

Conditions: Tendering and Contract

Supply of Goods

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CONDITIONS OF TENDERING AND CONTRACT SUPPLY OF GOODS

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1. CONDITIONS OF TENDERING

1.1 LODGEMENT OF TENDERS

Tenders shall be in the form required by the Clause titled "Documents to be Lodged with Tender Form". Tenders shall be enclosed in a sealed envelope marked with the Tender Number and closing date. Oral Tenders or Tenders submitted by electronic mail (other than via Quotations and Tenders Online eLodgement Service) shall not be considered.

1.1.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of the Request for Tender (RFT).

1.1.2 Delivered By Hand

The preferred Tender Box for lodgement of the Tender is as stated on the cover of the RFT.

Tenders however may be lodged by hand in any of the following Quotation and Tender Boxes:

Department of Business and Employment
Contract and Procurement Services
Ground Floor, Enterprise House
28-30 Knuckey Street
DARWIN NT 0800

Department of Business and Employment
1st Floor, Herbarium (Gaymark Plaza)
4 Mansfield Street
PALMERSTON NT 0830

Department of Business and Employment
1st Floor, NT Government Centre
5 First Street
KATHERINE NT 0850

Department of Business and Employment
1st Floor, Alice Plaza
Corner Parsons Street and Todd Mall
ALICE SPRINGS NT 0870

Department of Business and Employment
Shop 2, Ground Floor, Barkly House
99 Paterson Street
TENNANT CREEK NT 0860

Department of Business and Employment
Ground Floor, Arnhem Village
Arnhem Road
NHULUNBUY NT 0880

Tenderers lodging by hand in other than the Quotation and Tender Box referred to on the front cover of the RFT must take particular care to show the Tender Number and closing time and date on the envelope.

1.1.3 Delivery By Post

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

1.1.4 Sent By Facsimile

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

Where facsimile lodgement is used, Tenders must be faxed in full, by the closing time and date stated on the cover of the RFT. Tenders transmitted by facsimile that are not received in full by the stated time and date for closing of Tenders will be deemed late and will not be admitted for consideration.

1.1.5 Lodged via Electronic Lodgement

Where electronic lodgement has been allowed, Tenders must be submitted:

- (a) in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip); and
- (b) using the eLodgement button;

on the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT,

Tenders lodged at a different address or in an unspecified electronic format will be invalid and the Tender will not be admitted for consideration.

Where electronic lodgement has been allowed and the selected RFT is available from an e-mail link, Tenders must be submitted electronically using the same e-mail link.

The Tender (ie. tender form and all other response schedules) 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.

CONDITIONS OF TENDERING

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 invalid and not admitted for consideration.

1.1.6 Late Tenders

Tenders received (in full or part) after the stated time and date for closing of Tenders are not admitted for consideration.

Notwithstanding the preceding paragraph:

- (a) Tenders submitted by prepaid post or a commercial courier service, 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 Principal that it 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 Principal 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 Principal 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 Quotation 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.

1.2 TENDERERS TO INFORM THEMSELVES

Tenderers shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including an inspection of the site, if appropriate, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Legislative Procurement Framework can be found at the web address www.nt.gov.au/dbe/procurement_policy/framework.html or is available at the point of issue of the RFT.

Tenderers who have any doubts as to the meaning of any part of the RFT shall seek clarification in writing from the person specified in the Annexure to the Conditions of Tendering and Contract (the Annexure).

Arrangements for site inspection are as stated in the Annexure. Failure to attend the site meeting, where requested, will result in the Tender being declared ineligible for consideration.

Should the Tenderer find any discrepancy, error or omission in the RFT they shall notify the Director, Contract and Procurement Services in writing as early as possible but in any event before the stated time and date for closing of Tenders.

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.

Any Tenderer who believes the RFT to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing as early as possible, but in any event before the stated time and date for closing of Tenders.

1.3 DOCUMENTS TO BE LODGED WITH TENDER FORM

Tenders shall be in English. The Tenderer shall complete in full and submit one copy of the documents listed in the Annexure.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may be regarded as informal and rejected.

CONDITIONS OF TENDERING

The Principal will neither be responsible for, nor pay for, any expense or loss, which may be incurred by Tenderers in the preparation of its Tender. Once lodged, the Tender shall become the property of the Principal.

The Tenderer shall sign its Tender as indicated below, and have the signature witnessed.

- (a) In the case of a corporation:
- (i) With its common seal, and the fixing of the seal witnessed by:
 - 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:
 - 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 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.
 - (ii) Or in the case of firms having more than five 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.
 - (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" or "witnessed" blocks on the Tender Form.

