

CSIRO Purchase Order terms and conditions for supply of Goods and/or Services

Effective on and from 9 November 2023

1. Formation and duration of Contract

- 1.1 Unless otherwise agreed in writing, the Supplier agrees to provide the Goods and/or Services to CSIRO and CSIRO agrees to purchase the Goods and/or Services in accordance with the Purchase Order and these Terms.
- 1.2 This Contract continues on and from the date the Purchase Order is issued to the Supplier by CSIRO and ends when the Supplier has performed all its obligations under the Contract, including those in respect of rectification of defects (**Contract Term**).

2. Payment and price

- 2.1 The price or fee of the Goods or Services set out in the Purchase Order covers:
 - 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.
- 2.2 Subject to clauses 4 and 5, CSIRO must pay for the Goods and/or Services within 20 days of the receipt of a correctly rendered invoice following.
 - a) acceptance of the Goods by CSIRO in accordance with these Terms; and/or
 - b) satisfactory completion of the Services (if applicable),
whichever is later.
- 2.3 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.

3. Quality and performance

- 3.1 The Supplier must deliver all Goods and perform all Services at the time, place, and in the manner stated in these Terms and the Purchase Order.
- 3.2 The Supplier must pack, mark, and label the Goods to ensure safe delivery and handling by CSIRO after delivery.
- 3.3 The Supplier must perform the Services at a high standard with all due skill, care and diligence.
- 3.4 The Supplier must comply with any requirements relating to the Services and any specifications relating to the Goods as stated in the Purchase Order or (if the Purchase Order is silent) as stated in any quotation provided by the Supplier to CSIRO in connection with the provision of the relevant Goods and/or Services.
- 3.5 The Goods must be new, unused and free from defects in materials and workmanship, be of merchantable quality and be fit for their purpose.
- 3.6 The Supplier in performing the Services and providing the Goods must:
 - a) keep CSIRO fully and regularly informed as to all matters affecting or relating to the Services and the Goods.
 - b) comply with all materially relevant laws.
 - c) ensure that all information provided to CSIRO, including in reports and documents provided to CSIRO, is correct, complete, and not misleading.
- 3.7 The Supplier must not sub-contract the performance of the Services or the provision of the Goods or assign the Contract without the consent of CSIRO (acting reasonably) which may be withheld or given 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. Inspection and acceptance of Services

- 4.1 CSIRO may inspect the performance and outcome of the Services at any time to ensure adherence to the Contract, and for that purpose the Supplier must give at reasonable times and upon reasonable notice CSIRO's representatives access to the premises, records and Contract Material where the Supplier is performing Services. CSIRO may take copies of any such records and Contract Material and remove them

from the premises. CSIRO will endeavour not to unreasonably delay or disrupt the Supplier's performance of its obligations under the Contract.

- 4.2 If there is a defect in the performance of the Services, or the Services are not complete, CSIRO (acting reasonably and by providing reasonable notice to the Supplier) may require the Supplier to remedy the defect, complete the Services or redo the Services at no additional cost to CSIRO.

5. Inspection and acceptance of Goods

- 5.1 CSIRO may inspect the Goods at any time prior to acceptance and any Goods found not to be in accordance with the Contract.
- 5.2 CSIRO will not be liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods except to the extent that any negligent act or omission of CSIRO caused the damage or cost.
- 5.3 CSIRO, before accepting the Goods, may carry out such tests as it reasonably requires before accepting delivery of the Goods and Supplier shall provide all reasonable assistance in this regard. If, after conducting the acceptance testing, CSIRO reasonably decides that the Goods do not conform with the specifications as set out in the Purchase Order or (if the Purchase Order is silent) as stated in any quotation provided by the Supplier to CSIRO in connection with the provision of the relevant Goods (**Specifications**) and advises Supplier accordingly in writing setting out the departures from the Specifications, Supplier must promptly take all action reasonably necessary so that the Goods do conform with the Specifications and advise CSIRO in writing when this has been done. If CSIRO reasonably determines that one or more Goods do not conform to the Specifications, then CSIRO, may either reject those Goods that do not conform to the Specifications or terminate this Contract in accordance with clause 14.1.
- 5.4 If CSIRO (acting reasonably) rejects any Goods or determines during the Warranty Period that the Goods are defective, the Supplier must, within a reasonable time but no later than 30 days from receiving notification by CSIRO under this clause 5 and without prejudice to CSIRO's rights otherwise arising under the Contract or the general law:
 - a) replace, without cost to CSIRO, the rejected Goods with goods complying in all respects with the Contract.
 - b) refund payment for the rejected Goods; or

