

ASDEFCON (Shortform Goods)

General Conditions of Contract for the Supply of Goods and Repair Services

1. Supplies: The Supplier agrees to provide the Supplies to the Commonwealth and the Commonwealth agrees to purchase the Supplies in accordance with the terms of the Contract.

2. Contract Documents: Subject to clause 4, the Contract between the Commonwealth and the Supplier comprises the:

- (a) Special Conditions;
- (b) Purchase Order (other than the Special Conditions); and
- (c) Conditions of Contract.

If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

3. Special Conditions: The Supplier must comply with the Special Conditions (if any).

4. Existing Contracts and Standing Offers: Subject to the terms of the Purchase Order and any Special Conditions, if the Purchase Order is issued under the terms of an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and these Conditions of Contract (other than this clause 4) will have no effect.

5. Provision of Supplies: The Supplier must provide the Supplies and, if applicable, return the Repairable Item, to the Commonwealth at the Delivery Location on or before the relevant Delivery Date and in accordance with any special instructions for the delivery of the Supplies specified in the Purchase Order. The Supplier must promptly notify the Commonwealth if the Supplier becomes aware that it will be unable to provide all or part of the Supplies or return the Repairable Item, by the relevant Delivery Date and advise the Commonwealth as to when it will be able to do so.

6. Repair Services: The Supplier must provide the Repair Services to the satisfaction of the Contract Officer and in accordance with any requirements specified in the Purchase Order.

7. Repairable Item: The Supplier acknowledges that the Repairable Item at all times remains the property of the Commonwealth. The Supplier must keep the Repairable Item safe and secure and not use the Repairable Item for any purpose other than for the purpose of providing the Repair Services. The Supplier must not part with possession or control of the Repairable Item except where specified in the Purchase Order or otherwise agreed by the Commonwealth. The Supplier must not create or allow to be created any lien, charge, mortgage or encumbrance over the Repairable Item.

8. Acceptance: The Commonwealth may accept or reject the relevant Supplies within 14 days after delivery of the Supplies to the Delivery Location. If the Commonwealth does not notify the Supplier of acceptance or rejection within the 14 day period, the Commonwealth will be taken to have accepted the Supplies on the expiry of the 14 day period. The Commonwealth may reject the Supplies where the Supplies do not comply with the requirements of the Contract including any acceptance tests specified in the Special Conditions. If the Commonwealth rejects the Supplies the Commonwealth may:

- (a) require the Supplier to provide, at the Supplier's cost, replacement Supplies which

comply with the requirements of the Contract within a period determined by the Commonwealth; or

- (b) terminate the Contract in accordance with clause 16.

In either case and at the Commonwealth's request, the Supplier must promptly remove any relevant Goods and, if clause 8(a) applies, the Repairable Item (if any), from the Commonwealth's premises at its cost.

9. Title and Risk: Title to the Goods transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with clause 8. The risk of any loss or damage to the Goods remains with the Supplier until their delivery to the Commonwealth at the Delivery Location. The Supplier bears the risk of any loss or damage to a Repairable Item from the date upon which the Repairable Item is delivered to the Supplier until delivery of the Repairable Item to the Commonwealth at the Delivery Location.

10. Payment: The Commonwealth must pay the Contract Price to the Supplier within 30 days after receiving a correctly rendered invoice in accordance with clause 11.

If the Commonwealth fails to pay a correctly rendered invoice within 30 days of receipt and:

- (a) the Supplier is a Small Business; and
- (b) the Contract Price is valued up to A\$1 million,

the Supplier may submit a separate invoice in accordance with clause 11 for payment of simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due up to and including the day that payment is made, provided the interest payable exceeds A\$10.

11. Invoice: The Supplier must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) the Supplies meet the requirements of the Contract;
- (c) it is for an amount which does not exceed the Contract Price;
- (d) it includes the Purchase Order number, and the name and phone number of the Contract Officer; and
- (e) it is a valid tax invoice in accordance with the GST Act.

The Supplier must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Supplier or payment of the Contract Price by the Commonwealth.

12. Price Basis: The Contract Price is firm and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas. The Contract Price includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

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13. Warranty: The Supplier warrants that:

- (a) the Goods are new, free from deficiencies in design, manufacture and workmanship and are fit for the purposes for which goods of a similar nature to the Goods are commonly supplied and for any other purposes notified by the Commonwealth to the Supplier; and
- (b) in providing the Repair Services, it will use workmanship of a standard consistent with best industry standards for work of a similar nature to the provision of the Repair Services and which is fit for its intended purpose.

14. Intellectual Property: The Supplier warrants that it has all intellectual property rights and moral rights necessary to provide the Supplies to the Commonwealth and to allow the Commonwealth to have the full benefit of the Supplies and that the provision of the Supplies in accordance with the Contract will not infringe any third party's intellectual property or moral rights.

15. Defects: Notwithstanding acceptance of the Supplies by the Commonwealth in accordance with clause 8, the Supplier must remedy at its cost any defects in the Supplies notified by the Commonwealth to the Supplier at any time within the period of 90 days or the Supplier's or manufacturer's standard warranty period (whichever is the longer) following acceptance of the Supplies by the Commonwealth. The Supplier will be responsible for any costs of removing the Goods and, if applicable, the Repairable Item and delivering repaired or replacement Supplies or the Repairable Item to the Commonwealth together with any associated or incidental costs. If the Supplier does not remedy the defect, the Commonwealth may remedy the defect and the costs incurred by the Commonwealth in remedying the defect will be a debt due from the Supplier to the Commonwealth.

