Conditions of Tendering and Contract – Purchase and Removal of Goods

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# Conditions of Tendering

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

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

## Lodgement of Tender Response

### Lodgement

Unless otherwise directed by the Principal, Tender Responses must be lodged using one of the following methods:

1. prepaid post, directed to the postal address stated on the cover to the RFT;
2. facsimile, directed to the facsimile number stated on the cover to the RFT; or
3. electronically, against the corresponding Tender number using Quotations and Tenders Online eLodgement through the address stated on the cover to the RFT or if the Principal has approached a specific Tenderer(s) and provided access to the RFT through a link or web address, electronically using the link or address provided.

Failure to comply with the above requirements may result in the Tender Response being declared inadmissible for assessment.

If, for any reason, a part of a Tender Response (excluding the pricing schedule(s)) becomes corrupt, illegible, inadequate or incomplete as a result of transmission or storage, the Principal may request an additional copy of the Tender Response.

If, for any reason, the pricing schedule(s) contained in a Tender Response becomes corrupt, illegible, inadequate or incomplete as a result of transmission or storage the Tender Response may be declared inadmissible for assessment.

### Closing Time and Date

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

### Late Tenders

Tender Responses are to be received, in full, by the time and date for closing of the RFT.

Failure to lodge a Tender Response, or part thereof, before the time and date for closing of the RFT may result in the Tender Response being declared inadmissible for assessment.

## Admissibility

### General

Unless otherwise specified, if a Tenderer fails to comply with a requirement as set out in these Conditions of Tendering, their Tender Response may be declared inadmissible for assessment.

In determining whether a Tender Response is admissible for assessment the Principal will consider:

1. whether admitting the Tender Response will compromise the integrity of the tender process;
2. whether the Tenderer has or is likely to gain an unfair advantage;
3. reasons for the Tenderer’s failure to comply with a requirement;
4. whether the Tender Response is capable of assessment;
5. whether the Tender Response was mishandled by the Principal or a third party; and
6. evidence of unfair practices.

### Bankruptcy/Insolvency

The Principal may, in its absolute discretion, declare a Tender Response inadmissible for assessment in circumstances where the Tenderer is bankrupt or in liquidation.

### Improper Conduct

The Principal may, in its absolute discretion, declare a Tender Response inadmissible for assessment where, in the reasonable opinion of the Principal (being based on fact or a reasonable belief), the Tenderer has engaged in “improper conduct” as that term is defined in the *Independent Commissioner Against Corruption Act 2017* (NT).

## Tenderers to Inform Themselves

Tenderers must, at their own expense, inform themselves of all circumstances and conditions relating to submitting a Tender Response. This includes compliance with all legislation, an inspection of the relevant site(s) and satisfying themselves as to the correctness and sufficiency of the RFT documentation.

## Compliance with NT Procurement Code

In preparing its Tender Response, submitting its Tender Response and throughout the tendering period the Tenderer must comply with the Northern Territory Procurement Code (‘Code’).

A copy of the Code is available at:

<https://nt.gov.au/industry/government/procurement-conditions-framework/procurement-code>

If the Principal is of the reasonable opinion that the Tenderer has not complied with the Code, the Principal will declare the Tender Response inadmissible for assessment.

## Enquiries

Should the Tenderer:

1. have any doubts as to the meaning of any part of the RFT; or
2. find any discrepancy, error or omission in the RFT,

the Tenderer should seek clarification from the Principal, as identified in the Annexure, as early as possible but in any event before the stated time and date for closing of the RFT.

The Principal may decline to provide a clarification or further information requested by a Tenderer.

Any clarification provided by the Principal may be provided to all prospective Tenderers.

## Inspection

The Goods are offered for sale ex site on an "as is where is" basis and may be inspected at the location stated in the Annexure. Being available for inspection, no allowance will be made nor will the Tenderer be permitted to claim on the Principal on the grounds that the Goods have not been correctly described.

## Signing of Documents

The Tenderer shall sign its Tender as indicated below:

1. In the case of a corporation:
	1. 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
	2. 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
	3. 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.
2. In the case of a firm (including a firm trading under a business or trading name and a partnership):
	1. by signature of each proprietor of the firm; or
	2. 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
	3. 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 Quotations and Tenders Online eLodgement Service, there is no requirement to complete the "signature" block on the Declaration by Tenderer form.

Tender Responses should contain:

1. if the Tenderer is one or more individuals, the full names of each party;
2. if the Tenderer is one or more company or organisation, each company, business or trading name and each unique business identifier required by law (eg ACN/ARBN/ABN);
3. the 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 Response and any subsequent contract arising out of acceptance of the Tender Response.

