice of Acceptance.

### 1.29 Debriefing Tenderers

Tenderers may request a debriefing as to the specific reasons why their Tender was unsuccessful. This is for the purpose of assisting Tenderers to improve their competitiveness for future Tenders.

Information will be confined to discussion of the Tenderer's Tender and under no circumstances will information relating to another Tender be disclosed.



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## 2 Conditions of Contract

### 2.1 Interpretation of Terms

In these Conditions of Contract, unless the context otherwise requires:

**'Agency'** means a department, agency or statutory authority of the Northern Territory of Australia.

**'Annexure'** means the section in the RFT detailing the specific requirements applicable to the Conditions of Tendering and Contract.

**'Business Day'** means any day which is not a Saturday, Sunday or a NT wide public holiday within the meaning of the *Public Holidays Act*.

**'Business Hours'** means from 8.00am to 5.00pm on a Business Day at the place where the Goods are to be provided.

**'Completion'** means the Principal has determined that the supply of the particular Goods has been completed.

**'Common Use Contract'** means a Standing Offer arrangement for the provision of Goods to all Agencies.

**'Contract'** means the document that constitutes or evidences or, as the case may be all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor concerning supply of the Goods.

**'Contractor'** means the legal entity that, as party to the Contract is bound to supply the Goods in accordance with the Contract and includes the successors and lawful assigns of the Contractor.

**'Contractor's Tender'** means the Tender submitted by the Contractor in response to the RFT.

**'Date of Acceptance'** means the date, which appears on the Notice of Acceptance or Official Order and if no date appears is the date on which the Principal sent the Notice of Acceptance accepting the Contractor's Tender.

**'Goods'** means the items described and quantified, in the Scope of Requirement, Schedule of Prices, Notice of Acceptance or Official Order, which are to be provided by the Contractor in accordance with the Contract, including all variations provided for by the Contract.

**'Indigenous Person'** is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as Indigenous and is accepted in the community in which they live as an Indigenous person.

**'Intellectual Property'** includes all copyright and neighbouring rights, and all rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**'Notice of Acceptance'** means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of its Tender to supply the Goods under the Contract.

**'Official Order'** means an order issued on the Contractor, whether on paper or by electronic means, which conveys the essential details of a particular Goods requirement under the Contract and includes any methods of ordering the Goods specifically referred to in the Contract.

**'Ordering Officer'** means any person within the Agency authorised to order Goods under the Contract.

**'Panel Period Contract'** means Standing Offer arrangements have been entered into with more than one Contractor for the supply of Goods of the same type and nature.

**'Principal'** means the Northern Territory of Australia. The Principal for Power and Water Contracts is the Power and Water Corporation.

**'Principal's Representative'** means the person nominated by the Principal or other person from time to time appointed in writing by the Principal to be the Principal's Representative for the purposes of the Contract.

**'Rate'** means the rate (price) per unit of the Goods stated in the Contract or Official Order.

**'Request for Tender (RFT)'** means the document(s) containing or referring to the Conditions of Tendering and Contract, the Annexure, Special Conditions of Contract (if any), Northern Territory Procurement Code, Scope of Requirement, Response Schedules and any other document issued for the purposes of inviting Tenders for the supply of Goods.

**'Schedule of Rates'** means any schedule included in the Contract, which shows the respective unit rate of payment for supply of the Goods.

**'Scope of Requirement'** means the statement set out in the Contract or the Official Order specifying and describing the Goods to be provided.

**'Standing Offer'** means the Contractor agrees to provide the Goods from time to time if and when authorised by the Principal by the issue of an Official Order. The Contractor agrees that the Principal is not obliged to order a specific number of, or any, Goods during the term of the Contract.

**'sub-contractor'** means a person other than the Contractor's employees, engaged by the Contractor who provides goods or services to the Contractor.

