



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 **Abergeldie (ACI) issuing a purchase order to the nominated supplier (the supplier)**, whether as an offer or acceptance of an offer which may include additional terms and conditions (**the contract**) or, where that purchase order refers to ACI 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 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 ACI 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 ACI can inspect the goods at any time and reject those not in accordance with the contract.
- 6.3 ACI can reject goods after acceptance if they do not comply with the contract.
- 6.4 ACI 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 ACI, the supplier must, without prejudice to ACI's rights: a) replace or repair, without cost to ACI, the rejected goods and refund payment of 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 ACI to inspect the goods.

6.7 The supplier will not manufacture goods in bulk until ACI 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 ACI upon delivery.

8. Warranty

Correction

8.1 If ACI 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 not cost to ACI. Where no warranty is otherwise specified, the warranty period shall be 90 days from acceptance by ACI.

Cost of warranty

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

9. Indemnity and Insurance

9.1 The supplier indemnifies ACI, its officers, employees and agents against all loss, damage, injury or expense ACI may sustain or incur as a result, whether directly, 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 ACI'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 requested by ACI, the suppliers will provide ACI with proof of insurance acceptable to ACI.

10. Payment

10.1 *Payment of a correctly rendered invoice is due 30 days from the end of invoice month following receipt and acceptance of the goods.*

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 sustaining the amount claimed.

Assignment

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

11. Subcontracting

Consent required

11.1 The supplier must not, without ACI'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 ACI 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 (ACT).

13. Termination

13.1 If supplier:

- a) Fails to deliver the goods by date required by contract
- b) Is in breach of any other material term of the contract

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 the Act or any analogous overseas law.



- or
- c) Being a corporation (other than for the purpose of a reconstruction or amalgamation):
- (i) Is the subject of a compromise of arrangement with its creditors
 - (ii) In respect of property of which a receiver or receiver and manager is appointed or
 - (iii) In respect of property of which provisional liquidator or liquidator is appointed
- ACI 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 ACI 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 the way of indemnity from the supplier any loss it may occur in doing so.
- 14. Compliance with Commonwealth**
- 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 ACI and the supplier. ACI and the supplier shall act reasonably in deciding whether to agree to a variation, as requested by 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 ACI.
- 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.



