

Terms and Conditions for Purchase of Supplies (June 2021)

1. General

1.1 The “Conditions of Contract” include these conditions, the purchase order form or the Conditions of Contract, attached or dispatched separately, and any other documents incorporated by reference in that form (“Purchase Order”), and any amendments to any of those documents agreed in writing by CSIRO.

1.2 No additional conditions proposed by the Supplier apply to the provision of the Supplies unless agreed in writing by CSIRO.

1.3 If there is any inconsistency between the Purchase Order and these conditions, the Purchase Order prevails to the extent of that inconsistency.

1.4 In the Conditions of Contract:

CSIRO means the Commonwealth Scientific and Industrial Research Organisation;

Contract means the contract between CSIRO and the Supplier for the purchase of the Supplies on the terms of the Conditions of Contract;

goods means the articles, goods, material or their parts to be supplied under the Contract;

GST Act means [*A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)*](#);

intellectual property includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, trade secrets and know how, circuit layouts and all other rights resulting from intellectual activity;

Services means the services to be performed under the Contract;

Supplier means the person named on the Purchase Order who is to provide the Supplies to CSIRO, and where the Supplier includes more than one person, those persons jointly and severally; and

Supplies means the goods and/or services.



1.5 In the Conditions of Contract, unless the context otherwise requires: words importing one gender include any other gender; words importing the singular include the plural and vice versa; reference to a person includes a body politic, a body corporate and a natural person; and headings are for guidance only and do not affect the interpretation of the clauses they refer to.

2. Duration of Contract

2.1 This Contract continues from the Purchase Order Date until the Supplier has performed all its obligations including those in respect of defects.

2.2 The following clauses survive the termination or expiry of this Contract by 7 years clauses 7, 10, 12, 14.2, 14.3, 16, 17 and 19.

3. Performance and Delivery

3.1 The delivery of all goods and the performance of all services must be made at the time, place, and in the manner, stated in the Purchase Order.

3.2 CSIRO may reasonably specify in writing to the Supplier another time, place or manner for delivery or performance, in which case that other time, place or manner applies in place of that stated in the Purchase Order.

3.3 Goods must be packed, marked and labelled to ensure their safe delivery and safe handling by CSIRO after delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.

3.4 The Supplier must ensure CSIRO receives and is fully advised of all standard manufacturer and other relevant warranties in respect of the Contract Material.

3.5 The Supplier must not sub-contract the performance of the services or the provision of the goods which may be withheld or may be subject to conditions. It will be a condition of CSIRO's consent that the subcontractor must comply with



the relevant terms and conditions of this Contract and that the Supplier supply to CSIRO such details of the subcontractor as CSIRO requires.

4. Quality and Compliance with Requirements

4.1 The Supplier must provide the Supplies at a high standard with all due skill, care and diligence.

4.2 The Supplier must comply with any requirements relating to the services as stated in the Purchase Order and all goods must conform to any specifications relating to goods as stated in the Purchase Order.

4.3 Without limiting clauses 4.1 and 4.2, all goods must be free from defects in materials and workmanship, be of merchantable quality and be fit for the purpose specified in the Purchase Order (Purpose) and all services must be free from defects in performance, meet the Purpose and be complete.

5. Inspection and Acceptance

Services

5.1 CSIRO may inspect the performance and outcome of the services at any time and for that purpose the Supplier must, at reasonable times, give CSIRO's representatives access to the premises at which the Services are being performed. If there is a defect in the performance of the Services or the Services are not complete, CSIRO may by notice require the Supplier to remedy the defect, or complete the Services, at no additional cost to CSIRO. If the Services do not meet the Purpose or are not in accordance with the Contract, CSIRO may by notice require the Supplier to redo the Services at no additional cost to CSIRO. Where the Supplier fails to remedy a defect in the performance of the Services, complete the Services, or redo the Services, within 14 days after notification by CSIRO under this clause, CSIRO may perform or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies CSIRO may have.



Goods

5.2 CSIRO may inspect the goods at any time prior to acceptance and reject any goods found not to be in accordance with the Contract. After acceptance CSIRO may reject any goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.

5.3 Once the Supplier has installed and commissioned the goods, CSIRO, before accepting the goods, may carry out such tests as it reasonably requires before accepting delivery of the goods and the Supplier shall provide all reasonable assistance in this regard. Should CSIRO, after conducting the acceptance test, decide that the goods do not conform with the specifications set out in the Purchase Order, CSIRO will advise the Supplier accordingly in writing setting out the departures from the specifications. The Supplier must promptly take all action necessary so that the goods conform with the specifications and advise CSIRO in writing when this has been done. CSIRO, at the cost of the Supplier, may carry out further tests as it reasonably requires before accepting delivery of the goods. If CSIRO determines that one or more goods do not conform to the specifications, then CSIRO, in its sole discretion may either reject those goods or terminate this Contract in accordance with clause 14.1.

