

Standard Conditions of Contract for NBA Procurement of Goods and Services

When these Standard Conditions apply

1. These Standard Conditions apply to the procurement of Goods or Services by the NBA under:
 - 1.1 a Purchase Order issued by the NBA as an offer or acceptance;
 - 1.2 a Letter of Contract Engagement issued by the NBA; or
 - 1.3 other dealings entered into by the NBA which create a contract, which specifically refer to these Standard Conditions, or where no conditions of contract are specifically referred to.

Scope and operation of the Contract

2. Together, the communications between the parties referred to in clauses 1.1 to 1.3, these Standard Conditions, and any attachments included by specific reference, comprise the Contract.
3. The Contract describes the entire contractual agreement between the parties for the provision of the Goods or Services, and excludes all other prior or subsequent communications between the parties in relation to the Goods or Services or the applicable conditions of contract, including any inconsistent conditions proposed at any time by the Supplier. The only exceptions to this arise if a variation is agreed under clause 4, or if contract terms are implied by law.
4. No variation of the Contract is binding unless it is agreed in writing between the parties.

Supply of the Goods and Services

5. The Supplier agrees (without any cost or fee being payable by the NBA the Supplier in addition to the Payments properly payable under the Contract) to:
 - 5.1 supply the Goods and Services to meet the description, at the time and place, and in the manner, specified in the Contract;
 - 5.2 ensure that the Goods are free from defects in materials and workmanship, fit for purpose, and of merchantable quality;
 - 5.3 ensure that the Services are carried out with due care and skill;
 - 5.4 ensure that the Goods and Services conform with all relevant Australian Standards;
 - 5.5 not subcontract the performance of any part of the Services without prior approval in writing from the NBA;
 - 5.6 be responsible under the Contract for acts or omissions of any subcontractors as if those were acts or omissions of the Supplier.
 - 5.7 provide information requested by the NBA, and access to and the opportunity for the NBA to inspect the Goods or Services, at any time prior to supply;
 - 5.8 liaise as necessary with the NBA to identify the NBA's requirements, and comply with the NBA's reasonable requests, in relation to matters concerning the Goods or Services that are not specified in the Contract;
 - 5.9 if the NBA rejects any Goods or Services under clause 6.3, comply with a requirement of the NBA to:
 - 5.9.1 replace the rejected Goods or Services with Goods or Services which are in all respects in accordance with the Contract or otherwise are to the satisfaction of the NBA;
 - 5.9.2 repair or rectify the Goods or Services, on site or otherwise, to be in all respects in accordance with the Contract or otherwise to be to the satisfaction of the NBA; or
 - 5.9.3 reduce or refund any payment for the rejected Goods or Services;and in the case of 5.9.1 or 5.9.2, remove any rejected Goods in a manner which is reasonably acceptable to the NBA; and

- 5.10 supply the Goods with the minimum of packaging material necessary to ensure their safe delivery, and generally adopt environmental friendly methods for the supply of the Goods and Services to the extent practicable.
6. The Commonwealth may, acting reasonably:
 - 6.1 notify the Supplier of an alternate time or place for the supply of the Goods and Services;
 - 6.2 request information about or inspect the Goods or Services at any time prior to supply;
 - 6.3 reject any Goods or Services for non-conformity with the Contract within 90 days, or such other period agreed in the Contract, after supply; and
 - 6.4 if the NBA rejects any Goods or Services, then (without prejudice to the NBA's rights otherwise arising under the Contract or the general law) impose a requirement on the Supplier under clause 5.9.
7. Property in, and risk of loss of or damage to, the Goods passes to the NBA on final supply to the NBA. However, property in and risk of loss or damage to any Goods rejected by the NBA reverts to the Supplier on notification of rejection.

