



# Conditions of Contract For the Supply of Goods

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# CONDITIONS OF CONTRACT

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Conditions of Contract, unless the context otherwise requires, the following definitions will apply:

**Acceptance** means a document so entitled by which QIMR notifies the Supplier that its Offer is accepted by QIMR;

**Additional Provisions** means any terms and conditions, that are agreed between QIMR and the Supplier and specified in Schedule C;

**Business Day** means between 9.00am and 4.00pm in Brisbane on a weekday other than a Saturday, Sunday or public holiday;

**Conditions of Contract** means these terms and conditions, and includes the attached Schedules and any additional conditions of contract as specified in Part 5 of the Invitation;

**Confidential Information** means, in relation to QIMR, information that is not trivial and:

- a) is by its nature confidential;
- b) is communicated by QIMR to the Supplier as confidential;
- c) the Supplier knows or ought to know is confidential; and/or
- d) all information obtained by the Supplier in the course of submitting an Offer.

**Contract** means the contract referred to in clause 2.1;

**Correctly Rendered Invoice** means an invoice:

- a) in which the amount claimed is due for payment in accordance with the Contract;
- b) in which the amount claimed is correctly calculated in accordance with the Contract;
- c) which correctly identifies the Goods supplied;
- d) which, if GST applies is a valid tax invoice under the GST Legislation; and
- e) which complies with clause 7.1.

**Delivery Date** means the date in item 3 of Schedule A in which the Goods will be supplied by the Supplier to QIMR;

**Delivery Period** means the period item 3 of Schedule A in which the Goods will be supplied by the Supplier to QIMR;

**Goods** means the goods specified in the Specifications;

**GST** means a goods and services tax imposed by or through the GST Legislation;

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**Intellectual Property Rights** includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia;

**Invitation** means QIMR's invitation inviting offers for the supply of the Goods;

**Notice** means a notice in writing which may be given by a Party by personal delivery, pre-paid postage or facsimile to the Party's business address or registered office or, except for a notice under clause 16, notice given by email to a Party's nominated email address;

**Offer** means the offer submitted by the Supplier in response to the Invitation;

**Parties** means QIMR and the Supplier;

**Price** means the itemised prices and/or the price calculated by reference to the schedule of rates specified in Schedule B, and unless otherwise specified in Schedule B is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

**Project Manager** means the person nominated by QIMR to oversee and supervise the performance of the Contract, as specified in item 4 of Schedule A, or other person nominated from time to time by QIMR as the Project Manager;

**QIMR** means The Council of the Queensland Institute of Medical Research whose particulars are set out in Item 1 of Schedule A;

**Schedule** means the schedules which are part of the Contract;

**Specification** means the detailed description of the Goods as specified in Part 3 of the Invitation;

**Supplier** means the entity specified in item 2 of Schedule A, from whom the Goods are being procured.

## 1.2 Interpretation

1.2.1 In these Conditions of Contract, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Conditions of Contract.

1.2.2 The following rules shall apply in interpreting these Conditions of Contract, unless the context otherwise requires:

- a) words importing a gender include the other gender;
- b) words in the singular include the plural and vice versa;
- c) all dollar amounts refer to Australian Currency;
- d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- g) "consent" means prior written consent;
- h) "in writing" means either by letter, email or facsimile;
- i) a reference to a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to these Conditions of Contract;
- j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- l) a clause is a reference to all of its sub-clauses; and
- m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

## 2. FORMATION OF CONTRACT

2.1 The following documents will constitute the entire Contract between QIMR and Supplier:

- a) the Acceptance or Order which incorporates by reference these Conditions of Contract including Schedule A, B and C as completed by QIMR which are attached to the Acceptance or Order;
- b) the Specifications;
- c) the Supplier's Offer; and
- d) any other documentation forming part of the Contract, as agreed in writing between QIMR and Supplier.

2.2 In the event of any conflict between the documents specified in clause 2.1, the order of precedence to resolve the conflict will be the above order. In the event of any inconsistency between the Acceptance and Schedules A, B and C, the Acceptance will prevail to the extent of the inconsistency.

2.3 Any Additional Provisions which have been agreed between QIMR and Supplier in relation to the Specifications and/or these Conditions of Contract as specified in Schedule C.

2.4 This Contract supersedes all prior representations, agreements, statements and understandings between QIMR and the Supplier, whether oral or in writing relating to the subject matter of this Contract.

### **3. ROLE OF THE PROJECT MANAGER**

3.1 The Project Manager is QIMR's representative to oversee and supervise the performance of the Contract. The Project Manager is NOT authorised either apparently or ostensibly to amend this Contract on behalf of QIMR.