Each Tender Response (excluding attachments or supplementary information provided by the Tenderer) must be in English. A Tender Response that does not comply with this requirement will be declared inadmissible for assessment.

## Tender Validity

Tender Responses must remain valid and open for acceptance by the Principal for the period stated in the Annexure.

On expiry of the validity period:

1. a Tenderer may withdraw their Tender Response by written notice to the Principal; or
2. the Principal may, by close of business on the date of expiry, request an extension to the validity period.

## Part Offer and Part Acceptance

Unless otherwise stated in the Annexure, Tenderers may tender for any item or items or any group or groups of items.

Where part offers are allowed, the Principal reserves the right to accept separate Tenders for each or any item or items or item groups, which have been tendered for, unless the Tenderer specifically states to the contrary in its offer.

## Pricing

All prices shall be stated in Australian dollars and where applicable be inclusive of GST. The price(s) shall include all costs necessary and incidental to the removal of the Goods.

The Tenderer shall complete each line item in the Schedule of Prices against which a price is offered and lodge the Schedule with the Tender.

## Change to the Conditions

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

## Tender Assessment Criteria

Selection of the successful Tenderer will be based on a best value for Territory assessment of Tender Responses against the tender assessment criteria specified in the Annexure.

## Conflict of Interest

For the purpose of this clause a “Conflict” means any matter, circumstance, interest, or activity affecting the Tenderer (including the officers, employees, agents and sub-contractors of the Tenderer) which may or may appear to impair the ability of the Tenderer to perform any contract resulting from this RFT diligently and independently.

Tenderers must declare any Conflict in their Tender Response.

Tenderers must not place themselves in a position that may, or does, give rise to a Conflict during the RFT process.

If at any time during the RFT process, a Tenderer is aware that an actual, potential or perceived Conflict exists or may arise, that Tenderer must immediately notify the Principal.

If a Conflict exists or arises during the RFT, the Principal may:

1. declare the Tender Response inadmissible for assessment;
2. enter into discussions to seek to resolve the Conflict; or
3. take any other action it considers appropriate.

## 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 perform 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.

## Notification of Acceptance

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

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.

## Debriefing Tenderers

Tenderers may request a debriefing as to the specific reasons why their Tender Response was successful or 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 Response and under no circumstances will information relating to another Tender Response be disclosed.

# Conditions of Contract

## Interpretation of Terms

In these Conditions, 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 removed.

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

**'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.

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

**'Contract Price'** means the price that the Contractor has agreed to pay for the purchase and removal of the Goods.

**'Date of Acceptance'** means the date that appears on the Notice of Acceptance issued by the Principal accepting the Tenderer’s Tender.

**'Goods'** means the items described and quantified in the Description of Goods and/or Schedule of Prices, which are to be purchased by the Contractor in accordance with the Contract.

**'Notice of Acceptance'** means the written notification and any accompanying documentation sent to the Contractor by the Principal advising acceptance of the Tenderer’s Tender to purchase and remove the Goods.

**'Principal'** means the Northern Territory of Australia.

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

**'Description of Goods'** means the statement set out in the Contract detailing the Goods to be removed.

**'Request for Tender (RFT)'** means the document containing or referring to the Conditions of Tendering, Conditions of Contract, Special Conditions of Contract (if any), the Annexure, the Description of Goods, Response Schedules and any other document issued for the purpose of inviting Tenders for the purchase and removal of the Goods.

**'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*.

In the Contract, unless the contrary intention appears:

1. headings are for the purpose of convenient reference only and shall not be used in the interpretation of these conditions;
2. the singular includes the plural and vice-versa;
3. a reference to one gender includes the other;
4. 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;
5. 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;
6. 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;
7. a reference to time is to Australian Central Standard Time;
8. 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;
9. a reference to a ‘dollar’, ‘$’, ‘$A’ or ‘AUD’ means the Australian dollar unless otherwise stated;
10. a reference to a “measurement” means Australian legal units of measurement unless otherwise specified;
11. 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;
12. the word ‘includes’ in any form is not a word of limitation;
13. a reference to a clause includes a reference to a subclause of that clause; and
14. 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.

## Formation of the Contract

The Contract between the Principal and the Contractor shall comprise:

1. these Conditions of Contract and any Special Conditions;
2. the Notice of Acceptance;
3. the RFT;
4. the Tenderer’s Tender Response; and
5. 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:

1. Special Conditions (if any);
2. these Conditions of Contract;
3. Annexure to the Conditions of Tendering and Contract;
4. Notice of Acceptance;
5. Scope of Services;
6. Drawings included in the RFT (if any);
7. any other document expressly referred to in items (a) to (f) inclusive of this clause as forming part of the Contract;
8. 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 Tenderer’s Tender); and
9. the Tenderer’s Tender response including any drawings;

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

## General Obligations of the Parties

Both the Principal and the Contractor will, at all times:

1. act reasonably in performing their obligations and exercising their rights under the Contract;
2. diligently perform their respective obligations under this Contract; and
3. work together in a collaborative manner.