1. This request for tender, these standard conditions of tender or any submitted tender do not and shall not create any legal obligation between any Abergeldie Complex Infrastructure entity (ACI) and the entity submitting this tender (the Tenderer) or any other tenderer.
2. The Tender Documents are made up of these Standard Conditions of Tender, the Request for Tender, ACI HSEQ requirements and the additional tender documents listed in the Request for Tender.
3. All information provided as part of this request for tender is to be considered confidential and shall not be copied other than for the purpose of preparing and submitting a tender. The Tenderer shall return all documents associated with this request for tender to ACI immediately upon request to do so.
4. The Tenderer shall obtain all information relevant to the request for tender and satisfy itself that its tender is correct and sufficient to cover the cost of complying with all the obligations provided for or implied in the request for tender and all things necessary for the proper performance and completion of the work contemplated by the request for tender (Work).
5. The Tenderer shall immediately notify the Contact Person in writing upon becoming aware of any ambiguity, discrepancy, error or omission in the request for tender documents.
6. The Tenderer shall be bound by any non-reliance provisions in the Head Contract in preparing this tender or carrying out the Work.
7. The National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Building and Construction Industry (the Guidelines) and Building Code 2013 (the Code of Practice) apply to all tenders and all work undertaken by ACI.. Any subcontractor undertaking any work on any ACI site shall comply with the provisions of the Code, the Guidelines and the Code of Practice.
8. Tenderers and subcontractors shall provide evidence of compliance with the Code. Subcontractors may self-assess on the DEEWR website at www.deewr.gov.au/WorkplaceRelations/Policies/Buildin gandConstruction/CodeAssessmentOnline
9. As a minimum requirement, the Tenderer shall provide a completed Declaration of Compliance with the Code.
10. As a minimum requirement, a subcontractor shall provide a successful assessment from DEEWR. If ACI is required to carry out an assessment of a subcontractor's compliance with the Code, the cost of that assessment will be recoverable from the subcontractor.
11. By submitting a tender, the Tenderer (if not already doing so) agrees to comply with the provisions of the Code, the Guidelines and the Code of Practice.
12. Prior to the Tenderer submitting a tender for Work or a subcontractor being engaged to carry out work in the ACT, the Tenderer or subcontractor shall hold a current Industrial Relations and Employment Certificate (IRE Certificate).
13. Any government code of practice for procurement applicable in the jurisdiction in which the Work is carried out shall apply to this tender and any subsequent Work. If in NSW this refers to the implementation guidelines to the NSW COP for Procurement: Building and Construction (the guidelines)
14. The Tenderer shall not collude with any other tenderer or enter into any agreement to share rates, prices or conditions relating to this request for tender.
15. The Tenderer shall immediately notify ACI of any conflict of interest in relation to this request for tender.
16. Where proprietary products or services are specified in the tender documents and the Tenderer proposes an alternative product or service, the Tenderer shall clearly specify the product or service proposed and how it differs from the proprietary product or service. Failure to notify such difference will be deemed to be an undertaking by the Tenderer to provide the proprietary product as specified in the tender documents.
17. The Tenderer shall submit a tender strictly in conformance with the request for tender documents. The Tenderer may also submit an alternative tender but in so doing the Tenderer shall clearly identify the benefits of the alternative tender.
18. The tender price shall include all taxes and duties levied by any authority or government, but GST shall be shown separately.
19. Unless specifically stated elsewhere in the request for tender the rates and prices submitted in the Tender will be fixed for the duration of the Work and not subject to adjustment to rise and fall in cost.
20. Upon submission of a tender all tenders become the exclusive property of ACI. The Tenderer shall ensure that no third-party intellectual property rights are infringed upon by ACI's use of the submitted tender and the information contained therein.
21. The Tenderer shall bear the cost of preparation and submission of its tender. ACI will not be liable for any cost, loss or expense incurred by the Tenderer in preparing and submitting its tender or in any discussions or negotiations with ACI after the submission of the tender.
22. Any tender submitted after the time and date nominated in the request for tender may, at the absolute discretion of ACI, be rejected.
23. ACI may, at its absolute discretion, accept any tender and is not obliged to accept any tender.
24. The Tenderer's tender shall remain valid and open for acceptance by ACI until the date specified in the request for tender.
25. The Tenderer shall provide any additional information requested by ACI to allow it to properly assess its tender or the ability of the Tenderer to carry out the proposed Work.
26. All Work undertaken by ACI is carried out in accordance with ACI Health, Safety, Environmental and Quality (HSEQ) requirements.
27. By submitting a Tender, the Tenderer undertakes to comply with ACI's HSEQ requirements and to provide all OHS documentation applicable to the Work or as required by legislation.
28. By submitting a Tender the Tenderer undertakes to provide all information, documentation and undertakings necessary to allow ACI to fulfil its obligations under the Head Contract.
29. By submitting a Tender the Tenderer agrees to undertake the requirements of the Head Contract as they apply to the Work.
30. The successful tenderer will be required to enter into a subcontract for the Work (the Subcontract). At the sole discretion of ACI and depending on the requirements of the Head Contract and/or the value of the tender, the Subcontract will be either a standard subcontract reflecting the requirements of the Head Contract or the ACI Subcontract Order and Agreement.
31. Health Safety Environmental and Quality (HSEQ)

General Requirements

The Subcontractor shall comply with the following documents to ensure compliance with the Project requirements for HSEQ at



the site of the Subcontract Work:

- *The Subcontract;*
- *ACI Project Safety Management Plan;*
- *ACI Project Risk Assessment;*
- *ACI Project Environmental Management Plan;*
- *ACI Project Quality Management Plan.*

Copies of relevant documents are available for review through the ACI tendering department or project office as appropriate. By submitting a Tender, the Subcontractor shall be deemed to have read and understood the relevant documents and this summary of HSEQ requirements and agrees to abide by the conditions relating to HSEQ if they are successful in winning the Work.