3.2 The Supplier must liaise with and report to the Project Manager about the supply of the Goods:

- a) attend meetings with, or provide briefings to, the Project Manager as required from time to time; and
- b) promptly comply with any request or direction given by the Project Manager, in accordance with the Contract, about the supply of the Goods.

### **4. SUPPLY AND DELIVERY OF GOODS**

4.1 The Supplier agrees to supply the Goods to QIMR.

4.2 The Supplier must supply the Goods by the Delivery Date, or during the Delivery Period, as the case may be.

### **5. REQUIREMENTS FOR GOODS**

5.1 All Goods provided by the Supplier shall :

- a) in all respects comply with the Specifications;
- b) comply with the terms of the Contract;
- c) be fit for their purpose;
- d) be of merchantable quality;
- e) comply with any sample previously provided by the Supplier to QIMR;
- f) comply with any applicable legislation;
- g) comply with any applicable Australian/New Zealand Standard and where an Australian/New Zealand; and
- h) where an Australian/New Zealand standard does not exist, the relevant current International Standard (ISO).

5.2 All Goods supplied by the Supplier must be in a new and unused condition and of recent origin, unless otherwise specified in item 6 of Schedule A.

5.3 QIMR may, acting reasonably, reject any Goods that do not comply with clauses 7.1 and 7.2

5.4 If QIMR, acting reasonably, rejects any Goods by reason of their failure to comply with clauses 7.1 or 7.2, the Supplier shall at its expense collect those rejected Goods from QIMR.

5.5 All Goods supplied by the Supplier must be suitably packed and otherwise appropriately prepared for transportation.

5.6 Risk and title in the Goods (free of all encumbrances and interests) will pass to QIMR upon the completion of delivery of the Goods at QIMR's delivery address specified in Item 5 of Schedule A.

5.7 The Supplier must ensure that any manufacturer's warranty that applies to the Goods will be transferred to QIMR, at no cost to QIMR.

### **6. PRICE**

6.1 If the Goods are provided in accordance with the Contract, QIMR will pay the Price to the Supplier.

6.2 The Price will be payable in the manner and at the time specified in Schedule B and the Supplier must submit invoices for the Price at the times specified in Schedule B.

## **7. PAYMENT**

7.1 The Correctly Rendered Invoice submitted by the Supplier must:

- a) identify the Goods; and
- b) identify the purchase order number and specific details pertaining to that purchase order (if applicable).

7.2 Upon Receipt of an invoice, QIMR may require the Supplier to provide additional information or documentary evidence to enable QIMR to determine whether or not an amount is payable.

7.3 Unless otherwise specified in Schedule B, QIMR will make payment at the end of the following month after Receipt of a Correctly Rendered Invoice, or if additional information or evidence is required by QIMR pursuant to this clause, 30 days after receipt of the additional information or evidence.

## **8. GENERAL RIGHT OF SET-OFF BY QIMR**

8.1 QIMR may deduct from any moneys due to the Supplier any sum which is payable by the Supplier to QIMR whether or not QIMR's right to payment arises by a credit for Goods returned, damages, debt, restitution or otherwise and whether or not the factual basis giving rise to QIMR's right to payment arises out of this Contract, any other contract/s, or is independent of any contract.

8.2 Nothing in this clause will affect the right of QIMR to recover from the Supplier the whole of such moneys or any balance that remains owing.

## **9. COMMISSIONS AND INCENTIVES**

9.1 The Supplier will not offer anything to QIMR or any officer or employee of QIMR, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence QIMR's actions in relation to the Contract.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 The Supplier warrants that the Goods do not infringe the Intellectual Property rights of another person.

## **11. CONFIDENTIALITY**

11.1 The Supplier must not, and must ensure that its officers, employees, agents and sub-Suppliers do not, use or disclose any Confidential Information without QIMR's consent.

11.2 The Supplier may disclose Confidential Information to its officers, employees, agents and sub-Contractors to the extent necessary for the performance of this Contract, provided that the Supplier:

- a) makes sure persons are aware that the information is confidential; and
- b) if specified in item 7 of Schedule A or directed by QIMR during the Term of this Contract, obtains from such persons a confidentiality undertaking in a form acceptable to QIMR.

11.3 The Supplier must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

11.4 Clauses 11.1 to 11.3 do not apply to Confidential Information:

- a) which was already known by the Supplier without any prior obligation of confidentiality to QIMR

- b) which has become public knowledge (other than through a breach of an obligation of confidence); and
- c) to the extent the Supplier is required by law to disclose it.

