



# **Power and Water Corporation General Quotation Terms**

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## TERMS AND CONDITIONS

### 1. FORMATION OF CONTRACT

- 1.1 A binding contract is formed when Power and Water Corporation (ABN 15 947 352 360) (**PWC**) issues a purchase order (**Order**) to the person or entity referenced in the Order (**Supplier**) in connection with the Supplier's response to the request for quotation issued by PWC for: (a) Goods; (b) Services; or (c) Goods and Services (**Goods and/or Services**).
- 1.2 The contract referred to in clause 1.1 (**Contract**) will be between PWC and the Supplier, and will be comprised of: (a) the Order (which may be comprised of one or more documents); (b) the relevant request for quotation issued by PWC (including, without limitation, all documents setting out the scope of, and PWC's requirements for, the Goods and/or Services issued by PWC prior to the Order); (c) the relevant parts of the Supplier's response to that request for quotation specifying the Goods and/or Services and pricing; and (d) these terms and conditions.
- 1.3 The terms and conditions of this Contract will apply to the exclusion of all other terms and conditions, including any other terms and conditions:
- (a) contained in, or endorsed upon:
    - (i) the Supplier's response to the request for quotation issued by PWC;
    - (ii) any correspondence, invoices or documents issued by the Supplier in connection with this Contract; or
  - (b) otherwise stated by the Supplier.

### 2. SUPPLY OF GOODS AND PROVISION OF SERVICES

- 2.1 The Supplier must:
- (a) deliver the goods (if any) specified in this Contract (**Goods**) to PWC in accordance with this Contract;
  - (b) ensure that the Goods are appropriately packaged prior to delivery and that all relevant markings and labels are shown on or attached to all packages. The Supplier must not charge PWC for any packaging or shipping costs (save to the extent expressly set out in this Contract) and PWC is under no obligation to return any packaging (including any crates or pallets) to the Supplier;
  - (c) provide:
    - (i) the services specified in this Contract;
    - (ii) any incidental or related services not specifically described in this Contract that are reasonably required for the proper provision of the services specified in this Contract; and
    - (iii) and any outputs of the services specified in clauses 2.1(c)(i) and 2.1(c)(ii) (**Deliverables**), (together the **Services**) in accordance with this Contract;
  - (d) provide the Goods and/or Services to PWC and perform its other obligations under this Contract:
    - (i) in a timely, efficient, proper and workmanlike manner using a high standard of care, skill and diligence;
    - (ii) at the location specified by PWC (if any);
    - (iii) using a sufficient number of suitably trained, qualified, skilled and experienced officers, employees, contractors, agents and subcontractors (**Supplier Personnel**); and
    - (iv) in accordance with:
      - (A) the timetable and any other requirements set out in this Contract; and
      - (B) all applicable laws and regulations, best industry practice and the reasonable directions of PWC from time to time;
  - (e) provide PWC with such reports and information regarding the Goods and/or Services as requested by PWC from time to time;
  - (f) ensure that Supplier Personnel are aware of, and comply with, all relevant PWC policies notified to the Supplier, including safety and security policies while attending PWC's premises or any location specified by PWC. PWC may from time to time request that the Supplier remove (and the Supplier must immediately remove) any Supplier Personnel whose behaviour or performance is unsatisfactory (as determined by PWC in its absolute discretion). If PWC requests, the Supplier must ensure that all Supplier Personnel involved in the performance of this Contract: (a) enter into a written, legally binding confidentiality agreement in favour of PWC and in a form acceptable to PWC; and (b) undergo any necessary background verification, criminal history and security checks specified in writing by PWC from time to time; and
  - (g) ensure that any Supplier Personnel specified in this Contract provide the Goods and/or Services and are not replaced without the prior written consent of PWC.

- 2.2 Legal and beneficial title to (and property in) the Goods passes to PWC on the earlier of:
- (a) delivery of such Goods to PWC; or
  - (b) payment by PWC for such Goods.
- 2.3 The Supplier bears the risk of and must indemnify PWC and its directors, officers, employees and advisors against:
- (a) any loss (including loss of use) of, or damage to, the Goods before acceptance of delivery of the Goods by PWC; and
  - (b) any loss (including loss of use) of, or damage to, the Goods arising from any act or omission of the Supplier after acceptance of delivery of the Goods by PWC.
- 2.4 Notwithstanding acceptance of delivery of the Goods by PWC, PWC may at any time reject any Goods that do not comply with this Contract. Any Goods rejected by PWC must be promptly collected by the Supplier and, until such time, will be held by PWC at the Supplier's risk and expense. PWC is under no obligation to pay for rejected Goods. If PWC has already paid for the rejected Goods, PWC may elect to have the amount paid:
- (a) set off against any amount due or subsequently due from PWC to the Supplier; or
  - (b) reimbursed to PWC within 15 Business Days of the rejection of the relevant Goods.