**'Tax Invoice'** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

**'Warranty Period'** means the period identified in the Contract or Official Order for the particular Goods.

In the Contract, unless the contrary intention appears:

- a) headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
- b) the singular includes the plural and vice-versa;
- c) a reference to one gender includes the other;
- d) a reference to a person includes a natural person, a body politic, body corporate, a partnership, joint venture, incorporated association, government, local government authority or agency;
- e) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract;
- f) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;

- g) a reference to time is to Australian Central Standard Time;
- h) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- i) a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- j) a reference to a "measurement" means Australian legal units of measurement unless otherwise specified;
- k) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of the Notice of Acceptance and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- l) the word 'includes' in any form is not a word of limitation;
- m) a reference to a clause includes a reference to a subclause of that clause; and
- n) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure.

## 2.2 Formation of the Contract

The Contract between the Principal and the Contractor shall comprise:

- a) these Conditions of Contract and any Special Conditions;
- b) the Notice of Acceptance;
- c) the RFT;
- d) the Contractor's Tender response; and
- e) any other document expressly referred to in items (a) to (c) of this clause as forming part of the contract (together the Contract).

If there is any inconsistency between any part of the Contract, a descending order of precedence shall be accorded to the:

- a) Special Conditions (if any);
- b) these Conditions of Contract;
- c) Annexure to the Conditions of Tendering and Contract;
- d) Notice of Acceptance;
- e) Scope of Requirement;
- f) Drawings included in the RFT (if any);
- g) any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract;
- h) Conditions of Tendering and all other documents, other than those specified above in (a) to (f) inclusive, forming the RFT or the Contract (other than the Contractor's Tender); and
- i) the Contractor's Tender response including any drawings;

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

## 2.3 Nature of Contract

### 2.3.1 Type of Contract

The type of Contract is a standing offer arrangement.

### **2.3.2 Basis of Payment**

The Contractor shall be paid on a Schedule of Rates basis. The sum payable shall be calculated by multiplying the unit Rate for the particular Goods by the number of units delivered and accepted in accordance with the Contract.

### **2.3.3 Period of Contract**

The Contract is a Period Contract. The initial period of the Contract is the period stated in the Annexure. The Contract shall commence in accordance with the nomination in the Annexure, being either a specific date or the Date of Acceptance.

### **2.3.4 Contract Extension**

The Principal has the right to extend the Contract for any further period(s) as stated in the Annexure. There is no obligation on the Principal to extend the Contract.

An extension to the Contract is not valid until the Principal gives the Contractor the opportunity to submit revised rates and the Principal agrees to any revised rates and notifies the Contractor in writing that the Contract is extended.

### **2.3.5 Estimated Requirements**

The estimated quantities required are shown in the Schedule of Rates in the Response Schedules. Although every endeavour has been made to form an accurate estimate of requirements during the period of the Contract, the Principal does not bind itself to take the quantities stated, but reserves the right to order greater or lesser of the quantities according to requirements during that time.

If in the opinion of the Principal, specific requirements of the Agency are outside the scope and intent of the Contract, the Principal shall be free to obtain the requirements or any part of them by other means.

### **2.3.6 Price Adjustment**

The basis of price adjustment if any, to the Contract Unit Rates shall be as stated in the Annexure.

If the Contract allows a review of the Contract unit Rates during the Contract period the Contractor shall submit to the Principal for approval, a written application for price adjustment in accordance with the formula below. The application shall include adequate information to substantiate the adjustment in unit Rates.

It is the intention that revised Rates shall reflect the Contractor's current costs based on relevant cost adjustment indices or other industry factors and shall not provide for increases in profit margin.

Price adjustment shall take effect at either the date allowed for in the Contract or the Contractor's application date, whichever is the latter. There shall be no retrospective adjustment of the Contract unit Rates.

Price Adjustment will be on the following basis:

- a) Contract Rates shall be firm for the first twelve (12) months and thereafter subject to price adjustment.
- b) The adjustment shall be undertaken once annually on anniversary of Contract commencement date. Adjustment shall apply until the next adjustment date.
- c) The relevant statistics used for annual calculation of price adjustment shall be drawn from the most recent Australian Bureau of Statistics catalogue number 6401.0 All Groups – Darwin, available from:  
[www.abs.gov.au](http://www.abs.gov.au) or by telephoning 1300 135 070 and selecting option 2.

