



## Department of Water Terms and conditions of Contract

### 1. General

Every purchase/blanket order ('order') the department issues is an offer to acquire works and/or services from you subject to:

- (a) if the order is the result of a written contract you have entered into with the department, the terms and conditions of that contract
- (b) if there is no written agreement, these terms and conditions ('standard terms') and any written special conditions that the department include with our order. Where you accept our order, there is a contract on this basis ('Contract'). Any terms and conditions in your quote, offer document, order acceptance or any other document you supply are excluded.

### 2. Definitions and interpretation

In these standard terms:

- The singular includes the plural and vice versa.
- A person includes a firm, body corporate, unincorporated association or authority and reference to a person includes their executors, administrators, successors, substitutes and assigns.
- The meaning of general words is not limited by specific examples introduced by 'including' or 'for example'.
- Headings are for convenience only.
- 'Works' means the whole of the work to be carried out and completed in accordance with the Contract.
- 'Privacy Laws' means the *Privacy Act 1988* (Cth) and all associated legislation and regulations as modified or re-enacted.
- 'Products' means goods and/or services and includes any deliverable resulting from a service.
- 'Services' means services set out in our order.
- 'The department' means the Department of Water, Western Australia ABN 28 420443 065.
- 'You' or 'your' means the Contractor set out in the department's order.

### 3. Delivery

You must supply works and/or services as, where and when specified in the department's order or otherwise directed by the department (at any time) in writing. You must keep the department informed of any delays or other matter which may affect the works or services.

### 4. Cancellations

The department may cancel an order by written notice to you:

- (a) at any time prior to supply; or
- (b) after supply, if products are not in accordance with the department's order (including where wrong quantities are delivered) or if you otherwise breach this Contract.

## **5. Quality**

- 5.1 You must, and all works, products and services you supply must, strictly comply with all applicable laws, regulations, codes and Australian Standards, and with the department's order (including any performance criteria).
- 5.2 Goods must be new, fit for the purpose for which they are acquired, free from damage and defects in workmanship and materials and of merchantable quality. Services must be performed to a high standard of professional care and skill by appropriately trained and qualified personnel.
- 5.3 Without limiting clause 5.2, you must assign to the department the benefit of any warranty or guarantee given by the manufacturer in respect of goods.
- 5.4 The department may reject products which do not comply with the department's order or these standard terms, even if the department have previously inspected and/or accepted them. Where products are rejected, you must, at the department's option within ten (10) days:
  - (a) replace, repair or re-supply the products at your expense; or
  - (b) refund to the department any amount the department paid for the rejected products.

## **6. Price and payment**

- 6.1 The price for the works is the price stated in the department's order.
- 6.2 Unless the order expressly states otherwise, it includes:
  - (a) any applicable GST
  - (b) all costs associated with the performance of the Contract and all taxes and duties.
- 6.3 You may only invoice the department after works have been delivered or completed to the department's satisfaction. Your invoice must:
  - (a) be correctly addressed
  - (b) identify the department's order number
  - (c) be a valid Tax Invoice for GST purposes
  - (d) where the department request it, be accompanied by documentation substantiating the amount claimed.
- 6.4 The department will pay all correctly rendered and undisputed invoices by electronic funds transfer or cheque within 30 days of the date of invoice.
- 6.5 If the department disputes an invoice:
  - (a) payment is suspended until the dispute is resolved
  - (b) you must give the department any information or document the department request in relation to the invoice or the dispute.
- 6.6 As well as any of the department's other rights, the department may deduct from your invoice any amount you owe the department (including under any indemnity).

## **7. Title and risk**

- 7.1 Title to and risk in products passes to the department on delivery.
- 7.2 You warrant that:
  - (a) you have complete ownership of the products free of any encumbrances
  - (b) the department will receive clear and complete title to the products free from any encumbrances
  - (c) no claim of infringement of moral rights will be brought against the department by your employees or agents.

7.3 Any intellectual property rights created from your performance of this Contract vest in and are assigned to the department on creation.

## **8. The department's materials**

8.1 Any tools, patterns, designs, drawings, dies or other material used in supplying or manufacturing products and that is paid for or supplied by the department ('the department's materials') is the department's property.

8.2 While the department's materials are in your possession, you:

- (a) hold them solely as the department's bailee
- (b) must store them securely and maintain them in good repair
- (c) must use them only for the purpose of performing this Contract
- (d) must return them to the department on demand.

## **9. Confidentiality**

9.1 You must keep the department's confidential information (which includes information about the department and employees) confidential and not directly or indirectly disclose, use, record, memorise, reverse engineer or copy it for any purpose other than to perform this Contract, without the department's prior written approval.

9.2 You must:

- (a) comply, and must ensure that your employees comply, with all requirements set out in Privacy Laws
- (b) handle the collection, disclosure, storage and use of personal information in a manner consistent with the *Privacy Act 1988*.

## **10. Indemnity and insurance**

10.1 You indemnify the department, its officers, employees, agents and contractors against all loss, damage, claim, expense or liability incurred in connection with:

- (a) your performance or breach of this Contract
- (b) any products or services you supply
- (c) a claim by a third party that the works or products infringe their intellectual property rights
- (d) any negligent or wilfully wrong act or omission by you, your employees, agents and contractors.

10.2 You must effect and maintain appropriate insurance policies, taking into account the works under the Contract (WUC). You must provide the department with proof of your insurance upon request.

## **11. Subcontracting**

You must not subcontract the whole or any part of your obligations under this Contract without the department's prior written approval, which the department may grant or withhold at the department's sole discretion. You will remain principally liable for the performance of this Contract and the acts and omissions of any subcontractor.

## **12. Termination**

As well as the department's other rights, the department may terminate this Contract where you:

- (a) fail to perform the WUC by the date required in the department's order
- (b) breach this Contract
- (c) become or threaten to become insolvent or bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.

## **13. Miscellaneous**

13.1 This Contract can only be varied by written agreement.

13.2 You may not assign this Contract without the prior written consent of the department which the department may grant or withhold at our sole discretion.

13.3 These standard terms including any written special conditions plus our order constitute the entire agreement between the department and you in relation to its subject matter.

13.4 The parties are independent contractors. No relationship of employment, agency, partnership or joint venture is created by this Contract.

13.5 Our delay or failure to exercise a right under this Contract is not a waiver of that right or any other rights. Our consent to a breach of this Contract is not a consent to any subsequent breach.

13.6 If a provision of these standard terms is unenforceable for any reason, it shall be read down to the point of severance. These standard terms must not be construed to our disadvantage merely because the department prepared them.

13.7 This Contract is governed by the law of Western Australia. You submit to the jurisdiction of the courts of Western Australia and waive any right to claim that those courts are inconvenient forums.