## **12. LICENSING REQUIREMENTS**

- 12.1 The Supplier warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods.
- 12.2 The Supplier must, if requested by QIMR, provide evidence of compliance with its obligations under this clause to the satisfaction of QIMR.

## **13. RESOLUTION OF DISPUTES**

- 13.1 If a dispute or difference arises between the Parties in relation to the Contract or concerning the performance or non-performance by either Party of their obligations under this Contract, a Party may give notice of a dispute to the other Party. The Parties must, if requested by either Party within 10 Business Days of receipt of a notice of dispute by a Party, refer the dispute to mediation before commencement of any litigation, other than for injunctive relief, in relation to the dispute.

The mediator shall be:

- a) mutually agreed upon by the Parties in writing; or
- b) in the absence of agreement, appointed by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

## **14. VARIATION**

- 14.1 No variation to this Agreement shall be binding upon the parties unless it is in writing and signed by the parties.

## **15. SUSPENSION OF PAYMENT**

- 15.1 QIMR may suspend payments to the Supplier without penalty if the Supplier refuses, neglects or fails to supply the Goods, until the Goods are supplied to QIMR and in accordance with this Contract.

## **16. TERMINATION**

- 16.1 QIMR may terminate this Contract for convenience by giving 30 days prior Notice or such other reasonable periods as specified by QIMR.
- 16.2 If the Contract is terminated pursuant to clause 16.1:
  - a) the Supplier shall, following receipt of that Notice from QIMR, immediately take all steps necessary to minimise the loss suffered by the Supplier as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its suppliers and sub-suppliers and otherwise to mitigate its loss; and
  - b) QIMR will not be liable for payment to the Supplier for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss, or any other loss or damage in relation to termination.
- 16.3 Without limiting clause 16.1, where the Supplier commits any breach of the Contract, QIMR may by Notice, require the Supplier to remedy that breach within 14 days.

- 16.4 If the Supplier fails to remedy that breach within 14 days QIMR may terminate this Contract by serving a Notice upon the Supplier to that effect.
- 16.5 QIMR may immediately terminate this Contract by Notice to the Supplier if:
- a) the Supplier breaches any part of clause 12; or
  - b) the Supplier:
    - i. becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
    - ii. has a receiver or a receiver or manager appointed or a mortgagee goes into possession of any of its assets or it becomes subject to any form of external administration;
    - iii. enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
    - iv. is wound up, voluntarily or involuntarily; or
  - c) the Supplier indicates that it is unable or unwilling to complete the Contract.
- 16.6 If QIMR terminates this Contract under either clause 16.4 or 16.5, the termination is without prejudice to any rights of QIMR under the Contract or at common law.

## **17. NOTICES**

- 17.1 Any Notice or other form of communication (a "notice") which may be given to or served on either Party under this Contract must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following respective addresses:
- a) for QIMR – as specified in item 8 of Schedule A;
  - b) for the Supplier – as specified in item 9 of Schedule A;
- or such other address as a Party may subsequently notify to the other.
- 17.2 Notwithstanding clause 17.1, if the Supplier is a company then QIMR may serve a notice at any time on the Supplier's registered office.
- 17.3 A notice to be given or served pursuant to clause 16 must not be sent via email.
- 17.4 A notice will be deemed to be given:
- a) if posted – two Business Days after the date of posting;
  - b) if delivered by hand during a Business Day – on the date of delivery;
  - c) if faxed – on the date the sender's facsimile machine notes a complete and successful transmission; or
  - d) if emailed – on the date of the email;

Except that a fax or email received after 4.00pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

## **18. RIGHT TO INFORMATION AND DISCLOSURE**

- 18.1 The Right to Information Act 2009 (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 18.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- 18.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 18.4 If disclosure under the RTI Act, and/or general disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated in Response Form 6.1.

The QIMR cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror in Response Form 6.1, will be protected from disclosure under the RTI Act.

18.5 Despite any other provision of the Invitation and/or Invitation Process, the QIMR is entitled to publish on the Queensland Government Chief Procurement Office website ([www.qgcpcpo.qld.gov.au](http://www.qgcpcpo.qld.gov.au) under 'eTender system for Government Suppliers') or by any other means, the following details:

- a. the name and address of the QIMR and/or Customer;
- b. a description of the Goods;
- c. contract commencement date or date awarded;
- d. contract value;
- e. name and address of the Successful Offeror; and
- f. procurement method used.

18.6 Any proposed variation by the Offeror to clause 18.5 which take away or reduce the entitlements that would otherwise be provided to the QIMR under that clause will be null and void.