- Pn** Is the New Price, expressed as \$. Calculate New Price by applying the formula set out below to the Base Price.
- Pb** Is the Base Price, expressed as \$. This is the price accepted by the Principal as the initial contract rate or sum.
- Mc** Is the price component subject to price adjustment and shall be 0.90 (90%).
- Fc** Is the price component not subject to price adjustment and shall be 0.10 (10%).
- Mn** Is the New CPI Index 6401.0 All Groups – Darwin, applicable at the adjustment date.
- Mb** Is the Base CPI Index 6401.0 All Groups – Darwin and for this RFT shall be the index effective at closing for this tender.

$$Pn = Pb \times ( (Mc \times (Mn/Mb) ) + Fc )$$

Note: “X” means multiply; “/” means divide by the value following the symbol; calculations in the internal brackets to be performed first.

### 2.3.7 Panel Period Contract

Subject to any other provisions of the Contract, if the Contract is designated as a Panel Period Contract the following provisions will apply:

- a) Specific Requirements at Unit Rates:
  - i. The Principal will issue an Official Order against the established rates to the Contractor offering the best value-for-money outcome, within the required time frame.
- b) General Requirements with no Unit Rates:
  - i. The Principal will select a Contractor in the following manner:
    - Prepare a request for quotation setting out the details of the Goods including deliverables and time frame for completion.
    - Forward the request for quotation to a number of panel members depending on the estimated value of the particular Goods:
      - If up to \$50,000 at least three panel members, if practicable
      - \$50,000 and greater all panel members.
  - ii. Selection will be based on the panellist offering the best value for money outcome within the required timeframe and against the specified selection criteria.

The Principal recognises that the panel members have been selected on the basis that they are capable of providing the Goods and the opportunity for the different panel members to submit an offer for particular Goods should be approximately equal over the life of the Contract.

Where the Contract is for a general scope of requirements without any rates:

- a) the panel once established will remain closed for a period of twelve (12) months unless the Principal determines that owing to changed circumstances the size of the panel is inadequate.
- b) at the end of every twelve (12) months or sooner if the Principal so determines, the Principal may appoint additional contractors to the panel under the same assessment criteria contained in the RFT.
- c) the Principal will notify existing panel members of any additions to, or withdrawal from, the panel.

### 2.3.8 Applicable Law

The Contract shall be governed by and construed in accordance with the laws of the Northern Territory of Australia.

## 2.4 Entire Agreement

The Contract formed between the parties for the supply of the Goods constitutes the entire agreement between the parties and supersedes any previous agreements or understandings.

## 2.5 Principal's Responsibilities and Obligations

The Principal shall give or cause to be given to the Contractor timely instructions, decisions and information sufficient to define the requirements of the Goods to be supplied under the Contract.

The address for service of Notices is as stated in the Annexure.

### 2.5.1 Principal's Representative

The Principal's Representative shall exercise the duties discretions and powers vested in the Principal under the Contract except this power of appointment.

The Principal's Representative is nominated on the Annexure.

### 2.5.2 Contract Manager

For the purpose of exercising some of the powers, duties, discretions and authorities, vested in him on behalf of the Principal, the Principal's Representative may from time to time appoint a representative ('**Contract Manager**'). The Contract Manager will be notified in the Notice of Acceptance.

The Contract Manager will act as first point of contact for matters under the Contract.

The Contractor shall recognise and accept notices from the Contract Manager as if the Principal's Representative issued such. Any reference to the Principal within these conditions shall be deemed to be a reference to the Contract Manager so far as it concerns the exercise of the Contract Manager's powers by virtue of his appointment.

## 2.6 Directions

The Contractor shall comply with any direction either orally or in writing issued, given or served upon them by the Principal. Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing.

For the purposes of this clause the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal may make, give or issue pursuant to the provisions of the Contract.

## 2.7 Contractor's Responsibilities and Obligations

The Contractor warrants that:

- a) the Contractor has the right and shall transfer title to the Goods to the Principal;
- b) the Goods shall be new and shall comply in all respects with the Scope of Requirements;
- c) the Goods shall conform to the description, model number and the sample (if any) provided by the Contractor;
- d) the Goods have been manufactured or assembled at the place disclosed by the Contractor;  
and

- e) the Goods are free from defects and conform to any legally applicable standards.