c) repair the Goods, on site or otherwise, to the reasonable satisfaction of CSIRO.

Further, in the case of clauses 5.4(a) or 5.4(b), CSIRO may remove the rejected Goods at the Supplier's reasonable expense.

- 5.5 If prior to the issue of the Purchase Order, CSIRO requires the Supplier to submit samples of Goods, Supplier must not proceed to bulk manufacture until CSIRO has approved the samples.
- 5.6 Title in, and risk of loss of or damage to, the Goods pass to CSIRO on delivery.

6. Insurance

- 6.1 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.

7. Auditor General and Privacy Commissioner

- 7.1 The rights of CSIRO under clauses 4.1 and 5.6 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.
- 7.2 The Supplier must do all things necessary to comply with the Auditor-General's or the Privacy Commissioner's or their delegate's reasonable requirements.
- 7.3 Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Privacy Commissioner or their delegates.
- 7.4 This clause applies during and for 7 years from the end of this Contract.

8. Intellectual Property

- 8.1 The title to and ownership of Intellectual Property in all Contract Material will vest immediately upon its creation in CSIRO. To the extent that the Supplier owns any Intellectual Property in the Contract Material, the Supplier hereby assigns all of its right, title and interest in such Intellectual Property to CSIRO.

- 8.2 The Contract does not affect the Supplier's or CSIRO's ownership of its Background IP. However, the Supplier grants to CSIRO a perpetual, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, publish, adapt and exploit the Background IP anywhere in the world insofar as it relates to and is necessary for CSIRO's full use of the Contract Material and for full benefit of the Contract.
- 8.3 In conjunction with the Goods, the Supplier grants an irrevocable, perpetual, worldwide licence (including a right of sublicense) to use any software provided as part of the Goods to enable CSIRO to use the Goods.
- 8.4 The Supplier must not use CSIRO's name or acronym in a manner that suggests that CSIRO endorses or is associated with the Supplier's business, products or services. The Supplier must not use any CSIRO trademark or logo without CSIRO's prior written consent.

9. Confidentiality and disclosure of information

- 9.1 **"Confidential Information"** means information that:
- a) is by its nature confidential;
 - b) is designated by a party as confidential;
 - c) either party knows or ought to know is confidential;
 - d) is comprised in or relates to Contract Material or confidential information CSIRO provides to the Supplier in connection with the Contract including documents, equipment, information and data stored by any means;
- but does not include information which:
- e) is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligations; or
 - f) a party has independently developed or acquired.
- 9.2 Neither party, its employees, agents, and sub-contractors must disclose or make public any Confidential Information of the other party without the prior approval in writing of that party except in accordance with this Contract, if required to do so by law or a stock exchange, or as strictly required in relation to legal proceedings relating to this Contract.
- 9.3 CSIRO may disclose any of the Supplier Confidential Information:

- a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over CSIRO.
- b) for public accountability reasons, including a request for information by parliament or a parliamentary committee.
- c) for any other reporting requirements of CSIRO; or
- d) to CSIRO staff and contractors on a need-to-know basis where they have entered into an arrangement to preserve the confidentiality of the information.

9.4 This clause will survive the end of the Contract for a period of 7 years.

10. Privacy

- 10.1 In providing the Goods and/or Services, the Supplier must comply, and ensure that its officers, employees, agents and subcontractors comply, with the *Privacy Act 1988* (Cth) and not do anything which, if done by CSIRO, would breach an Australian Privacy Principle as defined in that Act. The Supplier will notify CSIRO if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.
- 10.2 The Supplier undertakes to notify CSIRO when it experiences a data breach or a potential data breach as soon as possible but no later than 3 days following the breach and to comply with the Notifiable Data Breach Scheme.
- 10.3 The Supplier will only use and store information on Australian-based servers.
- 10.4 This clause will survive the end of the Contract.

