



# Standard terms and conditions

## 1. General

- 1.1 These are the terms and conditions referred to in the **purchase order**.

### *When terms and conditions apply*

- 1.2 These standard terms and conditions (**standard conditions**) apply to any contract entered into by the Australian Competition and Consumer Commission (ACCC) issuing a purchase order to the nominated supplier (**the supplier**), whether as an offer or acceptance of an offer (**the contract**), where that purchase order refers to the ACCC standard terms and conditions.

## 2. Interpretation

- 2.1 In these standard conditions:

**Goods** means any material, plant, item or equipment specified in the order.

**Manufacture** includes grow, extract, produce, process and assemble.

**Property** includes every type of right, interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill.

**Supplies** means property and/or services as the context requires.

- 2.2 Headings are not part of these standard conditions.

### *Conditions to prevail*

- 2.3 Subject to clause 6, these standard conditions will prevail in any conflict between them and the terms of any offer or acceptance by the supplier.

## 3. Special conditions

- 3.1 The contract conditions include any special conditions referred to in the purchase order and if any such special conditions are inconsistent with these standard conditions, the former will, to the extent of this inconsistency, prevail.

## 4. Packing

- 4.1 Goods must be packed with the minimum of packaging material so as to ensure its safe delivery. Environmentally friendly packaging material shall be used where practicable.

## 5. Delivery

### *Time, place and manner*

- 5.1 Subject to clause 9, delivery of the goods must be made at the time, place and in the manner specified in the purchase order. Failure to comply with the advised transport mode may render a cost variation at the supplier's expense.

### *Later delivery*

- 5.2 The ACCC can specify in writing a later time for delivery.

### *Documentation*

- 5.3 Either a delivery docket, packing note or invoice is to accompany all deliveries made, quoting the purchase order number, quantity dispatched, description of the supplies and consignment details.

## 6. Quality

- 6.1 The goods must be free from defects in materials and workmanship and at least of merchantable quality.
- 6.2 The ACCC can inspect the goods at any time and reject those not in accordance with the contract.
- 6.3 The ACCC can reject goods after acceptance if they do not comply with the contract.
- 6.4 The ACCC is not liable to pay for:
- rejected goods
  - goods damaged by inspection
  - or
  - costs associated with inspection or rejection.
- 6.5 If goods are rejected by the ACCC, the supplier must, without prejudice to the ACCC's rights:
- a) replace or repair, without cost to the ACCC, the rejected goods
- or
- b) remove the rejected goods and refund payment of the rejected goods.
- 6.6 The supplier must comply, at no cost, with all efforts of the ACCC to inspect the goods.
- 6.7 The supplier will not manufacture goods in bulk until the ACCC has approved the purchase of goods.

## 7. Ownership of property

- 7.1 Ownership of, and risk of loss of or damage to the goods, passes to the ACCC upon delivery.

## 8. Warranty

### *Correction*

- 8.1 If the ACCC gives reasonable notice of any defect or omission discovered in the goods during any warranty period, the supplier must correct that defect or omission without delay and at no cost to the ACCC.

Where no warranty is otherwise specified, the warranty period shall be 90 days from acceptance by the ACCC.

### *Cost of warranty*

- 8.2 The supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs.

## 9. Indemnity and insurance

- 9.1 The supplier indemnifies the ACCC, its officers, employees and agents against all loss, damage, injury or expense the ACCC may sustain or incur as a result, whether directly or indirectly, of any breach of this contract, including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of the ACCC's receipt or enjoyment of the goods.
- 9.2 The supplier will, for so long as any obligations remain in connection with this contract, effect and maintain appropriate insurance policies. Upon request by the ACCC, the suppliers will provide the ACCC with proof of insurance acceptable to the ACCC.

## 10. Payment

### *Due 30 days*

- 10.1 Subject to clause 14, the ACCC must pay for the supplies no later than 30 days after ownership of the supplies has passed to it or upon receipt of a correctly rendered invoice, whichever is the later.

### *Invoices*

- 10.2 An invoice will be correctly rendered if it is addressed in accordance with the purchase order, identifies the purchase order number, is a tax invoice for GST purposes and is, where explanation is necessary, accompanied by documentation substantiating the amount claimed.

### *Assignment*

- 10.3 The supplier must not, without the ACCC's consent in writing, assign the supplier's rights under the contract.

## 11. Subcontracting

### *Consent required*

- 11.1 The supplier must not, without the ACCC's consent in writing, subcontract the whole or any part of the work of manufacture or provision of the supplies.

### *Liability for subcontractors*

- 11.2 The supplier will be liable to the ACCC for the acts and omissions of any subcontractor as if those were the acts or omissions of the supplier.

## 12. Applicable law

- 12.1 The contract will be governed by and construed in accordance with the laws in force in the Australian Capital Territory.

## 13. Termination

- 13.1 If the supplier:
- a) fails to deliver the goods by the date required by the contract
  - b) is in breach of any other material term of the contract
  - c) being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the **Bankruptcy Act 1966** as amended or a creditor accepts a composition under that Act or any analogous overseas law
  - or
  - d) being a corporation (other than for the purpose of a reconstruction or amalgamation):
    - (i) is the subject of a compromise or arrangement with its creditors

- (ii) in respect of property of which a receiver or a receiver and manager is appointed
- or
- (iii) in respect of which a provisional liquidator or liquidator is appointed

the ACCC can, without prejudice to any other rights and remedies it has under the contract or otherwise, terminate the contract in whole or part by notice in writing to the supplier.

- 13.2 On such termination the ACCC can:

- a) cease payment under the contract
- b) recover from the supplier all sums paid for undelivered goods
- c) purchase similar goods from alternative suppliers and claim by way of indemnity from the supplier any loss it may occur in doing so.

## 14. Compliance with Commonwealth policies

- 14.1 The supplier shall, in its dealings with its employees, have due regard to Commonwealth policies on employment, including equal employment opportunity, access and equity, affirmative action, occupational health and safety and workplace diversity.

## 15. Waiver

- 15.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

## 16. Variation

- 16.1 This contract will only be varied by written agreement between the ACCC and the supplier. The ACCC and the supplier shall act reasonably in deciding whether to agree to a variation, as requested by the other party.

## 17. Negation of employment, partnership and agency

- 17.1 This contract does not create a relationship of employment, agency or partnership between the supplier and the ACCC.

## 18. Price

- 18.1 The contract price for the supplies includes:
- a) all taxes, duties and other imposts for which the contractor is liable
  - b) all insurance costs
  - c) all amounts payable for the use (whether in course of performance of the services or their enjoyment) of patents, copyright, registered designs, trademarks and other intellectual property rights
  - d) all charges for performances of the services.