

# For Official Use Only

## Standard Terms and Conditions for Purchase of Minor Goods and Services

### AG-1034



#### 1. General

- 1.1. The Parties to this Contract are ANSTO ('we', 'us', 'our') and the Supplier ('you', 'your').
- 1.2. Unless otherwise agreed by us, the Contract includes these Conditions, any PO, any Special Conditions or Specifications and any amendments to any of those documents agreed by us in writing.
- 1.3. Where the Contract comprises other ANSTO terms and conditions or any Special Conditions relating to a particular procurement by ANSTO, those other ANSTO terms or conditions or Special Conditions will prevail over these Conditions, with any Special Conditions taking the highest precedence.
- 1.3. No additional terms or conditions proposed by you at any time, apply to the provision of the Supplies unless specifically agreed to in writing by us.
- 1.4. No variation of this Contract is legally binding upon either Party unless in writing and signed by both parties.
- 1.5. You are taken to have accepted the Contract by indicating your acceptance by oral, electronic or written communication to our nominated contact officer, or by your conduct that is consistent with the existence of the Contract. For example, if you start to perform your obligations under the Contract even though you have not expressly advised us of your acceptance of our offer or Order.

#### 2. Supplies

- 2.1. The delivery of all Supplies, including the delivery of any Goods and the performance of any Services and Works, must be made at the time, place and in the manner stated in the Contract, or as otherwise advised by us in writing.
- 2.2. Title in and risk of loss or damage to, any Supplies passes to us when the Supplies are delivered to us. If we have paid for the Supplies in advance, property in the Supplies passes to us on the earlier of payment for, or delivery of, the Supplies.
- 2.3. All Supplies must be packed, marked and labelled by you to ensure their safe delivery and safe handling by us and if there are specific requirements in the PO you must comply with those requirements.
- 2.4. You must provide the Supplies to us at a high standard with all due skill, care and diligence and be in accordance with relevant best practice.
- 2.5. You must comply with any requirements or Specifications relating to the Supplies as stated in the PO or the Contract.
- 2.6. Without limiting clauses 2.4 or 2.5, all Supplies must be free from defects in materials and workmanship, be of merchantable quality and fit for the purpose specified in the PO or the Contract (Purpose).
- 2.7. If there is a defect in the Supplies, or the Supplies are not delivered in accordance with the Specifications, or the Supplies do not meet the Purpose, we may by notice require you to remedy the defect, or to redo the Supplies, at no additional cost to us.
- 2.8. If you fail to remedy a defect, fail to meet the Purpose in the Supplies or fail to deliver, redo or replace the Supplies within 30 days after notification by us under subclause 2.7, we may perform or have the necessary work performed by a third party and recover the costs from you, or we may reject the Supplies and/or terminate the Contract.
- 2.9. Where we require in the Contract, that you are to:
  - 2.9.1. submit samples of the Supplies, and you must not proceed to bulk manufacture until we have approved the samples; and
  - 2.9.2. provide reasonable access to your premises and all other necessary assistance for our representatives to inspect any manufacture or assembly of Supplies.

#### 3. Warranties

- 3.1. Subject to the express terms of the Contract, you warrant that:
  - 3.1.1. you are the legal and beneficial owner of the Supplies, free from any third party interests;
  - 3.1.2. that we are free to use the Supplies for the Purpose or in accordance with the Contract once delivered to us, and that as far as you are aware the supply of the Supplies does not infringe the Intellectual Property Rights or other rights of any other third party; and
  - 3.1.3. for the Warranty Period, the Supplies are free from defects in design, materials and workmanship, meet the Purpose and any Specification and are of merchantable quality and have been produced with all due skill, care and diligence and be in accordance with relevant best practice.
- 3.2. If we, or you notice of any defect or breach of the warranty under clause 3.1 discovered in the Supplies during the Warranty Period, you must, during the Warranty Period, after consultation and at our option:
  - 3.2.1. remedy any defects in warranted Supplies by repair, replacement or modification and must meet all costs incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs; or
  - 3.2.2. refund any payment we have made for the defective Supplies; or
  - 3.2.3. if applicable under clause 2.8, pay any applicable costs, including third party costs we have incurred in remedying any defects.
- 3.3. You must ensure that we receive and are fully advised of all standard manufacturer and other relevant warranties in respect of the Supplies.
- 3.4. You warrant that you do not have any time during the term of the Contract any judicial decisions (except under appeal) or any claims in respect of unpaid Personnel entitlements, which remain unpaid.
- 3.5. You also warrant that you and your Personnel hold all necessary licences, certifications, approvals or visas to necessary to perform your obligations under the Contract.