Where the Tender is from a:

- (a) person or persons, full given names are to be provided.
- (b) firm or business or trading name, full given names of each member of the firm are to be provided.
- (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/BN) 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.

1.4 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.

1.5 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. When samples are to be lodged with Tender, it will be specified in the Scope of Requirement.

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 disqualify the Tender from further assessment.

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.

1.6 PERFORMANCE PLAN

If it is stated in the Annexure that a Performance Plan is required then the Tenderer is to submit a Performance Plan Proposal with the Tender.

If required, any Tender in which the Performance Plan Proposal is not provided may be considered as informal and rejected.

1.7 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 undertaking training will only be recognised as being compliant for Tender purposes if:

- (a) a signed contract of training for the trainee is currently with the New Apprenticeships Centre; or
- (b) the trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Education and Training (DET); or
- (c) the training being undertaken is a recognised accredited training course.

Further information on accredited training programs and/or employment of trainees can be obtained from:

Evaluation and Validation Unit,
Department of Education and Training
Mitchell Centre
55 – 59 Mitchell Street
DARWIN NT 0800
Telephone: (08) 8901 1316

OR

GPO Box 4821
DARWIN NT 0801
Facsimile: (08) 8901 1326

1.8 ALTERNATIVE TENDERS

Tenderers may submit alternative tenders where the RFT states that alternative tenders are allowed. Where the RFT 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.

1.9 TAXES, DUTIES, FEES, ETC

The Tenderer shall make due allowance for any fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

Tenderers shall submit a Tender that includes GST.

1.10 PRICING

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

Any Schedule of Prices, which is included in the RFT shall be completed and lodged with the Tender. Pricing shall be submitted for each item in the Schedule against which a price is offered.

1.11 PART OFFER AND PART ACCEPTANCE

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

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

1.12 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.

1.13 CHANGE TO THE 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 Tender Form that changes to the Conditions are being requested or that alternative Conditions 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 deemed non-conforming and will not be considered.

This clause does not allow Tenderers 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 deemed non-conforming and set aside.

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

1.14 TENDER ASSESSMENT CRITERIA

Selection of the successful Tenderer will be based on, but not necessary limited to, assessment of Tenders against the following Tender Assessment Criteria and the price(s) submitted.

The elements under each standard 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 standard criterion are not to be considered exclusive to any specific tender.

- (a) Past Performance:
 - (i) Performance history, including standard/quality of product.
 - (ii) Project delivery.
 - (iii) Degree of necessary supervision of the Contractor.

- (iv) Previous disputes and claims history.
- (v) References.
- (vi) Safe and fair workplace record.
- (b) Timeliness:
 - (i) Whether the Goods are available immediately.
 - (ii) Length of supply chain.
 - (iii) Supply chain vulnerability.
 - (iv) Completion time offered.
- (c) Capacity:
 - (i) Ability to supply Goods.
 - (ii) Number and value of Contracts in progress.
 - (iii) Legal action pending.
 - (iv) Financial capacity (including current credit rating).
- (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 service response.
 - (iii) Proposed level of usage of apprentices, trainees and local Indigenous enterprise.
 - (iv) Proposed number of jobs for Territorians including jobs for local Indigenous Territorians.
 - (v) Accredited training programs supported by the Tenderer.
 - (vi) Regional development opportunities.
 - (vii) Northern Territory research and development proposals.
- (e) Scope Specific Criteria (specified as required):
 - (i) Scope Specific Criteria are those criteria that are considered relevant to the nature of the Goods being procured. Scope Specific Criteria could include, but is not limited to, any one or more of the following; environmental issues or requirements, technical requirements, and specific experience and expertise.
- (f) Innovation (specified as required):
 - (i) New technology.
 - (ii) Alternative solutions.
- (g) Whole of Life Cost (specified as required):
 - (i) Operating costs.
 - (ii) Expected life and potential for upgrade.
 - (iii) Support services.
 - (iv) Warranties.
 - (v) Compatibility with existing equipment.
 - (vi) Reliability.
 - (vii) 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 reserves the right to apply weightings to each criterion in its total discretion, having regard to requirements contained in the NT Government Legislative Procurement Framework.

1.15 ADDITIONAL INFORMATION

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

The Tenderer shall within the time specified comply with any such requests. Should the Tenderer fail to submit any or all of the information required, in the time stipulated, their Tender may be treated as informal and rejected.

1.16 DISCLOSURE OF PERCENTAGE WEIGHTINGS

Disclosure of percentage weightings will apply to all tenders with an estimated value equal to or greater than \$200,000.