Personnel of successful Subcontractors that work on site will be required as a minimum to:

- Hold current Construction Industry Induction Card – white card or equivalent.
- Attend a site induction;
- Wear the mandatory PPE requirements whilst at the site including Hi-Vis clothing, long sleeve shirt, long pants and safety footwear;
- Wear any additional activity specific PPE;
- Comply with the HSEQ requirements at the site;
- Carry the appropriate certification / licenses;
- Comply with ACIs Drug and Alcohol Policy including random testing and sampling.

Prior to commencing at the Site

The following information shall be provided 5 working days prior to commencing at the site:

- If required by legislation, a site-specific safety plan incorporating the following components, or if a site-specific safety plan is not required, the following individual components:
 - *Safe work method statements (SWMS) specific to the site activities;*
 - *Plant risk assessments for plant to be used at the site;*
 - *Details of personnel that will work at the site with details of construction induction card and relevant training and certification / licenses possessed.*
 - *Inspection and test plans (ITP's).*
 - *Form PM007-F06 Subcontractor Competency Declaration*

During work at the Site

Subcontractors working at the site shall provide the following information to ACI on a weekly basis or as otherwise detailed below / requested:

- Advice of any injury / incident associated with the work at the site immediately after the injury / incident occurs.
- A copy of injury / incident reports along with associated paperwork (medical certificates, etc.) by the end of shift.
- A revised SWMS when a work activity has been modified.
- Copies of all safety data sheets (SDS) for chemical / hazardous substances being used /stored on the site.
- Copies of all consultation communications (toolbox meetings, daily team briefings, etc.).
- Additional paperwork for any new plant and equipment used on site.

Provisions for use of plant at the Site

The supplier / owner of plant shall:

- Undertake a Plant Risk Assessment of the plant.
- Provide a copy of the Plant Risk Assessment to ACI for acceptance prior to the plant being used at the site.
- Retain the Plant Risk Assessment with the plant whilst it remains at the site.
- Service and maintain the plant, as a minimum, in accordance with the requirements of the original equipment manufacturer.
- Provide a copy of the plant service and maintenance records to ACI prior to commencement at the site.
- If the plant is wet hired, provide a trained, competent and experienced operator.

The operator of plant shall:

- Provide a copy of their certification / license to ACI prior to using the plant.
- Conduct and record daily pre-start inspections.
- Arrange for servicing of the plant at the required intervals.
- Operate the plant in a safe manner with no risk to the operator, other personnel, the plant or existing infrastructure and facilities.
- Wear necessary PPE while using the plant.



In addition to the Standard Conditions of Tender ACI may have additional site-specific requirements for subcontractors working.

Sub-contractors are requested to ensure the below items are discussed and agreed with ACI prior to Contract signing.

Terms of Insurances – specific project requirements if any.

Generally, those requirements over and above those provided with subcontractor's records.

For example – named parties to be listed on insurances for the works to be completed under contract, Specific Mining insurances or requirements for additional cover to satisfy working over water or other individual working scenarios.

Pre-Induction – information and records required to be furnished prior to attendance to site.

Trade Persons – Specific training and records of site staff may be required for approval by clients or third parties.

Drivers to Site – Specific procedures and delivery acceptance terms e.g. Approved truck routes covered under head contract, delivery vehicle requirements and the like.

Use of Plant/ Equipment at the Site – Compliance inspections or reports required prior to mobilization to site and conditions for provision of the same. e.g. MDG15, AS4871 and AS3007- please refer head contract for details.

Safety initiatives – For example **Take 5's** to be maintained by personnel working in or on specific site locations, Areas of work.