

ASC Purchase Order Terms

1. Background

The Australian Sports Commission (ASC) requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the ASC's requirements and has responded representing that it is able to meet the requirement.

Some terms used in these *ASC Purchase Order Terms* have been given a special meaning. Their meanings are set out in the *Commonwealth Contracting Suite Glossary*.

2. Relationship of the Parties

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the ASC.

In all dealings related to this Contract, the parties agree to:

- a. communicate openly with each other and cooperate in achieving the contractual objectives; and
- b. act honestly and ethically; and
- c. comply with reasonable commercial standards of fair conduct; and
- d. comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

3. Conflict of Interest

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the fulfilment of the Contract, the Supplier will immediately notify the ASC and comply with any reasonable Notice given to the Supplier by the ASC in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

4. Precedence of Documents

The Parties' Contract is described in the:

- a. *ASC Purchase Order*;
- b. *ASC Purchase Order Terms*; and
- c. *Commonwealth Contracting Suite Glossary*;

unless otherwise agreed in writing between the parties.

Together all three (3) documents comprise the "Contract".

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

5. Governing Law

The laws of the Australian Capital Territory apply to the Contract.

6. Entire Agreement

The Contract represents the parties' entire agreement in relation to the subject matter.

Anything that occurred before the issue of the Contract shall be disregarded (unless incorporated in writing).

The parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either party unless in writing and agreed by both parties.

If either party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay does not operate to prejudice those rights.

7. Survival

Clauses 17 [Supplier payments], 20 [Transition Out], 22 [Compliance with laws and Policies], 22A [Access to Suppliers Premises and Records] 22F [Fraud], and 23 [Intellectual Property] survive termination or expiry of the Contract.

8. Notices

A Notice is deemed to be effected:

- a. if delivered by hand – upon delivery to the relevant address;
- b. if sent by registered post – upon delivery to the relevant address; or
- c. if transmitted electronically – upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

9. Assignment

The Supplier may not assign any rights under the Contract without the ASC's written consent.

10. Subcontracting

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the ASC. The ASC's consent will not be unreasonably withheld.

The Supplier must make available to the ASC the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the ASC may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

At the ASC's request, the Supplier, at no additional cost to the ASC, must promptly remove from involvement in the Contract any Subcontractor that the ASC reasonably considers should be removed.

11. Delivery and Acceptance

The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.

The Supplier must promptly notify the ASC if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified and advise the ASC when it will be able to so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the Contract.

The ASC may reject the Goods and/or Services within fourteen (14) calendar days after delivery, or such longer period specified in the Contract, if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the ASC's reasonable control cause a delay in the ASC's evaluation of the compliance of the Goods and/or Services with the Contract, the ASC may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the ASC does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the ASC will be taken to have accepted the Goods and/or Services, though the ASC may accept the Goods and/or Services sooner. Title to Goods transfers to the ASC only on acceptance.

If the ASC rejects the Goods and/or Services, the ASC must issue a Notice clearly stating the reason for rejection and the remedy the ASC requires. No payment will be due for rejected Goods and/or Services until their acceptance.

12. Licences Approvals and Warranties

At no cost to the ASC, the Supplier must obtain and maintain all licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the ASC with all relevant third party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the ASC with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

13. Specified Personnel

The Supplier must ensure that the Specified Personnel set out in the Contract (if any) perform the part of the Services specified. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the ASC. The ASC's written consent will not be unreasonably withheld.

At the ASC's reasonable request, the Supplier, at no additional cost to the ASC, must as soon as reasonably practicable replace any Specified Personnel with personnel acceptable to the ASC.

14. Liability of the Supplier

The Supplier will indemnify the ASC and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the ASC and its officials will reduce proportionally to the extent that any act or omission, on the part of the ASC or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* [ACT], or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the ASC with proof when reasonably requested.

15. Termination or Reduction for Convenience

In addition to any other rights it has under the Contract, the ASC acting in good faith, may at any time, terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the Supplier.