Tender assessment criterion may include sub-criteria, although percentage weightings shall only be published as a cumulative percentage against the standard tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given relative 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.

Tender Assessment Criteria, including Supply Specific Tender Assessment Criteria and Relative Percentage Weightings are detailed in the document titled "Tender Assessment Criteria – Schedule of Percentage Weightings".

1.17 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.

1.18 PRIVACY NOTICE

The Principal is collecting the information on the Declaration of Business Status form to determine eligibility to contract with the Principal. This is required by Procurement Regulation 6 (7)(h). The Principal usually gives some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in your Tender being not considered in the assessment process.

Your personal information provided in this form can be accessed by the Tenderer on request. Any queries should be directed to the Officer stated in the Annexure as the contact point.

1.19 NOTIFICATION OF ACCEPTANCE

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

Notice of acceptance of the Tender shall be given in the form of written notice or an official order and this notice or order shall constitute a binding Contract between the Principal and the successful Tenderer (hereinafter called the "Contractor").

If 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.

1.20 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.

2. CONDITIONS OF CONTRACT

2.1 INTERPRETATION OF TERMS

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

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

'Contract' means in the order of precedence in which they should be read these conditions of contract, the notice of acceptance, the RFT and, to the extent it is not inconsistent with any of the above, the Tenderer's Tender response that constitutes or evidences the final and concluded agreement between the Principal and the Contractor concerning supply of the Goods.

'Contractor' means the Person who as party to the Contract is bound to supply the Goods in accordance with the Contract and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns. The Contractor is also responsible for coordinating and integrating the work of any sub-contractor engaged under the Contract.

'Date of Acceptance' means the date, which appears on the written notice or Official Order issued by the Principal accepting the Tenderer's Tender.

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

'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.

'Lump Sum' means the Contractor has agreed to provide the Goods for the total price as set out in the Contract.

'Notice of Acceptance' means the written notice or Official Order and any accompanying documentation sent to the Contractor by the Principal advising acceptance of the Tenderer's Tender to supply the Goods.

'Official Order' means an order issued to the Contractor by the Principal, whether on paper or by electronic means, which conveys the essential details of the Goods required.

'Ordering Officer' means the person named in the Annexure and any person(s) who from time to time be appointed or authorised by the Principal as Ordering Officer and includes any person for the time being acting for or on behalf of the Ordering Officer. The word "the" before "Ordering Officer" in any of the Conditions of Contract does not indicate that the same Ordering Officer exercises, in relation to a Contract, all of the functions of an Ordering Officer.

'Person' means a natural person, or a corporation, partnership, joint venture, incorporated association, government, local government authority or agency.

'Price' means the price per unit of the Goods stated in the Contract or Purchase Order.

'Principal' means the Northern Territory of Australia. The address of the Principal for service of notices is as stated in the Annexure. The Principal for Power and Water Contracts is the Power and Water Corporation.

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

'Schedule of Prices' 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.

'sub-contractor' means a Person who provides goods or services to the Contractor.

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

Where two or more persons are named as a party to this Contract, the terms, conditions and warranties of this Contract shall bind all such persons jointly and each of them severally and they shall be jointly and severally entitled to the benefits and rights conferred by this Contract.

Clause headings shall not be used in the interpretation of these Conditions.

Words in the singular include the plural and words in the plural include the singular according to the requirements of the context.

Words importing a gender include every gender.

A reference to persons includes Corporations.

2.2 NATURE OF CONTRACT

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

Unless otherwise stated in the Schedule of Prices, prices will be considered firm. The basis of price adjustment, if any, to the Contract unit Prices shall be as stated in the Schedule of Prices.

Where the ensuing Contract allows for review of the Contract unit Price(s) during the Contract the Contractor shall submit a written application for price adjustment in accordance with the provisions of the Contract to the Ordering Officer for approval, which shall not be unreasonably withheld. The application shall include adequate information to substantiate the adjustment in unit Price(s).

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 Prices.

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

2.3 CONTRACTOR'S WARRANTY

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 Specification;
- (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, the Northern Territory Procurement Code, and with the requirements of all regulations, by-laws, orders or proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to supply of the Goods.

2.4 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.

2.5 CONFIDENTIALITY AND PUBLICITY

The Contractor agrees that the Contractor or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any confidential information or documentation relating to the Principal or the affairs of others which may have come to its or their knowledge as a result of the Contract and shall take all necessary precautions to prevent unauthorised access to such information or documentation.