#### 4. Payment

- 4.1. Subject to clause to the express terms of the Contract, we must pay you for the Supplies within 30 days of the receipt of a correctly rendered invoice provided the following has occurred:
  - 4.1.1. title in the Supplies (if applicable) has passed to us and we have accepted them; and/or
  - 4.1.2. the Supplies have been satisfactorily completed; whichever is the later.
- 4.2. An invoice will be correctly rendered if it:
  - 4.2.1. is addressed to us in accordance with the PO;
  - 4.2.2. identifies the PO;
  - 4.2.3. is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
  - 4.2.4. where required by Australian law, a valid Tax Invoice within the meaning of the GST Act.

#### 5. Indemnity and Insurance

- 5.1. You will indemnify us, and our Personnel against all loss, damage, injury or expense we may directly or indirectly sustain or incur as a result of:
  - 5.1.1. any breach of the Contract by you; and/or
  - 5.1.2. any act or omission involving fault on your part in relation to the provision of Supplies under the Contract (including negligence or willful misconduct by you or your Personnel).
- 5.3. Your liability to indemnify ANSTO under clause 5.1 will be reduced to the extent that any negligent act or omission of ANSTO contributed to the relevant liability, loss or damage, or loss or expense. To the extent permitted by law, the Proportionate Liability Legislation is excluded and does not apply to any claim arising under this Contract.
- 5.2. You shall at all relevant times maintain the insurances specified in the Contract or, if not specified, reasonably appropriate insurances in respect of any risks under the Contract. You shall provide us (or our Authorised Representative) with evidence of such insurance cover on request.

#### 6. Assignment

- 6.1. You must not, without our prior written consent, sub-contract or assign the whole or any part of the Contract. Despite any approval from us to sub-contract, you remain fully responsible for the performance of your obligations under the Contract.

#### 7. Contract Price

- 7.1. Subject to the express terms of the Contract, the Contract Price of the Supplies includes all taxes (including GST), duties and other imposts for which you are liable; all insurance costs; all amounts payable for the use of the Supplies (including all necessary Intellectual Property Rights); all charges for Supplies; and no extra charges for testing, inspection, packing, delivery or otherwise.

#### 8. Additional Obligations

- 8.1. You must treat and require your Personnel to treat, all our Confidential Information given in connection with the Contract and identified as having, or marked with, a classification indicating its confidentiality, according to that classification or marking. This clause does not apply to information which is part, or becomes part, of the public domain other than by breach of this clause.
  - 8.2. You warrant that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of your obligations under the Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, you are to notify us immediately in writing of that conflict or risk and follow any of our directions to deal with the conflict or we may terminate the Contract.
  - 8.3. You must, when using our premises or facilities, comply with the WHS Law, and all of our relevant security and safety policies and procedures, as notified by us. You must also comply with all applicable laws, regulations and policies of the Commonwealth, of any State, Territory and local authorities (including the WHS Law, anti-discrimination and equal opportunity laws, the Fair Work Act 2009, the Privacy Act 1988, the Charter of the United Nations (Dealing with Assets) Regulations 2001 and the Modern Slavery Act 2018 Act).
- #### 9. Termination
- 9.1. We may at any time give notice to you in writing to terminate the Contract or reduce the scope of the Supplies without cause and on receipt of such a notice you must cease or reduce work as specified in the notice and take steps to mitigate your losses.
  - 9.2. On termination or reduction of the Contract under clause 9.1, you may submit a claim for compensation to us and we must pay you such claims as are fair and reasonable in respect of the loss or damage sustained by you in consequence but you will not be entitled to claim compensation for work done or expenditure incurred contrary to the Contract or for loss of profits and under no circumstances will we be liable for more than the Contract Price.
  - 9.3. Without limiting any other rights or remedies, we may, by notice in writing to you, terminate the Contract immediately if you commit a material breach of the Contract or cease to be able to pay your debts as they become due, or enter into liquidation or administration; or you fail to commence performance of the Contract or to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or to remedy a breach of any obligation under this Contract within 21 days of being given the notice referred to; or if you breach any provision of the Contract on more than 3 occasions in any 12 month period.
  - 9.4. Where before termination of the Contract under clause 9.3, we have made any payment in advance on account of the Contract Price to you, the total amount of that payment must be repaid by you to us on termination and, if not repaid is recoverable by us from you as a debt.
  - 9.5. If the Contract is terminated under clause 9.3, we are both relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; our rights to recover damages are not affected; and you must return all our Confidential Information to us.