11. Conflict of interest

- 11.1 The Supplier warrants to the best of its knowledge that, at the date of signing the 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.
- 11.2 If, during the Contract Term, 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 reasonably required, CSIRO may terminate the Contract in accordance with clause 14.

12. Compliance with CSIRO'S Policies

12.1 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 (including no smoking), safety and security in effect at those premises or facilities, as CSIRO notifies or as might reasonably be inferred from the use to which the premises or facilities are being put. The Supplier acknowledges that on occasion, before it or its employees, agents or subcontractors can perform under this Contract, they must obtain appropriate security clearances.

13. Termination for convenience

13.1 CSIRO may terminate the Contract at any time by notice in writing and the Supplier must cease or reduce work according to the tenor of the notice and must immediately do everything possible to mitigate consequential losses.

13.2 If CSIRO terminates the Contract under clause 13.1, CSIRO is only liable for:

- a) payment of fees for Services the Supplier performed and for Goods the Supplier provided before the effective date of termination, provided the Supplier performed those Services or provided those Goods in accordance with the Contract and the Supplier is not otherwise in breach of the Contract; and
- b) subject to this clause, any unavoidable Loss the Supplier incurs or sustains and directly attributable to the termination of the Contract, provided that the Supplier reasonably substantiates the costs to CSIRO.

14. Other termination

14.1 In addition to its rights at common law, CSIRO may, by notice in writing to the Supplier, end the Contract immediately if:

- a) the Supplier suffers an Insolvency Event;
- b) the Supplier breaches the Contract and the breach is not capable of rectification;
- c) the Supplier breaches the Contract and the Supplier does not rectify the breach within 14 days after receiving a notice from CSIRO requiring the Supplier to rectify the breach;
- d) the Supplier engages in dishonest or fraudulent conduct; or
- e) the Supplier fails to perform its obligations for over 60 days due to an Unforeseen Event that CSIRO did not cause.

14.2 Where, before the Contract ends under clause 14.1, CSIRO has made any payment in advance to the Supplier for which it has not received Services or Goods, the amount of that payment must be repaid by the Supplier to CSIRO immediately on termination and, if not repaid, it becomes a debt.

14.3 If the Contract ends under clause 14.1:

- a) subject to the Contract, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- b) any rights to damages are not affected; and
- c) the Supplier must comply with all obligations in the Contract relating to Contract Material.

15. Indemnity

15.1 The Supplier indemnifies CSIRO against all Loss that CSIRO may sustain or incur from any breach of the Contract by the Supplier and any negligent act or omission of the Supplier except to the extent that any negligent act or omission of CSIRO contributed to the Loss.

15.2 If payment under an indemnity to CSIRO gives rise to a liability for CSIRO to pay GST, the Supplier must pay and indemnify CSIRO against the amount of such GST.

15.3 This clause will survive the end of the Contract.

16. Variation of Contract

16.1 The parties may only vary the Contract by mutual consent in writing.

16.2 The Contract is the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the Services or the Goods except to the extent the Contract expressly incorporates them.

17. Notices

15.1 A party may deliver notices under the Contract by prepaid postage, by hand or by e-mail transmission to another party at the address set out at the beginning of the

Contract or such other address a party may notify in writing to the other.

18. Unforeseen Event

18.1 When an Unforeseen Event has occurred, the non-performing party will not have to perform the obligations affected for as long as the circumstances prevail provided the non-performing party is without fault in causing or reasonably failing to prevent the failure or delay and continues to use reasonable endeavours to recommence performance whenever and to whatever extent possible as soon as reasonably practicable. Any party delayed in its performance will promptly notify the party to whom performance is due and describe in reasonable detail the circumstances causing the delay.