The Contractor shall, unless the Contract otherwise provides, supply at its own cost and expense everything necessary for the supply of the Goods and the proper performance of its obligations under the Contract.

The Contractor shall observe and comply with requirements of all Acts of the Commonwealth of Australia, Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, the Northern Territory Procurement Code and with the lawful requirements of any relevant authority, regulator or standard setting entity as shall be in force in the place affecting or applicable to supply of the Goods.

## 2.8 Contractor's Representative

The Contractor shall appoint a representative ('**Contractor's Representative**') to be the first point of contact with the Principal. The Contractor's Representative shall be nominated to the Principal in writing.

Any direction given to the Contractor's Representative shall be deemed to be a direction issued to or served upon the Contractor.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

The Contractor or its representative shall have sufficient command of the English language to be able to read, converse and receive instructions in English.

The Contractor may, with the prior written approval of the Principal, cancel the appointment and shall nominate another Contractor's Representative.

## 2.9 Status of the Contractor

The Contractor, employees and sub-contractors thereof, in supplying the Goods, are not for any purpose a servant or employee of the Principal.

## 2.10 Supply of Goods by Official Order

The Contractor shall fulfil all Official Orders for particular Goods placed by the Ordering Officer during the currency of the Contract.

## 2.11 Notices

### 2.11.1 Services of Notices

Notice must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices set out in the Contract, as varied by any Notice given by the recipient to the sender.

### 2.11.2 Effective on Receipt

Any notice given in accordance with the above sub-clause sent to the address set out in the Contract, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

- a) if hand delivered, on delivery;

- b) if sent by post, three (3) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from a place outside Australia); and
- c) if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 8.00am on the next Business Day.

## **2.12 Confidentiality and Publicity**

All information received or otherwise acquired by the Contractor under this Contract is deemed to be confidential and remains the property of the Principal.

The Contractor or its employees, agents, directors, partners, shareholders, sub-contractors or consultants shall not disclose to any third party, any information or documentation relating to the Principal, the affairs of the Principal or the affairs of others which may have come to its or their knowledge as a result of the Contract or the supply of the Goods and shall take all necessary precautions to prevent unauthorised access to or disclosure of such information or documentation.

The Contractor shall not divulge any information regarding the Contract or the nature or progress of the Contract or engage in any publicity concerning the Contract or the supply of Goods unless it first obtains the written consent of the Principal.

## **2.13 Local Development**

The Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:

- a) use labour including apprentices and trainees and Indigenous labour available within the Northern Territory; and
- b) use the services located and obtain supplies/materials available within the Northern Territory.

The Contractor shall, when requested by the Principal, submit a written report concerning the compliance with the provisions of this clause.

## **2.14 Performance Plan**

Where a Performance Plan has been specified in the Annexure, the Contractor will establish, document, implement and maintain a Performance Plan throughout the course of the Contract.

Within fourteen (14) days of award of Contract, the Contractor shall submit to the Principal for approval, one copy of the Performance Plan. The Principal shall within a reasonable time from receipt either approve the Performance Plan, or reject it, giving reasons for the rejection. The Contractor shall rectify the deficiencies and resubmit the Performance Plan for approval.

## **2.15 Industry Participation Plan**

Where an Industry Participation Plan has been specified, the Contractor will implement and maintain the Industry Participation Plan throughout the course of the Contract.

Within fourteen (14) days of award of Contract, the Contractor shall submit one copy of the Industry Participation Plan to the Principal for approval. The Principal shall within a reasonable time from receipt, either approve the Industry Participation Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Plan for approval.



The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Industry Participation Plan within thirty (30) days of the completion of the Contract.

## 2.16 Indemnities

The Contractor shall keep the Principal and employees or agents of the Principal indemnified against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person or for damage to any property arising from its performance under the Contract (except loss or damage caused by any negligent act, omission or default of the Principal or employees or agents of the Principal) and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

The Contractor shall indemnify the Principal at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the existence of any patent, design, trademark, intellectual property rights or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement, used or fixed or supplied by the Contractor in connection with the performance of the Contract.

## 2.17 Insurances

### 2.17.1 Workers Compensation Insurance

For the purpose of this clause “worker” shall have the definition it is given in the *Workers Rehabilitation and Compensation Act 2009*.