5.4 CSIRO will not be liable to pay for any rejected goods or for any damage or costs arising from inspection or rejection of goods.

5.5 If CSIRO rejects any goods, the Supplier must, without prejudice to CSIRO's rights otherwise arising under the Contract or the general law, comply with a requirement of CSIRO to:

- (a) replace, without cost to CSIRO, the rejected goods with goods complying in all respects with the Contract;
- (b) refund any payment for the rejected goods; or



(c) repair the goods, on site or otherwise, to the satisfaction of CSIRO;

and, in the case of (a) or (b), remove the rejected goods at the Supplier's expense.

5.6 Without additional cost to CSIRO, the Supplier must provide access to premises and all other necessary assistance for CSIRO's representatives to inspect the manufacture of the goods.

5.7 If CSIRO requires the Supplier to submit samples of goods, the Supplier must not proceed to bulk manufacture until CSIRO has approved the samples.

6. Title

6.1 Title in, and risk of loss of or damage to, the goods passes to CSIRO on delivery.

7. Defects in Goods

7.1 If CSIRO gives prompt notice of any defect or failure to meet specifications in the Purchase Order discovered in goods, the Supplier must correct that defect or failure without delay and at no cost to CSIRO.

7.2 Clause 7.1 does not apply when the defect or failure is as a result of unauthorised modifications, inappropriate use or failure to comply with the operating instructions supplied.

7.3 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

8. Inclusive Price

8.1 The price of the Supplies includes:

(a) all taxes (including GST), duties and other imposts for which the Supplier is liable;

(b) all insurance costs;

(c) all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trademarks and other intellectual property rights);

(d) all charges for supply of the goods or the performance of the services; and

(e) no extra charges for testing, inspection, packing, delivery or otherwise.

8.2 CSIRO is exempt from customs duty for imported goods in accordance with the UNESCO Florence Agreement on the Protocol Nairobi, Item 1D, [Customs By-law No 1940015 Part 1 of Schedule 4](#) to the [Customs Tariff Act 1987](#).

9. GST

9.1 Unless defined in these conditions, capitalised expressions in this clause have the meaning given to those expressions in the *GST Act*.

10. Intellectual Property

10.1 All intellectual property created under the Contract and relating to the Supplies is from the time of creation, owned by CSIRO. This does not affect any pre-existing material.

10.2 The Supplier must not use, disclose, copy or reproduce that intellectual property except for the purposes of the Contract.

10.3 The Supplier must at all times indemnify CSIRO, its officers, employees and agents, from and against all loss, damage, costs (including legal costs and expenses on a solicitor/own client basis), compensation and expenses arising out of the infringement or alleged infringement of any intellectual property, by reason of the purchase, possession or use of the goods or the outcomes of the services.

10.4 The Supplier must not use CSIRO's name or logos in any publication or announcement without obtaining CSIRO's prior written consent.

11. Assignment

11.1 The Supplier must not, without the consent in writing of CSIRO, assign its rights under the Contract.

12. Applicable Law

12.1 This Contract shall be construed and take effect in accordance with the laws in force for the time being in the State or Territory of Australia in which the Supplies are supplied.

12.2 The Supplier shall ensure that the work done under this Contract complies with the laws from time to time in force in the State or Territory in which the work under this Contract is to be performed and with the requirements of the relevant authorities.

12.3 The Supplier agrees in providing any Supplies not to, and to ensure any subcontractor does not, do any act or engage in any practice which, if done or engaged in by CSIRO, would be a breach of an Australian Privacy Principle under the Privacy Act 1988 (Cth).

13. Payment

13.1 Subject to clause 5.3, CSIRO must pay for the Supplies within 20 days of the receipt of a correctly rendered invoice provided the following has occurred:

(a) title in the goods (if applicable) has passed to CSIRO and they have been accepted; and/or

(b) satisfactory completion of the services (if applicable);
whichever is the later.

13.2 An invoice will be correctly rendered if it:

(a) is addressed in accordance with the Purchase Order;

(b) identifies the Purchase Order;

(c) is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and

(d) is, where required by Australian law, a valid Tax Invoice within the meaning of the *GST Act*.

14. Termination for Insolvency or Breach

14.1 Without limiting any other rights or remedies, CSIRO may, by notice in writing to the Supplier, terminate the Contract immediately if the Supplier:

(a) ceases to be able to pay its debts as they become due, or enters into liquidation or administration; or

(b) fails: (i) 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 (ii) to remedy a breach of any obligation under this Contract within 21 days of being

given the notice referred to; or

(c) breaches any provision of the Contract on more than 3 occasions in any 12 month period.