Payment and invoicing

8. The NBA agrees to make the Payments in accordance with the Contract by no later than 30 days after receipt of a correctly rendered invoice.
9. The Supplier may submit invoices to the NBA:
 - 9.1 at the time, or on the basis of achievement of particular milestones, specified in the Contract; or
 - 9.2 if not otherwise specified, after the supply of the Goods or Services in accordance with the Contract.
10. The NBA will be entitled, in addition to any other right it may have:
 - 10.1 to withhold any Payment until the Supplier has completed to the satisfaction of the NBA that part of the supply of Goods or Services to which the Payment relates; or
 - 10.2 to proportionately reduce any Payment in respect of supply of Goods or Services which are not fully in accordance with the Contract.
11. The NBA will not be liable to pay for any rejected Goods or Services, or for any damage done to or costs arising from inspection or rejection of the Supplies.
12. Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract, and all other costs, fees, expenses or charges incurred by the Supplier in connection with the Contract, will be borne by the Supplier.
13. The amounts payable under the Contract:
 - 13.1 include an amount to cover any liability of the Supplier for Goods and Services Tax (GST) on any supplies made by the Supplier under the contract which are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act); and
 - 13.2 must not include any amount representing GST paid by the Supplier for which the Supplier may claim an input tax credit within the meaning of the GST Act.
14. In relation to any taxable supplies made under the contract, the Supplier agrees to issue the NBA with a tax invoice, and if required, to issue any revised invoice or adjustment note, in accordance with the GST Act.

Material Provided by the NBA

15. The Supplier agrees to ensure that any Material provided by the NBA to the Supplier for the purposes of the Contract is used only for the purposes of performing the Contract and strictly in accordance with any conditions, restrictions or directions given by the NBA.
16. The Supplier will return to the NBA all such Material on expiration or earlier termination of the contract, or otherwise deal with such Material as directed by the NBA.

Contract Material

17. Intellectual Property in all Contract Material, and ownership of all Material in which Contract Material is or will be embodied, vests or will vest in the NBA. Upon the expiration or termination of the contract the Supplier agrees to deliver to the NBA or otherwise deal with all such Material as directed by the NBA.
18. Clause 17 does not affect the ownership of Intellectual Property in any Material that is agreed in the Contract or otherwise in writing between the Supplier and the NBA to be excepted from that clause, and the Supplier grants to the NBA a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit such Material as part of the Contract Material for any purpose of the NBA.
19. The Supplier warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in clauses 17 and 18.

Disclosure of Information

20. The Supplier agrees not to disclose to any person other than the NBA, any Confidential Information relating to the Contract or the Goods and Services without prior written approval of the NBA. This obligation will not be taken to have been breached where the information referred to is legally required to be disclosed. This obligation will survive the expiration or termination of the Contract.
21. 'Confidential Information' means information concerning the supply of the Goods and Services that is by its nature confidential and the Supplier knows or ought to know is confidential, or information that is designated by the NBA as confidential, but does not include information which is or becomes public knowledge other than by breach of the Contract or by any other unlawful means, is in the possession of the Supplier without restriction in relation to disclosure before the date of receipt from the NBA, or has been independently developed or acquired by the Supplier.

Protection of Personal Information

22. The Supplier agrees to comply with the Information Privacy Principles contained in the *Privacy Act 1988* to the extent that the content of those principles apply to the types of activities the Supplier is undertaking under the contract, as if the Supplier were an agency as defined in that Act.
23. The Supplier acknowledges its separate and continuing obligation to comply with the National Privacy Principles under the *Privacy Act 1988* or any other privacy laws applying to the Supplier in carrying out the Contract.

Conflict of Interest

24. The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the date of entering into the Contract no conflict with the interests of the NBA exists or is likely to arise in the supply of the Goods or Services. If, during the supply of the Goods or Services a conflict of interest arises, or appears likely to arise, the Supplier agrees to notify the NBA immediately in writing of that conflict, make full disclosure of all relevant information relating to the conflict, and take such steps as the NBA may reasonably require to resolve or otherwise deal with the conflict.

Conduct and security at NBA Premises

25. The Supplier agrees, when using NBA premises or facilities for the purposes of supply of the Goods or Services, to comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Commonwealth's smoke-free work-place policy) whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.

Access to Supplier's Premises

26. The Supplier agrees to give to the NBA and any persons authorised in writing by the NBA (including but not limited to, the Auditor-General and the Privacy Commissioner) the right of access to premises:
 - 26.1 at which Material associated with the Contract is stored; and
 - 26.2 where work associated with the Contract is undertaken;

at all reasonable times. The right of access will include (but not be limited to) the right to inspect and copy documents, records and other Material for purposes associated with the Contract or any review of performance under the Contract.

27. The Supplier agrees to provide all reasonable assistance requested by the NBA in respect of any inquiry concerning the Contract.
28. The operation of this clause will survive the expiration or termination of the Contract.

