



# GENERAL CONDITIONS OF CONTRACT

## 1 GENERAL

- 1.1 These General Conditions of Contract (General Conditions) apply to the contract created by Comcare when issuing the Purchase Order to the Contractor (the Contract). These General Conditions do not apply where the Purchase Order is issued under the terms of a standing offer or to extend the terms of an existing contract.
- 1.2 The Contract expressly excludes any terms or conditions appearing on any document of the Contractor.
- 1.3 All additions or alterations to these General Conditions will be in writing and attached as Special Conditions to the Purchase Order (Special Conditions). In the event of any inconsistency between these General Conditions and any Special Conditions, the Special Conditions prevail. In the event of any inconsistency between the Purchase Order and the General Conditions or any Special Conditions, the Purchase Order prevails.
- 1.4 The Contractor agrees that supply of the goods and services set out in the Purchase Order (Goods and Services) represents agreement with these General Conditions and any Special Conditions. If the Contractor does not agree with these General Conditions and any Special Conditions, details should be provided to Comcare in writing before the supply of any Goods or Services. Once Goods or Services are supplied the Contractor agrees that any conditions included on invoices or in its other correspondence will not amend, alter or add to these General Conditions and any Special Conditions in any way.
- 1.5 These General Conditions may only be varied by agreement in writing and signed by the parties.
- 1.6 The General Conditions, the Purchase Order and any Special Conditions constitute the entire agreement between the parties as to their subject matter.

## 2 PRICE BASIS

- 2.1 The price specified in the Purchase Order (Contract Price) is a fixed price subject to any Special Conditions. The Contract Price includes any customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery to final destination, insurance, goods and services tax (GST) where the Contractor is registered for GST, and all other applicable costs and charges.
- 2.2 Comcare will only pay the GST component specified in the Purchase Order if the Contractor has provided Comcare with evidence of its GST registration (if requested to do so by Comcare) and a valid tax invoice for the relevant taxable supply.

## 3 PAYMENT OF ACCOUNTS

- 3.1 Comcare's standard terms of payment are 30 days from acceptance of the Goods or Services and receipt of a correctly rendered invoice (unless Comcare has accepted in writing a discount offered by the Contractor for earlier payment).

## 4 PERFORMANCE OF THE CONTRACT

- 4.1 The Contractor must deliver the Goods and provide the Services at the time and place and in the manner specified in the Contract.
- 4.2 Goods. The Contractor must ensure the Goods meet any specification or statement of requirement of Comcare attached to or incorporated by reference to the Purchase Order or otherwise made known to the Contractor (Specification), are new, are free from defects in materials and workmanship, comply with the highest relevant commercially accepted standards, are at least of merchantable quality and are fit for purpose. The Contractor must ensure the Goods are packed to ensure their safe delivery and in accordance with any specific packing, marking or labelling requirements of Comcare.
- 4.3 Services. The Contractor must ensure that the Services are performed at a high standard with due skill, diligence and care. The Contractor must ensure the Services and all materials supplied in connection with the Services meet the Specification, are free from defects in performance, are fit for purpose and are complete.

## 5 INSPECTION/ACCEPTANCE

- 5.1 Receipt of the Goods or Services by Comcare will not under any circumstances be deemed to be acceptance by Comcare.
- 5.2 Goods. Comcare may reject any Goods found not to be in accordance with the Contract.
- 5.3 Comcare is not liable to pay for any rejected Goods, for any damage or costs arising from inspection or rejection of Goods or for return delivery fees for any rejected Goods.
- 5.4 If Comcare rejects any Goods, the Contractor must, without prejudice to any other right or remedy of Comcare, comply with a requirement of Comcare to:
  - 5.4.1 replace, without cost to Comcare, the rejected Goods with Goods in all respects in accordance with the Contract
  - 5.4.2 refund any payment for the rejected Goods
  - 5.4.3 repair the Goods to the satisfaction of Comcare, and reimburse Comcare for any costs incurred in relation to returning rejected Goods.
- 5.5 Services. Comcare may inspect the performance and outcome of the Services at any time. If the Services have not been performed in accordance with the Contract, Comcare may by notice require the Contractor to take all necessary steps to ensure that the Services are promptly corrected at no additional cost to Comcare.
- 5.6 Without prejudice to any other right or remedy of Comcare, the Contractor must correct the Services within 30 days after receiving notification by Comcare under clause 5.5.