Before commencing the Contract the Contractor shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Contractor. This cover shall comply with the *Workers Rehabilitation and Compensation Act 2009* of the Northern Territory and policies shall be purchased from Northern Territory approved insurers. Details can be found at the following web address:

[www.worksafe.nt.gov.au/ServiceProviders/Insurers/Pages/Find-an-Approved-Insurance-Company.aspx](http://www.worksafe.nt.gov.au/ServiceProviders/Insurers/Pages/Find-an-Approved-Insurance-Company.aspx)

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Workers Rehabilitation and Compensation Act 2009*.

The Contractor shall ensure that all persons employed under labour hire agreements, whether by the Contractor or through a Labour Hire Firm, are appropriately covered by Workers Compensation insurance.

Self-employed Contractors should ensure that they have adequate insurance coverage in place.

The Contractor shall be responsible for ensuring that all sub-contractors have appropriate insurance policies, and, upon request, shall provide to the Principal copies of all Certificates of Currency, including those of any sub-contractors (including self-employed Contractors and persons employed under Labour Hire Agreements).

### 2.17.2 Public Liability Insurance

Before commencing the Contract the Contractor shall take out and shall maintain during the currency of the Contract a Public Liability policy of insurance to cover its liabilities to third parties, including the liabilities as set out in the first paragraph of the clause titled “Indemnities”.

The Policy shall:

- a) note the Principal for its respective rights and interests;
- b) include a cross-liability clause in which the insurer accepts the term “insured” as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

The Contractor shall ensure that all sub-contractors take out Public Liability Insurance that meets the requirements of this clause.

### **2.17.3 Product Liability Insurance**

Before commencing the Contract the Contractor shall take out and shall maintain during the currency of the Contract a Product Liability Insurance policy for an amount not less than the sum stated in the Annexure.

The Contractor shall continue to maintain a Product Liability policy after the conclusion of the Contract for such period and for such amount as is necessary to indemnify the Contractor in respect of all liabilities arising out of this Contract. The Contractor’s liability to the Principal shall not be limited or otherwise affected by the terms of any such insurance policy.

### **2.17.4 Lodgement of Certificates of Currency**

The Contractor shall provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required under clause 2.17 including those of any sub-contractors (including self-employed contractors and persons employed under labour hire agreements):

- a) prior to commencing the Contract;
- b) within two (2) days of a written request by the Principal;
- c) within seven (7) days after the Contractor renews an insurance policy; and
- d) within seven (7) days after the Contractor makes any change to an insurance policy.

The Contractor will not cancel any insurance policy, or conduct itself in a manner that brings about such a cancellation of an insurance policy, except with the written consent of the Principal.

## **2.18 Delivery, Acceptance and Rejection**

### **2.18.1 Delivery and Acceptance**

The Contractor shall deliver the Goods to the place or places and within the time or times stated in the Contract and/or Official Order and shall obtain a receipt of their delivery. Title in the Goods shall pass to the Principal upon satisfactory delivery of the Goods by the Contractor in accordance with the Contract. Delivery and receipt of the Goods shall not be an acceptance of the Goods by the Principal. The Principal may reject Goods, which are not in accordance with the Contract.

Receipt of delivery, acceptance or payment shall not prejudice the right of the Principal to maintain an action for breach of condition or warranty should the Goods prove to be of inferior quality or in any respect contrary to the requirements of the Contract.

### **2.18.2 Rejection**

Upon rejection of any Goods the Principal shall notify the Contractor and may direct that the rejected Goods be removed and replaced or rectified at the Contractor’s risk and expense within such reasonable time as the Principal may direct. Should the Contractor fail to remove or rectify

rejected Goods within the time directed, the Principal may have the rejected Goods re-delivered at the Contractor's risk and expense.

## 2.19 Warranty Period

Without limiting any other warranty implied by statute or generally at law:

- a) if a defect (fair wear and tear excepted) appears in the Goods within the Warranty Period the Contractor shall promptly remedy such defect by either repairing or replacing the defective Goods without cost to the Principal; and
- b) the Contractor shall obtain for the Principal the benefit of any manufacturer's warranty.

