

Definitions and Interpretation

A Definitions

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

Basic Purchasing Conditions means the document titled '*Basic Purchasing Conditions*' available at www.hpw.qld.gov.au/Procurement

Business Day means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Customer's address.

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those arising out of the terms of any settlement.

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

Comprehensive Contract Conditions means the document titled '*Comprehensive Contract Conditions*' available at www.hpw.qld.gov.au/Procurement

Confidential Information means all information disclosed by or on behalf of the Customer, Principal or the Supplier ("**Discloser**") to the other party ("**Recipient**") in connection with an Invitation to Offer, Request for Quote or a Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Customer) all Customer Data. Confidential Information does not include any information which:

(a) is or becomes public, except through breach of a confidentiality obligation;

(b) the recipient can demonstrate was already in its possession or was independently developed by the recipient; or

(c) the recipient receives from another person on a non-confidential basis.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

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

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

(a) the Details and either the General Contract Conditions or Comprehensive Contract Conditions, and any document which the Details state will form part of the Contract; or

(b) the Details, and other specified contract and documents which the Details state will form part of the Contract; or

(c) for the purchase of Goods or Services under a Basic Order, the Basic Order and Basic Purchasing Conditions and any document which the Basic Order states will form part of the Contract; or

(d) where entered under the terms of an SOA, the SOA Conditions, those sections of the Details that are expressed to form part of the Contract, the SOA Order, and one of the following: (i) Basic Purchasing Conditions;

(ii) General Contract Conditions;

(iii) Comprehensive Contract Conditions;

(iv) GITC; or

- (v) other specified contract that applies when Customers purchase from the Supplier under the SOA,

as set out in the Details.

Contract Details means a document titled 'Contract Details' that contains information about a specific contract between the Customer and Supplier, which may be in a similar format to the 'Contract Details' document available at www.hpw.qld.gov.au/Procurement

Customer means the State of Queensland or the entity listed in the Details or Basic Order (as applicable).

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

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

Deliverables means the Goods, Services and documentation to be provided to the Customer including as described in the Requirements, and all incidental and ancillary goods, services and documentation.

Details means:

- (a) for purchases under an SOA: the SOA Details together with the Basic Order or SOA Order (as applicable); or
- (b) otherwise: the Contract Details.

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

General Contract Conditions means the document titled 'General Contract Conditions' available at www.hpw.qld.gov.au/Procurement

GITC means the Government Information Technology Contracting Framework. The GITC framework documents are currently located at <https://publications.qld.gov.au/dataset/gitcframework>

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

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or

something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Invitation to Offer, Request for Quote or Contract (as applicable), but excludes Moral Rights.

Invitation Process means the process commenced by the issuing of a request for quote, invitation to offer or any other process by which the Customer seeks an offer for the supply of goods and/or services and concluding upon formal announcement by the Customer of the selection of a preferred supplier or upon the termination of the process.

Invitation to Offer (ITO) means an Invitation to Offer issued by a Customer or Principal.

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

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Invitation to Offer, Request for Quote or Contract (as applicable).

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

Personal Information has the meaning given:

for the purpose of the Information Privacy Act – in that Act; or for the purposes of the Privacy Act – in that Act.

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

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

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

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

Queensland Government Body means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

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

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

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

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Contract, which are set out in the Contract, the Invitation to Offer or Request for Quote (if any), or otherwise agreed by the parties in writing.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Services means the services the Supplier will perform, described in the Details or Basic Order (as applicable).

Site means the site or premises at which the Deliverables are to be provided as specified by the Customer in the Details or Basic Order (as applicable).

SOA means a standing offer arrangement entered into between the Principal and the Supplier, made up of the SOA Details and the SOA Conditions and any document which the SOA Details states will form part of the SOA.

SOA Conditions means the document titled 'SOA Conditions' available at www.hpw.qld.gov.au/Procurement

SOA Details means a document titled 'Standing Offer Arrangement (SOA) Details' that contains information about a specific SOA, which may be in a similar format to the 'Standing Offer Arrangement (SOA) Details' document available at www.hpw.qld.gov.au/Procurement

SOA Order means any order or acknowledgment from the Customer for the provision of Goods and/or Services that are the subject of a SOA.

Supplier:

- (a) for a Contract: is described in the Basic Order or Details (as applicable); and
- (b) for an Invitation Process: is a potential supplier invited to participate in the Invitation Process.

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract by a party or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract or of a Law in respect of the Supplier's obligations under the Contract, committed with reckless disregard for the consequences and in circumstances where the Supplier knows or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

B Interpretation

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

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(consistency)** where an Invitation to Offer, Request for Quote or Contract is made up of more than one document, the Invitation to Offer, Request for Quote or Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) **(contract departures)** the contract departures section of the Details will take precedence over all other documents.
- (e) **(currency)** all currency amounts are in Australian dollars;
- (f) **(headings)** headings are provided for convenience and do not affect the interpretation of the Invitation to Offer, Request for Quote or documents making up a Contract;
- (g) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (h) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (i) **(governing law)** the laws of Queensland apply to a Contract, SOA and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
- (j) **(law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
- (k) **(person)** a person includes the person's executors, administrators, novatees and assignees;

- (l) (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (m) (**severability**) if any part of a Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

C Notices

- (a) A notice will be deemed to be given:
 - (i) if posted – two (2) Business Days after the date of posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- (b) A notice of suspension or termination of a Contract or SOA which is sent via email must also be sent by post or hand delivery, and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.