## 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 Contract.

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

### 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 in the Annexure.

## Nature of Contract

The Contractor shall pay on a Schedule of Prices basis.

Unless otherwise stated in the RFT, prices will be considered firm.

### Applicable Law

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

## Compliance with Relevant Acts, Regulations and By-Laws

The Contractor shall observe and comply with the provisions of relevant Acts, regulations, by-laws and rules and the requirements of any authority in the place where the Goods are stored in relation to the purchase and removal of the Goods.

## No Warranty Given

The Principal gives no warranty as to the quantity, quality, fitness of purpose, or safe condition of the Goods. The Goods are sold as and where they lie and the Contractor shall have no claim against the Principal in respect of the quantity, quality or safety of the Goods whatsoever.

## Responsibility/Risk, Safeguarding Goods

The Contractor is responsible for all cost and risk in relation to the purchase and removal of the Goods.

Before any part of the Goods is removed from site, the Contractor may notify the Principal’s Representative in writing of any deficiency in the quantity of the Goods at pre-tender inspection and when proof of payment is provided to the Principal’s Representative. The Principal’s Representative has sole discretion to determine the quantum of any deficiency in the quantity of the Goods and adjust the Contract Price accordingly.

Subject to the preceding paragraph, once the Contractor has presented the Principal’s Representative with satisfactory proof of payment of the Goods the Principal shall not be liable for any loss or damage to the Goods for any reason whatsoever.

## Notices

### Services of Notices

Notice must be:

1. in writing, in English and signed by a person duly authorised by the sender; and
2. 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.

### Effective on Receipt

Any notice given in accordance with sub-clause 2.9.1 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:

1. if hand delivered, on delivery;
2. if sent by post, three (3) Business Days after the date of posting; and
3. 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.

## Payment

Unless otherwise agreed in writing, payment for the Goods shall be made, within the time stated in the Annexure.

The Contractor shall remit the Contract Price for the Goods to the Receiver of Territory Monies, at the address shown on the Annexure. Payment is to be made by cash, bank cheque or EFTPOS if permitted in the Annexure.

## Removal of Goods within the Time Stated

The Contractor shall remove the Goods within the time and from the place stated in the Annexure.

Access to and removal of the Goods will be allowed when the Contractor has provided the Principal’s Representative with satisfactory proof of payment.

## Variations

A variation of the Contract shall only be made by agreement in writing by the parties.

## 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.

## Sub-Contracting

Should the Contractor desire to sub-contract any part or parts of the work the Contractor shall submit to Principal’s Representative the names of his proposed sub‑contractors the nature of the work that it is intended they undertake, and seek the written approval of the Principal’s Representative in respect of them. No sub‑contractor shall be employed in connection with the work unless such approval is first obtained. Such consent 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 removal 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.

## Disputes

Each party must follow the procedures in this sub-clause before starting court proceedings, other than for interlocutory relief.

Any party to this Contract who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

Within five (5) Business Days of the provision of the written notice, a nominated representative of each of the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute.

If the dispute is not resolved within five (5) Business Days of the parties meeting (or within such further period as the parties agree is appropriate) then one or both parties may nominate a mediator to determine the dispute.

If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the dispute.

The parties will bear the costs of the mediator equally.

## Termination

If the Contractor:

1. fails to pay for the Goods within the period stated in the Annexure or such extended time as the Principal’s Representative may approve, or
2. fails to remove the Goods within the period stated in the Annexure or such extended time as the Principal’s Representative may approve; or
3. intimates that they are unwilling or unable to complete the Contract, or becomes insolvent or bankrupt, or being a company goes into liquidation,

the Principal may, by notice in writing, cancel the Contract.

All sums of money remaining in the hands of the Principal may be forfeited and become vested in or become payable to the Principal.

Upon cancellation of the Contract the Principal may arrange disposal of the Goods by any means the Principal decides.

## Rights of Principal to Recover Monies

Should action, pursuant to the clause titled Termination, be taken then all losses, costs, charges and expenses incurred or sustained by the Principal in completing the Contract may be deemed to be a debt due to the Principal by the Contractor and may 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.

## Goods and Services Tax

The receipt issued by the Principal shall be a tax compliant invoice.