## 2.20 Invoicing and Payment

The Contractor shall provide to the Contract Manager a Tax Invoice showing the quantity and value of the Goods delivered and accepted, based on the particular Goods requirement under the Contract as set out in the Official Order.

The Contractor's Tax Invoice will include details of any Adjustments under clause titled "Goods and Services Tax" of the Conditions of contract and an explanation as to how such Adjustments were calculated.

The Contractor shall provide any further details in regards to the Goods and/or Tax Invoice upon request by the Principal.

Principal shall make payments within thirty (30) days of receipt of a Tax Invoice that is not disputed.

If the Principal disputes the invoice amount the Principal shall certify the amount it believes is due for payment, which shall be paid by the Principal and the liability of the balance of the payment shall be determined in accordance with the Contract.

The payment of monies pursuant to this clause shall not be taken as evidence against or as an admission by the Principal or the Agency that the Goods have been supplied in accordance with the Contract or the value thereof, but shall be taken to be payment on account only.

Failure by the Principal to pay the amount by the due date:

- a) will not be grounds to vitiate or avoid the contract; and
- b) will entitle the Contractor to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of a tax invoice. Interest penalties are to be calculated daily, for the period after the due date until the date payment is made by the Principal, at the ninety (90) day bank bill swap rate published on 1 June each year by the Australian Financial Markets Association. Where an interest penalty period spans 1 June, the rate shall be the rate published in the year the original invoice was issued.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties.

## 2.21 Variations

The Principal may direct a variation to the quantity, method, point or time of delivery of the Goods or to the character or quality of any material or work and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the

Principal, or, failing agreement, by the Principal and the amount payable to the Contractor increased or decreased accordingly.

## 2.22 Assignment

The Contractor shall not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract, without written consent of the Principal. Such consent shall not be unreasonably withheld.

## 2.23 Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the Contract it shall submit to the Principal for approval the names of the proposed sub-contractors, the nature and value of the Goods, that it is intended they undertake. No sub-contractor shall be employed in connection with the Contract unless such approval is first obtained. Such approval shall not be unreasonably withheld.

Any sub-contract shall be in writing and contain the provision that progress payments to the sub-contractor shall be made within fourteen (14) days after the Contractor has received payment from the Principal.

Any approval by the Principal to engage a sub-contractor for any part of the supply of the Goods shall not relieve the Contractor from any of its liabilities under the Contract. The Contractor shall be fully liable to the Principal for the work of the sub-contractor or any employee or agent of the sub-contractor.

## 2.24 Disputes

The Contractor shall, in respect of any dispute or difference arising out of the Contract and not later than fourteen (14) days after the dispute or difference arises, submit the matter at issue in writing with detailed particulars of the matter at issue to the Principal for decision and the Principal shall as soon as practicable thereafter give a decision in writing to the Contractor.

If the Contractor is dissatisfied with the decision of the Principal, the Contractor may, not later than twenty-eight (28) days after the decision is given, notify the Principal that it requires the matter to be referred for expert determination, in accordance with the expert determination process detailed in "Northern Territory of Australia - Expert Determination", a copy of which is available from the place of issue of the RFT documents or from the following web address:  
[www.dob.nt.gov.au/business/tenders-contracts/legislative\\_framework/tendering-contract/Pages/eddr.aspx](http://www.dob.nt.gov.au/business/tenders-contracts/legislative_framework/tendering-contract/Pages/eddr.aspx)

If the Principal does not receive the notice requiring expert determination within the prescribed time, the Principal's decision shall not be subject to expert determination.

## 2.25 Termination

Without prejudice to any other remedy of the Principal at Law if the Contractor fails to supply Goods as and when required by the Contract; fails in any other way to comply with the Contract; neglects or omits to carry out any direction of the Principal in respect of the Contract; intimates that they are unwilling or unable to complete the Contract; becomes insolvent or bankrupt or being a company goes into liquidation; is placed under official management or enters into a compromise or other arrangement with creditors; the Principal may by notice in writing to the Contractor, terminate the Contract. The termination shall be without prejudice to any claim by the Principal against the Contractor or any assignee or subcontractor arising out of the Contract.