## 6 TITLE, ACCEPTANCE AND RISK

- 6.1 Title to, and risk of any loss or damage to, the Goods passes to Comcare on delivery or acceptance by Comcare whichever occurs later.
- 6.2 The Contractor warrants that it transfers to Comcare good and unencumbered title to the Goods.

## 7 TERMINATION AND REDUCTION

- 7.1 Comcare may terminate the Contract in whole or in part by notice to the Contractor if the Contractor:
- 7.1.1 breaches any provision of the Contract which is capable of remedy and, following a notice from Comcare requiring the Contractor to remedy the breach, does not remedy the breach within the time specified in the notice
  - 7.1.2 breaches any provision of the Contract which is not capable of remedy
  - 7.1.3 becomes bankrupt or comes under any form of external administration
  - 7.1.4 is unable to complete the Contract.
- 7.2 Comcare may, at any time, terminate the Contract by notice to the Contractor. If the Contract is terminated under this clause 7.2, Comcare is liable only for payments under clause 3 for Goods and Services accepted in accordance with the Contract before the effective date of termination and reasonable costs actually incurred by the Contractor and directly attributable to the termination. Comcare is not liable to pay compensation for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under the Contract, exceed the Contract Price.
- 7.3 Comcare may reduce the scope of the Contract by providing reasonable written notice of the reduction to the Contractor.

## 8 PRIVACY

- 8.1 This clause 8 only applies where the Contractor deals with personal information as defined in the *Privacy Act 1988* (Cth) (Personal Information) in providing the Services under the Contract.
- 8.2 The Contractor must:
- 8.2.1 use or disclose Personal Information only for the purposes of the Contract
  - 8.2.2 not do any act or engage in any practice that would breach an Information Privacy Principle under the *Privacy Act 1988* (Cth)
  - 8.2.3 immediately notify Comcare if the Contractor becomes aware of a breach or possible breach of any of its obligations under this clause 8.
- 8.3 The Contractor must ensure that any subcontract entered into by the Contractor imposes on the subcontractor the same obligations that the Contractor has under this clause 8 (including this requirement in relation to subcontracts).

## 9 WARRANTIES

- 9.1 The warranty period commences on the day of delivery or acceptance of the Goods and Services, whichever occurs last. It will be valid for 90 days or the length of the Contractor's or manufacturer's standard warranty period, whichever is longer (Warranty Period).
- 9.2 Without limiting any other right or remedy of Comcare, if Comcare gives notice of any defect or omission discovered in the Goods or Services during the Warranty Period, the Contractor must correct that defect or omission within 30 days after receiving the notice and at no cost to Comcare.
- 9.3 The Contractor must meet all costs of and incidental to the discharge of its warranty obligations, including any packing, freight, disassembly and reassembly costs.

## 10 INSPECTION AND SOURCE QUALITY ASSURANCE

- 10.1 The Contractor must provide Comcare and its representatives (including the Auditor-General) with full and free access to its premises and work areas and all documentation appropriate to check compliance with the Contract.
- 10.2 The Contractor must provide all reasonable facilities and assistance at its own expense that Comcare or its representatives may require for the purposes of this clause 10.

## 11 ASSIGNMENT/SUBCONTRACTING

- 11.1 The Contractor must obtain the prior written approval of Comcare to assign or subcontract the Contract or any part of it. Approval to assign or subcontract will not relieve the Contractor from any of its obligations under the Contract, or impose any liability upon Comcare to a subcontractor.
- 11.2 The Contractor may not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- 11.3 The Contractor must on request provide Comcare with the names of any of the Contractor's subcontractors. The Contractor agrees, and must ensure that any subcontractor agrees, that Comcare may disclose the subcontractor's name publicly.
- 11.4 The Contractor will be liable to Comcare for the acts or omissions of any subcontractor as if they were the acts or omissions of the Contractor.

## 12 NOTICES

- 12.1 All notices, requests, variations and other communications by both parties are to be in writing and delivered promptly to the appropriate addresses described in the Purchase Order.