16. Termination: The Commonwealth may terminate the Contract in whole or in part if:

- (a) the Supplier:
 - (i) does not deliver all of the Supplies and, if applicable, the Repairable Item to the Delivery Location by the relevant Delivery Date; or
 - (ii) notifies the Commonwealth that it will be unable to deliver the Supplies and, if applicable, the Repairable Item to the Delivery Location by the Delivery Date in accordance with clause 5;
- (b) the Commonwealth rejects any of the Supplies in accordance with clause 8;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued by the Commonwealth to the Supplier requiring the Supplier to remedy the breach; or
- (e) the Supplier becomes bankrupt or insolvent.

If the Commonwealth has provided a Repairable Item to the Supplier in relation to that part of the Contract which has been terminated, the Supplier must immediately

return that Repairable Item to the Commonwealth at the Supplier's cost.

17. Termination for Convenience: In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Supplier in writing. If the Commonwealth issues such a notice, the Supplier must stop work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts.

The Commonwealth will only be liable for payments to the Supplier for Supplies accepted in accordance with clause 8 before the effective date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Commonwealth.

The Supplier will not be entitled to profit anticipated on any part of the Contract terminated.

18. Quality Assurance: Upon request by the Commonwealth, the Supplier must provide the Commonwealth and its nominees with access to the Supplier's premises to undertake quality audits and quality surveillance as defined in AS/NZ ISO 9000:2001 of the Supplier's quality system and/or the production processes related to the Supplies.

19. Security and Safety: If the Commonwealth provides the Supplier with access to any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Commonwealth or of which the Supplier is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.

20. Insurance: The Supplier must procure and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain.

21. Set Off: If the Supplier owes any debt to the Commonwealth in connection with the Contract, the Commonwealth may deduct the amount of the debt from payment of the Contract Price.

22. Indemnity: The Supplier indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, wilful or negligent act or omission on the part of the Supplier, its officers, employees, agents or subcontractors; or
- (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any infringement or alleged infringement of that third party's intellectual property including moral rights in connection with the Supplies.

The Supplier's liability to indemnify the Commonwealth under paragraph (a) is reduced to the extent that any wilful, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or contractors

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contributed to the liability, loss, damage, cost, compensation or expense.

23. Limitation of Liability:

- (a) Subject to paragraph (b), the liability of the Supplier to the Commonwealth arising out of the Supplier's performance of the Contract will be limited in aggregate to **[insert amount]**.
- (b) The limitation in paragraph (a) does not apply to liability of the Supplier, including under an indemnity whether or not expressly referred to in this clause, for:
 - (i) personal injury and death;
 - (ii) loss of, or damage to, third party property or Commonwealth property (other than Defence property);
 - (iii) breach of IP rights, confidentiality, privacy or security obligations;
 - (iv) fraud or dishonesty;
 - (v) unlawful or illegal acts; or
 - (vi) the IP indemnity provided by the Supplier under clause 22(b).

24. Notices: Any notice or communication under the Contract will be effective if it is in writing, signed and delivered to the Contract Officer or the Supplier as the case may be, at the address or facsimile number set out in the Purchase Order.

25. Assignment: The Supplier must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.

26. Subcontracting: Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract. Upon request the Supplier must make available to the Commonwealth the details of all subcontractors engaged to provide the Supplies under the Contract. The Supplier acknowledges that the Commonwealth may be required to disclose such information.

27. Approvals and Compliance: The Supplier must obtain any necessary export licences or other approvals for the provision of the Supplies and arrange any necessary customs entry for the Supplies. The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth policies relevant or applicable to the Contract.

28. Hazardous Substances: Unless the Commonwealth otherwise agrees in writing, the Supplier warrants that the Supplies do not contain any hazardous substances as defined in Part 6 of the Occupational Health and Safety (Safety Standards) Regulations 1994 (Cth).

Where the Commonwealth agrees that the Supplies may contain hazardous substances, the Supplier must comply with the Hazardous Substance policy as detailed in the Defence Procurement Policy Manual.

29. Applicable Law: The laws of the Australian Capital Territory apply to the Contract.

30. Entire Agreement: The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

31. Definitions: In the Contract:

"Commonwealth" means the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312.

"Conditions of Contract" means these General Conditions of Contract for the Supply of Goods and Repair Services.

"Contract Officer" means the contract officer specified in the Purchase Order.

"Contract" has the meaning given in clause 2.

"Contract Price" means the contract price specified in the Purchase Order, including any GST component payable, and for the purposes of clause 11 only, includes any simple interest payable on late payments.

"Delivery Date" means the date or dates for provision of the Supplies specified in the Purchase Order.

"Delivery Location" means the location or locations for the provision of the Supplies specified in the Purchase Order.

"General Interest Charge Rate" means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day.

"Goods" means the goods specified in the Purchase Order (if any) to be provided by the Supplier and any goods or component parts supplied by the Supplier as part of providing the Repair Services.

"GST" means a Commonwealth goods and services tax imposed by the GST Act.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Purchase Order" means the purchase order attached to these Conditions of Contract.

"Repair Services" means the repair services in respect of the Repairable Item specified in the Purchase Order (if any).

"Repairable Item" means any item or items provided by the Commonwealth to the Supplier for the purpose of the Repair Services.

"Small Business" means an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

"Special Conditions" means the special conditions attached to the Purchase Order by the Commonwealth (if any).

"Supplier" means the supplier specified in the Purchase Order.

"Supplies" comprise the Goods and the Repair Services and, for the avoidance of doubt, do not include the Repairable Item.