If the ASC issues a Notice under this clause:

- a. the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the ASC;
- b. the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions);

- c. the ASC will pay the Supplier for Goods and/or Services accepted in accordance with clause 11 [*Delivery and Acceptance*] before the effective date of termination or reduction; and
- d. the ASC will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the ASC.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

16. Termination for Cause

The ASC may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- a. the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the ASC that the Supplier will be unable to deliver the Goods and/or Services
- b. as specified in the Contract;
- c. the ASC rejects the Goods and/or Services in accordance with clause 11 [*Delivery and Acceptance*] and the Goods and/or Services are not remedied as required by the notice of rejection;
- d. the Supplier breaches a material term of the *Agreement* and the breach is not capable of remedy;
- e. the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the ASC in a notice of default issued to the Supplier; or
- f. subject to the ASC complying with any requirements in the *Corporations Act 2001* [Cth], the Supplier:
 - i. is unable to pay all its debts when they become due;
 - ii. if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001*[Cth]; or
 - iii. if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* [Cth].

Termination of the Contract under this clause, does not change the ASC's obligation to pay any Correctly Rendered Invoice.

17. Supplier Payments

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the ASC such supporting documentation and other evidence reasonably required by the ASC to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the ASC in connection with the Contract, the ASC may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice. The ASC must pay the amount of a Correctly Rendered Invoice to the Supplier within thirty (30) calendar days after receiving it, or if this day is not a business day, on the next business day.

If the ASC fails to make a payment to the Supplier by the business day it is due and the amount of interest payable under this clause exceeds \$100, the ASC will pay the unpaid amount plus interest on the unpaid amount.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the ASC effects payment, calculated using the General Interest Charge Rate formula available at the Australian Taxation Office website.

18. Dispute Resolution

For any dispute arising under the Contract both the Supplier and the ASC agree to comply with (a) to (c) of this clause sequentially:

- a. both Contract Managers will try to settle the dispute by direct negotiation;
- b. failing settlement within ten (10) business days, the ASC will, without delay, refer the dispute to an appropriately qualified mediator selected by the ASC or, at the ASC's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request. Representatives for the Supplier and the ASC must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.
- c. If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the ASC may commence legal proceedings.

The Supplier and the ASC will each bear their own costs for dispute resolution. The ASC will bear the costs of a mediator.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the ASC not to do so) continue their performance under the Contract. This procedure for dispute resolution does not apply to action relating to clause 16 [*Termination for Cause*] or to legal proceedings for urgent interlocutory relief.

19. Transition In

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

20. Transition Out

If the Contract expires, or is terminated, the Supplier must comply with any reasonable directions given by the ASC in order to facilitate the smooth transition of the provision of the Goods and/or Services to the ASC or to another supplier nominated by the ASC.

21. Compliance with Laws

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

22. Compliance with Laws and Policies

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws, and Commonwealth and ASC policies relevant to the Goods and/or Services, (including as applicable, the ASC **Anti-doping Policy**).

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- a. immediately report it to the ASC and provide a written report on the matter within five (5) business days; and
 - b. comply with any reasonable directions by the ASC in relation to any investigation or further reporting of the actual or suspected breach.
- A. **Access to Supplier's Premises and Records:**
The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the ASC, or its nominee, access to the Supplier's, or

its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the ASC's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* [Cth] or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the ASC will reimburse the Supplier's substantiated reasonable cost for complying with the ASC's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983*[Cth]) without the prior written consent of the ASC. All Commonwealth records, including any held by Subcontractors, must be returned to the ASC at the conclusion of the Contract.

- B. **Privacy Act 1988 [Cth] Requirements:** In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* [Cth] and not to do anything, which if done by the ASC would breach an Australian Privacy Principle as defined in that Act.
- C. **Confidential Information:** Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the ASC, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the ASC. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- The ASC will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The ASC will not be in breach of any confidentiality agreement if the ASC is required to disclose the information by law, a Minister or a House or Committee of Parliament.
- D. **Security and Safety:** When accessing any Commonwealth or ASC place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the ASC or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and

subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the ASC for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the ASC.

- E. **Criminal Code:** The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* [Cth]. The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.
- F. **Fraud:** For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or ASC, or causing a loss to the Commonwealth or ASC, by deception or other means.
- The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.
- If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the ASC in full.
- G. **Taxation:** The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

23. Intellectual Property

Intellectual Property Rights in the Goods provided under this Contract or pre-existing Intellectual Property Rights will not change as a result of this Contract.

The Supplier grants the ASC a licence in any such Intellectual Property Rights provided as part of the Goods and/or Services to allow the Commonwealth and ASC full use of the Goods and/or Services for their intended purpose.

Other than as set out above, the ASC owns the Intellectual Property Rights in any Material created under this Contract.

Except as specifically authorised by the ASC in writing to do so, the Supplier must not use or reproduce any name, logo, trade mark or service mark associated with the ASC for any purpose.