## 13 INDEMNITY

- 13.1 The Contractor agrees that it shall at all times indemnify and hold harmless Comcare, its officers, employees and agents (those indemnified) against all liabilities, losses, damages, costs and expenses, including:
  - 13.1.1 legal costs and expenses on a solicitor/own client basis
  - 13.1.2 the cost of time spent, resources used and disbursements paid by those indemnified
  - 13.1.3 loss of or damage to property of those indemnified, which arises in connection with
  - 13.1.4 the infringement or alleged infringement of any intellectual property rights by reason of the purchase, use or possession of the Goods or Services
  - 13.1.5 any wilful, unlawful, or negligent act or omission of the Contractor, its officers, employees, agents, or subcontractors (or any of their officers, employees, agents or subcontractors)
  - 13.1.6 any breach of the Contract by the Contractor.
- 13.2 The Contractor's duty of indemnity under this clause 13 will be reduced proportionately to the extent that any wilful, unlawful or negligent act or omission of those indemnified contributed to the loss or liability.

## 14 OCCUPATIONAL HEALTH AND SAFETY

- 14.1 The Contractor must (and must ensure that any subcontractors) at all times identify and exercise all necessary precautions for the health and safety of all persons including its employees, the agency's employees and members of the public who may be affected by the Goods or Services.
- 14.2 If, during the performance of work under the Contract, Comcare informs the Contractor that it is the opinion of Comcare that the Contractor is conducting the work in such a way as to endanger plant, equipment, materials or the health or safety of the Contractor's employees or Comcare, its employees or contractor's employees, the Contractor must remedy that breach of health and safety promptly. Comcare may direct the Contractor to suspend work until such time as the Contractor satisfies Comcare that the work will be resumed in conformity with applicable health and safety provisions. During the periods of suspension referred to above, Comcare is not required to make any payment to the Contractor.

## 15 INTELLECTUAL PROPERTY

- 15.1 In this clause 15:
- 15.1.1 IP means all intellectual property rights including copyright, patents, trademarks, designs, trade secrets, know-how, any application for any of the foregoing and any rights of a similar nature
- 15.1.2 **Contract IP** means all IP (including in data, information and documents) developed by the Contractor for the purpose of providing the Goods or Services.
- 15.2 Contract IP vests in Comcare on creation. The Contractor must not use, copy, modify, adapt, communicate, exploit or create derivative works from Contract IP except for the purposes of the Contract.
- 15.3 The Contractor grants or must obtain for Comcare a perpetual, irrevocable, non-exclusive, world-wide, royalty-free licence (including the right to sublicense) to use, copy, modify, adapt, communicate, exploit and create derivative works from any other IP in material provided to Comcare under the Contract.
- 15.4 As permitted by law, the Contractor unconditionally and irrevocably:
- 15.4.1 consents, and will obtain all other necessary unconditional and irrevocable consents, to any act or omission that would otherwise infringe any moral rights in any work that is provided as part of the Goods or Services, whether occurring before or after a consent is given
- 15.4.2 waives, and will obtain all other necessary and unconditional and irrevocable written waivers of, moral rights, for the benefit of Comcare, its licensees and anyone authorised by any of them.

## 16 CONFIDENTIALITY

- 16.1 The Contractor will keep confidential, and ensure its officers, employers, agents and subcontractors keep confidential, any information provided to the Contractor by Comcare or obtained by the Contractor in connection with the Contract which Comcare notifies the Contractor is confidential (Confidential Information).
- 16.2 The Contractor will establish and maintain effective measures to safeguard the Confidential Information from any access, use or disclosure not authorised by Comcare or compelled by law.

## 17 WAIVER

- 17.1 Failure by either party to enforce a provision of the Contract will not be construed as in any way affecting the enforceability in any other instance, or the enforceability of the Contract as a whole. A waiver of a right must be in writing signed by the party giving the waiver.

## 18 COMPLIANCE WITH LEGISLATION

18.1 The Contractor must (and must ensure its subcontractors) comply with all applicable legislation and in particular its obligations under the *Crimes Act 1914* (Cth); the *Criminal Code* (Cth); the *Racial Discrimination Act 1975* (Cth); the *Sex Discrimination Act 1984* (Cth); *Privacy Act 1988* (Cth); *Disability Discrimination Act 1992* (Cth); the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and the *Fair Work Act 2009* (Cth).

## 19 APPLICABLE LAW

19.1 The Contract is governed by and construed in accordance with the law applicable in the Australian Capital Territory.

## 20 EXCLUSION OF VIENNA CONVENTION

20.1 The United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna Austria on 10 April 1980, does not apply to the Contract.

## 21 NO EMPLOYEE, PARTNERSHIP OR AGENCY

21.1 The Contract does not create a relationship of employment, agency or partnership between the parties.