Insurance

29. The Supplier agrees, for so long as any obligations remain in connection with the Contract, to effect and maintain:
 - 29.1 the insurances, if any, specified in the Contract; or
 - 29.2 if no insurances are specified – a prudential portfolio of insurances to cover risks arising in connection with the supply of the Goods and Services or otherwise in connection with the Contract, including those which continue after the expiration or termination of the Contract.
30. The Supplier agrees, upon request, to provide proof of insurance acceptable to the NBA.

Termination

31. Where the Supplier fails to satisfy any of its obligations under the Contract, the NBA may:
 - 31.1 if it considers the failure is not capable of remedy, by notice in writing, terminate the Contract immediately; or
 - 31.2 if it considers the failure is capable of remedy, by notice in writing, require that the failure be remedied within the time specified in the notice (being not less than 7 days) and if not remedied within that time, may terminate the Contract immediately by giving a second notice in writing.
32. The NBA may, by notice in writing, terminate the contract immediately if the Supplier comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration.
33. Termination of the Contract under clauses 31 or 32 is without prejudice to any prior right of action or remedy which either party has or may have under the Contract or at law.
34. The NBA may, at any time by notice in writing, terminate the Contract immediately. Upon receipt of such a notice the Supplier agrees to stop work on the Contract, take all available steps to minimise loss resulting from that termination and to protect Contract Material.
35. Where there has been a termination under clause 34, the NBA will be liable only for payments and assistance for Goods or Services supplied before the effective date of termination, and reasonable costs unavoidably incurred by the Supplier and directly attributable to the termination.
36. The NBA will not be liable under clause 35 to pay an amount which would, together with any amounts paid or due, or becoming due, to the Supplier under the Contract, exceed the Payments under the Contract. Nor will the Supplier be entitled to compensation for loss of prospective profits.

Interpretation and general operation of the Contract

37. The laws in the Australian Capital Territory apply to the contract.
38. The terms of the Contract do not include any express or implied limitation or exclusion of liability of either party, or any indemnity from one party to the other.
39. The Supplier agrees not to represent itself, and to use its best endeavours to ensure that persons engaged or employed by the Supplier do not represent themselves, as being officers, employees, partners or agents of the NBA, or otherwise able to bind or represent the NBA.
40. If a party does not exercise (or delays in exercising) any of its rights under the contract, that failure or delay does not operate as a waiver of those rights.
41. A party must not assign, in whole or part, its rights or obligations under the contract without the prior written approval of the other party.
42. The parties must attempt to settle by negotiation any dispute in relation to the contract before resorting to external legal proceedings.

43. The Supplier acknowledges that under Division 137 of the *Criminal Code Act 1995* (Cth) it is a serious offence to give information or produce a document to a Commonwealth entity (such as the NBA) knowing that it is false or misleading in a material particular, or that it omits any matter or thing without which the information or document is misleading in a material particular.
44. In these Standard Conditions, unless the contrary intention appears:
- 44.1 **'Contract'** means the contract described in clause 2;
- 44.2 **'Contract Material'** means all Material:
- 44.2.1 created for the purposes of the contract;
- 44.2.2 provided or required under the contract to be provided to the NBA as part of supply of the Goods or Services; or
- 44.2.3 derived at any time from the Material referred to in clauses 44.2.1 or 44.2.2;
- 44.3 **'Goods'** means the goods to be supplied under the Contract;
- 44.4 **'Intellectual Property'** 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 trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- 44.5 **'Material'** includes documents, software stored on removable media, goods, and information or data stored by any means;
- 44.6 **'NBA'** means the Commonwealth of Australia acting through the National Blood Authority, or through any other department or agency of the Commonwealth that is from time to time responsible for the administration of the contract, and includes the officers, employees, agents and subcontractors of the NBA;
- 44.7 **'Payments'** means the fees, charges, prices, costs, allowances, disbursements or other amounts specified in the Contract as payable by the NBA in respect of the supply of Goods and Services properly in accordance with the Contract;
- 44.8 **'Services'** means the services to be supplied by the Supplier under the contract;
- 44.9 **'Supplier'** means the contractor specified in the Contract Letter and includes the officers, employees, agents and subcontractors of the Supplier;
- 44.10 words importing a gender include any other gender;
- 44.11 words importing persons include a partnership and a body whether corporate or otherwise;
- 44.12 words in the singular include the plural and words in the plural include the singular;
- 44.13 clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- 44.14 all references to money are denominated in Australian dollars;
- 44.15 reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth of Australia as amended or replaced from time to time; and
- 44.16 where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.