19. Supply chain integrity

19.1 *Forced labour* - The Supplier warrants that it has conducted a reasonable examination of its Supply Chain and at all times warrants that there is no evidence of Exploitation. It must notify CSIRO promptly should it become aware of Exploitation in its Supply Chain and provide the steps to eliminate this Exploitation. If the Supplier fails to notify CSIRO of Exploitation in its Supply Chain or CSIRO does not accept the suggested remedy, CSIRO may terminate the Contract for breach in accordance with **clause 14**. The Supplier undertakes, if CSIRO requests, to provide to CSIRO details of its Supply Chain for CSIRO's reasonable examination for Exploitation.

Exploitation means engaging labour through slavery or bonding, indenture or other forms of compulsion. **Supply Chain** means all stages of manufacture of the Goods whether or not those stages were done by the Supplier or third parties and includes all aspects of the manufacture including any components and packaging.

19.2 *Asbestos* - The Supplier warrants that no asbestos has been used in the manufacture of any component of the Goods including any packaging unless CSIRO agrees in writing. **Asbestos** means a friable silicate mineral having a asbestiform habit including actinolite asbestos, grunerite (or amosite) asbestos (brown), anthophyllite asbestos, chrysotile asbestos (white), crocidolite asbestos (blue) and tremolite asbestos.

20. Goods and Services Tax

- 20.1 CSIRO warrants that it is an “Australian-based business recipient” for the purposes of the GST Act.
- 20.2 Unless otherwise expressly stated and / or separately in agreed in writing between the parties:
- a) all amounts or other sums payable or to be provided in accordance with this Contract are inclusive of any GST; and
 - b) the party liable to provide consideration for a supply made under or pursuant to this Contract is not required to “gross up” or pay any additional amount to the supplier on account of the relevant supply being a taxable supply.
- 20.3 Where a supply made under or in connection with this Contract is a progressive or periodic supply, this clause 20 applies to each component of the progressive or periodic supply as if it were a separate supply.
- 20.4 If some or all of the consideration for a taxable supply made by a party under or pursuant to this Contract is not expressed as an amount of money (Non-Monetary Consideration) and its provision also constitutes a supply by the recipient, the parties agree that:
- a) the Non-Monetary Consideration is GST inclusive and will not be increased on account of GST;
 - b) any remaining portion of the supplier’s taxable supply which is not made for Non-Monetary Consideration shall be treated as being made for monetary consideration which is inclusive of any GST; and
 - c) the GST inclusive market value of the taxable supply and the sum of the Non-Monetary Consideration and any monetary consideration provided for that supply are of equal value.
- 20.5 The supplier of a taxable supply must issue a tax invoice to the recipient of the taxable supply before the supplier is entitled to any payment.
- 20.6 Where any indemnity, reimbursement or similar payment under this agreement is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- 20.7 References to GST payable and input tax credit entitlements include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

21. Dispute Resolution

- 21.1 Any dispute, controversy or claim arising out of or in connection with this Contract, including its existence, breach, validity or termination (Dispute) must be dealt with in accordance with this clause. This clause does not prevent either party from seeking urgent injunctive or similar interim relief from a Court.
- 21.2 Either party claiming that there is a Dispute must notify each other party in writing and give details of that Dispute in accordance with this Contract (Dispute Notice). Following the giving of a dispute notice, the Chief Executive of the Supplier and of the supervisor of the Contract Manager will meet and use reasonable efforts to resolve the dispute within 14 days of the giving of the dispute notice.
- 21.3 If the Dispute is not resolved within 30 days from the date that the written notice of the Dispute is received, then either party may submit the Dispute to mediation in accordance with, and subject to, the Resolution Institute Rules. The mediation must take place in Sydney, Australia and be administered by the Resolution Institute.
- 21.4 If the Dispute cannot be resolved within 90 days (unless this period is extended by mutual agreement in writing) from the date it is submitted for mediation, then the Dispute must be resolved by arbitration in accordance with the Resolution Institute Arbitration Rules 2016.
- 21.5 Where the Supplier is resident outside of Australia, the Dispute may be submitted to mediation in accordance with, and subject to, the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules. The mediation must take place in Sydney, Australia and be administered by ACICA.
- 21.6 Any arbitration is governed by, and all Disputes must be resolved according to, the laws of New South Wales. There is to be one arbitrator. Unless the parties agree upon one arbitrator, either party may request a nomination from the Chair of the Resolution Institute. The place of arbitration is Sydney, New South Wales, Australia. The language of the arbitration must be English. The decision of the arbitrator (including any award as to costs) will be final and binding. CSIRO may, if required, disclose any information regarding the arbitration to its responsible government Minister, House of Parliament or a Committee of Parliament.
- 21.7 The parties must continue to comply with the Contract but no party need pay any monies in relation to the matter under dispute until it is resolved.