#### 10. Miscellaneous Provisions

- 10.1. You are not by virtue of this Contract, and must not represent yourself to be, and must ensure that none of your Personnel represent themselves to be, our employee, partner or agent or otherwise able to bind or represent us in performing your obligations under the Contract.
- 10.2. The Contract is governed by the laws in force for the time being in the State or Territory in which the Supplies are being provided to us.
- 10.3. Unless the contrary intention applies, the Contract commences on the date of the PO and continues until you have performed all your obligations under the Contract, including those in respect of defects and warranties.
- 10.4. Clauses necessary to give effect to the Contract continue after termination or expiry by 7 years.
- 10.5. If either Party fails or delays the exercise a power or right, this does not operate as a waiver of the power or the right. A waiver is not effective unless it is in writing and signed by us.
- 10.6. You must not use our name or logos in any publication or announcement without obtaining our prior written consent.
- 10.7. If we have a dispute that cannot be resolved by negotiation then the matter must be referred to the Resolution Institute for arbitration in accordance with the Institute's Arbitration Rules. The decision of the arbitrator (including any award as to the costs shall be final and binding). Nothing in this clause prevents us from exercising our rights under the Contract or from seeking interlocutory relief through the appropriate courts.

#### 11. Interpretation

- 11.1. In this Contract the following words will have the meanings assigned to them unless the contrary intention appears:

**ANSTO** means the Australian Nuclear Science and Technology Organisation (ABN 47 956 969 590) of New Illawarra Road, Lucas Heights, NSW, Australia

**Authorised Representative** means a provider nominated by us for Contract management purposes and which currently includes Barrington Group Australia Pty Ltd (ABN 63 128 660 891).

**Conditions** means these 'Standard Terms and Conditions'.

**Confidential Information** means information disclosed by one party to the other which is designated as confidential by the person disclosing it or which the other person knows or ought to know is confidential.

**Contract** means the agreement between us incorporating these Conditions, any PO and any Special Conditions, Specifications and other documents specified in the PO as forming part of this Contract.

**Contract Price** means the price we will pay you for the Supplies as specified in the PO.

Goods means any goods you are to supply us under the Contract.

**GST and GST Act** have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

**Intellectual Property Rights** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Order or PO** means ANSTO's purchase order, order or other acceptance notice issued by ANSTO to you accepting your offer to provide the Supplies to ANSTO.

**Personnel**, unless the contrary intention applies, means a Party's officers, employees, agents, approved subcontractors and consultants.

**Proportionate Liability Legislation** means:

- (a) Section 137B and Part VIA of the *Competition and Consumer Act 2010* (Cth)
  - (b) Part 4 of the *Civil Liability Act 2002* (NSW); and
  - (c) Any similar applicable laws relating to proportionate liability;
- in each case which are capable of exclusion.

**Services** means any services you are to supply us under the Contract.

**Supplier** means the person or the organisation who is to provide the Supplies to us, and where the Supplier includes more than one person, those persons jointly and severally.

**Supplies** means the Goods, Services or Works that you are to provide to us under the Contract.

**Specifications** mean any specifications we have specified in our invitation documents or PO regarding the Supplies.

**Warranty Period**, unless agreed by us in writing at the time of acceptance of your Order, means the warranty period commencing on the date of delivery or our acceptance of the Supplies, whichever is the later, and shall be valid for 12 months, or the length of your or the manufacturer's standard warranty period, whichever is longer.

**WHS Law** means the Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulation 2011 (NSW) and Work Health and Safety Act 2011 (Cth) and Work Health and Safety Regulations 2011 (Cth) and any other relevant or applicable law.

**Works** means any works you are meant to carry out for us under the Contract.

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Custodian: Manager, Sourcing and Procurement

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