14.2 Where, before termination of the Contract under clause 14.1, CSIRO has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment must be repaid by the Supplier to CSIRO on termination and, if not repaid is recoverable by CSIRO from the Supplier as a debt.

14.3 If the Contract is terminated under this clause:

(a) the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;

(b) rights to recover damages are not affected; and

(c) the Supplier must deal with the Contract Material as reasonably directed by CSIRO and return all CSIRO's confidential information to CSIRO.

15. Termination for Convenience

15.1 CSIRO may at any time give notice in writing to the Supplier to terminate the Contract or any part without cause.

15.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.

15.3 On termination of the Contract or any part under this clause, the Supplier may submit a claim for compensation and CSIRO must pay to the Supplier such sums as are fair and reasonable in respect of the loss or damage sustained by the Supplier in consequence but the Supplier will not be entitled to claim

compensation for any work done or expenditure incurred contrary to the Contract or for loss of anticipated profits.

15.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the total price payable under the Contract.

16. Insurance

16.1 The Supplier shall at all relevant times maintain the insurances specified in the Purchase Order or, if not specified, reasonably appropriate insurances in respect of any risks under this Contract. The Supplier shall provide certificates of currency of such insurances upon CSIRO's request which will not be more often than once every 12 months.

17. Provision of security

17.1 CSIRO may require the Supplier to, at no additional cost to CSIRO, provide to CSIRO, no later than 14 days prior to CSIRO paying any monies under this Contract, security in a form acceptable to CSIRO which must be:

(a) executed by a financial institution approved by CSIRO and be stamped (if required); and

(b) at least equal to the amount CSIRO is to pay in respect of Supplies prior to their delivery,

(Financial Undertaking).

17.2 The Financial Undertaking is for ensuring the due and proper performance by the Supplier of its obligations under the Contract. CSIRO may demand any sum under the Financial Undertaking for amounts owed to CSIRO by the Supplier under the Contract.

18. Audit and Access

18.1 The Supplier must ensure that all books and records relating to the performance of this Contract are kept and retained for seven years after termination or expiration of this Contract, including adequate records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable under this Contract to be determined.

18.2 CSIRO or a nominee may conduct audits of any matters relevant to the performance of this Contract, including the Supplier's obligations under this Contract.

18.3 CSIRO or its nominee may, at reasonable times and on giving reasonable notice to the Supplier:

- (a) access the premises of the Supplier to the extent relevant to the performance of this Contract;
- (b) require the provision by the Supplier and its personnel, of records and information in a data format and storage medium accessible by CSIRO by use of CSIRO's existing computer hardware and software;
- (c) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Supplier or its personnel; and
- (d) require assistance in respect of any inquiry into or concerning this Contract.

18.4 The rights of CSIRO under clauses 18.2 and 18.3 apply equally to the Auditor-General, the Privacy Commissioner, or their respective delegates, for performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

19. Confidentiality

19.1 The Supplier must treat, and require its employees, agents and subcontractors to treat, all confidential information of CSIRO given in connection with the Contract and identified as having, or marked with, a classification indicating its confidentiality, according to that classification. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

20. Compliance with CSIRO's Policies and Law

20.1 The Supplier must, when using CSIRO's premises or facilities, comply with all reasonable directions of CSIRO and all procedures and policies of CSIRO relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by CSIRO or as might reasonably be inferred from the use to which the premises or facilities are being put. The Supplier shall comply with all applicable legislation.

21. Conflict of Interest

21.1 The Supplier warrants to the best of its knowledge that, at the date of this Contract, no conflict of interest exists or is likely to arise in its performance of the Contract which CSIRO has not already consented to in writing.

21.2 If, during the term of the Contract, a risk of conflict of interest arises, the Supplier will notify CSIRO immediately in writing of that risk and to take steps as CSIRO reasonably requires dealing with the conflict. If the Supplier does not deal with the conflict as required, CSIRO may terminate the Contract in accordance with **clause 14**.

22. Dispute Resolution



22.1 If there is a dispute between CSIRO and the Supplier 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 arbitration will occur in the jurisdiction where the Supplies are provided and will be in English. The decision of the arbitrator (including any award as to costs) shall be final and binding. Nothing in this clause prevents either party exercising rights under the Contract or from seeking interlocutory relief through the appropriate courts.

23. Unpaid Employee Entitlements

23.1 The Supplier warrants that it does not have at any time during this Contract any judicial decisions against it (except under appeal by it) in respect of unpaid employee entitlements which remain unpaid.

24. Waiver

24.1 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 in writing.