22. General

- 22.1 No additional conditions proposed by the Supplier apply to the provision of the Goods or Services unless agreed in writing by CSIRO.
- 22.2 The Supplier must comply at all times with the *Work Health and Safety Act 2011* (Cth) as well as all State and local government laws and regulations on occupational health and safety.
- 22.3 The Contract and its context do not make the Supplier an employee, partner or agent of CSIRO. The Supplier or its employees must not represent themselves as being employees, partners or agents of CSIRO.
- 22.4 The Supplier warrants that it does not at any time during this Contract have any judicial decisions against it (except any under appeal by it) in respect of unpaid employee entitlements and has not paid the claim.

23. Interpretation

23.1 In this Contract:

Background IP means any Intellectual Property owned or controlled by a party, prior to the commencement of the Contract or developed independently of the Contract, which a party contributes to the Goods and/or Services.

Contract has the meaning defined in clause 1.1.

Contract Material means all material created or required to be developed or created as part of, or for performing, the Services, including documents, equipment, information and data stored by any means.

Goods means the goods as described in the Purchase Order to be supplied under the Contract.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Insolvency Event means any of:

- a) The Supplier, being a company, enters into liquidation or has a controller liquidator or administrator appointed except to reconstruct or amalgamate while solvent or enters into, or resolves to enter into, a scheme of arrangement

- or composition with all or any class of its creditors, or it proposes a reorganisation or moratorium involving any of them;
- b) The Supplier being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;
 - c) The Supplier being a partnership, any step is taken to dissolve that partnership; or
 - d) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property includes business names, copyrights, and all rights in relation to inventions, patents, new plant varieties, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, the right to have Confidential Information kept confidential, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Loss means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent. Loss includes any amount paid by CSIRO for an interference with the privacy of an individual being a reasonable amount as compensation for loss or damage for which CSIRO is liable, or would have been liable under the *Privacy Act 1988* (Cth) if such breach had been that of CSIRO.

Purchase Order means CSIRO's purchase order form including any other documents incorporated by reference in that form (provided such documents are provided by Supplier or reasonably accessible to Supplier).

Services means the services to be performed by the Supplier as described in the Purchase Order.

Supplier means the person or entity identified on the Purchase Order who is to provide the Goods and/or Services, and where the Supplier includes more than one person, those persons jointly and severally.

Terms means the purchase order terms and conditions as set out in this document.

Unforeseen Event means any event which is not within the reasonable control of the party affected but does not include any act or omission of the other party (including any sub-contractors) to the Contract.

Warranty Period means 12 months from the date of completion of the Services or 12 months from the date of delivery or installation by the Supplier (whichever is the later) of the Goods.

- 23.2 Unless otherwise defined in this Contract, words or expressions used in the Contract which are defined in the GST Act have the same meaning in the Contract.
- 23.3 Words importing a gender include any gender. Words in the singular number include the plural and the converse.
- 23.4 If there is inconsistency between the provisions of the Purchase Order and the Terms, the Purchase Order prevails to the extent of that inconsistency
- 23.5 A party's failure or delay exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.
- 23.6 The laws applying in the State or Territory in which the Goods are delivered and/or Services supplied will govern the Contract (Governing Law) and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Governing Law in respect of those matters not governed by Dispute Resolution