If the Principal terminates the Contract in accordance with this clause, the Principal may obtain similar Goods from another source of supply. If practicable the Principal shall obtain competitive

prices and any additional costs incurred by the Principal in the re-supply of the Goods shall be a debt due to the Principal by the Contractor..

## 2.26 Voluntary Termination

Either party may terminate the Contract by giving thirty (30) days written notice to the other party.

Termination of the Contract under this clause shall not relieve the Principal or the Contractor of their respective rights and obligations under the Contract or any Official Order up to and including the date of any such termination.

## 2.27 Rights of Principal to Recover Monies

Should the Principal take action pursuant to the Clause titled "Termination" then all losses, costs, charges and expenses incurred or sustained by the Principal in completing the Services will be deemed to be a debt due to the Principal by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies are less than the amount so deductible the amount of the deficiency shall be a debt due by the Contractor to the Principal.

## 2.28 Contractor's Performance Report

The Contractor agrees that upon delivery of each Official Order under the Contract, or every twelve (12) months, and upon completion of the Contract term or the termination of the Contract:

- a) the Principal will prepare a Contractor's Performance Report ('**Report**');
- b) the Principal shall liaise with the Contractor in completing the Report although the Principal reserves the ultimate right to complete the Report (other than the contractor's comments); and
- c) the Principal may use and/or release the Report to any other Agency of the Commonwealth or any State or Territory for evaluation of the Contractor's performance in the assessment of future Tenders.

The Contractor agrees that neither the Contractor nor any other person shall have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation and use of the Report.

## 2.29 Goods and Services Tax

For the purposes of this Clause unless the context otherwise requires:

**'GST'** means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999 ('Act')* and any related *Tax Imposition Act* and "New Tax System Changes" has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999 ('TPA')*. Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

**'GST Rate'** means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time;

**'Input Tax Credit'** has the meaning it bears in the Act;

**'Recipient' 'Entity' and 'Supplies'** have the meaning they bear in the Act, and, in addition for the purposes of this contract shall also be read as follows:

- a) "**Entity**" shall also mean Contractor;

- b) "**Recipient**" shall also mean Principal;
- c) "**Supplies**" shall also mean the Goods and/or Service.

**'Adjustment'** means each form of adjustment to consideration provided for in this clause.

The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming this Contract.

The Contractor shall provide the Recipient with a Tax Invoice and/or adjustment notes in relation to the supply prior to an amount being paid by the Recipient under this Contract, and shall do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply.

Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the date of formation of this Contract.

## 2.30 Privacy

For the purposes of this Clause unless the context otherwise requires:

**'Act'** means the *Information Act (NT)*;

**'Privacy Laws'** means the Act; and the Information Privacy Principles set out in the Act or any "code of practice" approved under the Act that applies to any of the parties to this Contract.

**'Personal Information'** means all information about a person that is "personal information" as defined in the Act, which is collected and/or handled by any of the parties in connection with this Contract.

The Contractor agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Contractor were a public sector organisation.

The Contractor is to collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling its obligations under this Contract.

The Contractor is not to disclose Personal Information without the written authority of the Principal, and in any event disclosure is to be in accordance with the Privacy Laws. The Contractor is to immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

The Contractor is to ensure that any employees, agents or subcontractors, and any other person who may have access to Personal Information held by the Contractor, are aware of the obligations of the Contractor under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.

The Contractor is to take all reasonable measures to ensure that Personal Information is protected from misuse, loss, unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

The Contractor is to develop, and obtain the written approval of the Principal:

- a) policies for the management of personal information; and
- b) complaint handling procedures.

Each party is to immediately notify the other when a complaint is received. The Contractor acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.

The Contractor must not transfer Personal Information outside the Northern Territory without the prior approval of the Principal. The Contractor, in respect to Personal Information, is to immediately notify the Principal where the Contractor becomes aware of a breach of this clause or the Privacy Laws.

The Contractor indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Contractor under this Contract.

When this Contract expires or is terminated, the Contractor must, at the Principal's discretion:

- a) either return to the Principal all records containing Personal information;
- b) retain any material containing Personal Information in a secure manner as approved by the Principal; or
- c) destroy or delete any Personal Information.

This sub-clause will survive the expiration or termination of this Contract.