## **19. GENERAL PROVISIONS**

### **19.1 Relationship of Parties**

19.1.1 The relationship of the Parties under this Contract is one of Supplier and customer and the Supplier is not by virtue of this Contract in partnership or joint venture with QIMR and must not represent itself or allow itself to be represented as a partner, agent, joint venturer, officer or employee of QIMR.

### **19.2 No Advertising**

19.2.1 The Supplier will not make any public announcement or advertisement in any medium in relation to QIMR or this Contract without the consent of QIMR.

### **19.3 Waiver**

19.3.1 Any failure by a Party at any time to enforce a clause of this Contract, or any forbearance, delay or indulgence granted by a Party to the other will not constitute a waiver of the Party's rights.

19.3.2 No provision of this Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.

19.3.3 A waiver by a Party of a breach of any part of this Contract will not be a waiver of any subsequent breach of the same part or a waiver of a breach of any other part.

### **19.4 No Sub-contracting**

19.4.1 The Supplier shall not sub-contract the provision of any Goods pursuant to this Contract, without the prior consent of QIMR. Any consent given by QIMR to sub-contract:

- a) may be conditional;
- b) will not operate as an authority to transfer responsibility to the sub-contractor; and
- c) will not relieve the Supplier from any of its liabilities or obligations under this Contract.

### **19.5 Governing Law**

19.5.1 This Contract is governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

### **19.6 Compliance with all Laws**

19.6.1 The Supplier must comply with all relevant laws in the provision of the Goods and in performing its obligations under this Contract.

### **19.7 Severability**

19.7.1 If any part of this Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

### **19.8 Further Assistance**

19.8.1 The Supplier must do all things reasonably required by QIMR to give effect to this Contract.

### **19.9 No Assignment**

19.9.1 The Supplier may not assign its obligations or interest in this Contract, except with the consent of QIMR.

## **20. CLAUSES TO SURVIVE TERMINATION**

20.1 The following clauses will survive termination or expiration of this Contract:

Clause 11	Confidentiality; and
Clause 19.5	Governing Law

## SCHEDULE A – CONTRACT PARTICULARS

ITEM	INFORMATION	DETAILS
1	<p><b>Customer</b> (clause 1.1): [Insert full name of QIMR]:</p> <p>[Insert QIMR's ABN]: [Insert QIMR's Address]: [Insert the name of the person representing QIMR, who will be responsible for this Contract]: [Insert QIMR's contact person's email]</p>	<p>Name: Queensland Institute of Medical Research</p> <p>ABN: 314 118 13344 Address: 300 Herston Road Herston QLD 4006 Contact Person: Email:</p>
2	<p><b>Supplier</b> (clause 1.1): [Insert full name of QIMR]:</p> <p>[Insert the Supplier's ABN]: [Insert the Supplier's Address]: [Insert the name of the person representing the Supplier, who will be responsible for this Contract]: [Insert the Supplier's contact person's email]</p>	<p>Name:</p> <p>ABN: Address: Contact Person: Email:</p>
3	<p><b>Delivery Date / Delivery Period</b> (clause 1.1) [Specify the date or period which the Goods are to be supplied and/or the Services are to be performed].</p>	
4	<p><b>Project Manager</b> (clauses 1.1): [Insert the position title of the nominated Customer's officer who will oversee the Contract on QIMR's behalf].</p>	
5	<p><b>Delivery Address</b> (clause 1.1): [Insert the delivery address where the Goods are to be delivered].</p>	
6	<p><b>Requirements for Goods</b> (clause 5.2): [Specify if the Goods are to be other than new and unused condition and of recent origin].</p>	
7	<p><b>Confidentiality</b> (clause 11.2): [Specify whether the Supplier is required to obtain from its officers, employees, agents and sub-Suppliers a confidentiality undertaking in a form approved or provided by QIMR].</p>	
8	<p><b>Notices – Customer's address for notices</b> (clause 17.1): [Insert address for notices].</p> <p>[Insert facsimile no.].</p> <p>[Insert email address].</p>	<p>Address:</p> <p>Facsimile No.:</p> <p>Email Address:</p>
9	<p><b>Notices – Supplier's address for notices</b> (clause 17.1): [Insert address for notices].</p> <p>[Insert facsimile no.].</p> <p>[Insert email address].</p>	<p>Address:</p> <p>Facsimile No.:</p> <p>Email Address:</p>



## **SCHEDULE C – DEPARTURE DETAILS**

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These terms and conditions reflect variations to the standard provisions of this Contract.

This Contract includes the following additional Provisions from the Specifications and/or Conditions of Contract – Version 001 – dated 4 March 2011.

<b>Parts</b>	<b>Clause Number</b>	<b>Departures</b>
<b>Specifications:</b>		
<b>Conditions of Contract:</b>		