The Contractor shall not divulge any information regarding the nature or progress of the Contract or give any publicity concerning the Contract except with the prior written consent of the Principal.

2.6 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 Ordering Officer for approval one copy of the Performance Plan. The Ordering Officer 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.

2.7 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 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.

2.8 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.

2.9 INSURANCES

2.9.1 Workers Compensation Insurance

For the purpose of this clause "worker" shall have the definition it is given in the *Worker 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 *Worker Rehabilitation and Compensation Act 2009* of the Northern Territory and policies shall be purchased from Northern Territory approved insurers.

The following information shall be provided with all tenders and as requested during the currency of the Contract:

- (a) for Contractors employing workers:
 - (i) workers compensation policy number;
 - (ii) name of insurer; and
 - (iii) date of expiry.
- (b) for Contractors not employing workers:
 - (i) written advice that they are not employing nor intending to employ workers during the currency of the contract.

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Worker 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).

2.9.2 Public Liability Insurance

Before commencing the Contract the Contractor shall take out and shall maintain for the duration 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.

2.9.3 Product Liability Insurance

Before commencing the Contract the Contractor shall take out and shall maintain for the duration 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.

2.9.4 Lodgment of Certificates of Currency

The Contractor shall, if so requested, provide the Principal with copies of Certificates of Currency and summaries of key provisions for all insurance policies required.

2.10 DELIVERY, ACCEPTANCE AND REJECTION

2.10.1 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 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 Ordering Officer. The Ordering Officer 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.

2.10.2 Rejection

Upon rejection of any Goods the Ordering Officer 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 Ordering Officer may direct. Should the Contractor fail to remove or rectify rejected Goods within the time directed, the Ordering Officer may have the rejected Goods re-delivered at the Contractor's risk and expense.

2.11 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.

2.12 INVOICING AND PAYMENT

For the purposes of this clause, "Tax Invoice" has the meaning given in *A New Tax System (Goods and Services Tax) Act*.

The Contractor shall provide to the Ordering Officer a Tax Invoice showing the value of the Goods delivered and accepted based on the Price. The Contractor shall provide any further details in regards to the Goods upon request by the Ordering Officer.

Principal shall make payments within thirty (30) days of receipt of claims that are correct and in order for payment. Failure by the Principal to pay the amount payable at the due time will not be grounds to vitiate or avoid the Contract.

If the Ordering Officer disputes the invoice amount the Ordering Officer 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.

The Contractor's claim 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.

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 rate published on 1 June each year. 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.

2.13 VARIATIONS

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

2.14 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 consent of the Principal. Such consent shall not be unreasonably withheld.

2.15 SUB-CONTRACTING

Should the Contractor desire to sublet any part of the Contract he shall submit to the Principal the names of the proposed sub-contractors, the nature of the Goods, which 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.

Nothing contained in the Contract shall in any way be construed as relieving the Contractor of his responsibility for the performance of the Contract according to its tenor.

2.16 CONTRACTOR'S PERFORMANCE REPORT

The Contractor agrees that upon delivery of the Goods or the termination of the Contract:

- (a) the Ordering Officer will prepare a Contractor's Performance Report ("the Report");
- (b) the Ordering Officer shall liaise with the Contractor in completing the Report although the Ordering Officer reserves the ultimate right to complete the Report (other than the contractor's comments); and
- (c) the Principal may 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 Quotations.

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.

2.17 DIRECTIONS AND NOTICES

The Contractor shall comply with any direction either orally or in writing issued, given or served upon them by the Ordering Officer. 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 Ordering Officer may make, give or issue pursuant to the provisions of the Contract.

2.18 SERVICE OF DOCUMENTS

Any notice in writing by the Principal, the Ordering Officer or the Contractor, sent to the address set out in the Contract, shall be deemed to have been duly received:

- (a) in the case of delivery by post, two (2) business days after the date of posting; and
- (b) in the case of 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.

2.19 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:

http://www.nt.gov.au/dbe/procurement_policy/conditions_contract/index.html

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.

2.20 DEFAULT OR BANKRUPTCY

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 Ordering Officer 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 Ordering Officer may obtain similar Goods from another source of supply. If practicable the Ordering Officer 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.

Should the Ordering Officer take action pursuant to this clause then all losses, costs, charges and expenses incurred or sustained by the Principal in completing supply of the Goods 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.

2.21 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* ("**the 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* ("**the 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:
"**Entity**" shall also mean Contractor;
"**Recipient**" shall also mean Principal;
"**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.

2.22 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.

CONDITIONS OF 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 and loss and from 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.