### **3. INVOICES**

Subject to the Supplier providing the Goods and/or Services in accordance with this Contract, PWC will pay the Supplier's charges set out or calculated in accordance with this Contract (**Charges**). PWC's payment of the Charges is conditional upon PWC receiving a GST compliant tax invoice from the Supplier, which must contain the Order number and may only be issued by the Supplier after the delivery or performance of the Goods and/or Services. PWC will pay the Supplier's undisputed and correctly rendered tax invoices within 30 days of receipt by PWC.

### **4. SUPPLIER WARRANTIES**

The Supplier represents, warrants and undertakes to PWC that:

- 4.1 all information which it provides to PWC, whether prior to, on or after the date of this Contract, is true and correct in every material respect and is not misleading or deceptive;
- 4.2 the Goods and/or Services (including any Deliverables) (including PWC's use of any of them) will not infringe the intellectual property rights or other rights of any third party;
- 4.3 it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under this Contract;
- 4.4 the Goods and any Deliverables are and will remain free from all encumbrances, including any security interest registered in accordance with the *Personal Property Securities Act 2009* (Cth), and the Supplier has full title to the Goods and any Deliverables;
- 4.5 the Goods and any Deliverables will:
  - (a) provide the functions and meet the standards, specifications and requirements set out in this Contract (and, where not fully detailed, the functional and performance specifications set out or referred to in the Supplier's (or the original manufacturer's) standard documentation for such Goods and Deliverables);
  - (b) be fit for the purpose for which they are provided;
  - (c) be new and unused and of merchantable and satisfactory quality; and
  - (d) be free from defects in materials, workmanship and installation; and
- 4.6 the Services will be of satisfactory quality and accord with the standards, specifications and requirements specified in this Contract.

### **5. INDEMNITIES**

The Supplier must indemnify and keep indemnified PWC and its directors, officers, employees and advisors against all losses, liabilities and costs (including legal expenses on a solicitor client basis) sustained, incurred or suffered by PWC arising from or in connection with any:

- 5.1 claim, action or proceeding that the use, possession or receipt by PWC of the Goods and/or Services (including any Deliverables) infringes the intellectual property rights or other rights of any third party;
- 5.2 negligence or wilful misconduct by the Supplier or any Supplier Personnel;
- 5.3 death, personal injury or property damage caused by the Supplier; or
- 5.4 claim, action or proceeding by any person against PWC arising from or in connection with the Goods and/or Services or any negligent, wilful or wrongful act or omission of the Supplier or any Supplier Personnel, provided

that such liability will be reduced to the extent that any unlawful or negligent act or omission of PWC caused or contributed to the losses, liabilities or costs.

## **6. INSURANCE**

6.1 Unless specified otherwise in this Contract, the Supplier must hold and maintain during this Contract the following insurances:

- (a) public and product liability insurance with an indemnity of at least \$10 million in respect of each claim and unlimited in the aggregate;
- (b) professional indemnity liability insurance with an indemnity of at least \$2 million in respect of each claim and unlimited in the aggregate;
- (c) workers' compensation insurance in accordance with applicable law; and
- (d) any other insurance which is customary or prudent in the circumstances, reasonably required by PWC or set out in this Contract.

6.2 If requested, the Supplier must provide PWC with copies of the certificates of currency, schedules of insurance and policy documents issued by the Supplier's insurers or some other evidence satisfactory to PWC confirming that each of the above insurance policies are current and that the insurance has the required and appropriate scope and limits of cover.

6.3 If the Supplier fails to:

- (a) effect the above insurances; or
- (b) provide copies of the certificates of currency, schedules of insurance and policy documents or some other evidence satisfactory to PWC upon request,

then the Supplier must not commence or must cease the supply of the Goods and/or provision of the Services under this Contract.

6.4 If the Supplier does not remedy a breach of clause 6.3 within 5 business days of a notice in writing from PWC requiring it to do so, PWC may, without limiting any other rights it may have:

- (a) effect the insurances and the cost will be a debt due from the Supplier to PWC; or
- (b) terminate this Contract.

## **7. PRIVACY, CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

7.1 The Supplier must not (without prior written approval of PWC) use, access, retain or disclose personal information that is collected, handled or held by or on behalf of PWC and must comply with (and ensure that all Supplier Personnel comply with) the information principles under the *Information Act* (NT), and any code of practice or authorisation under that Act, in the same way and to the same extent as PWC is required to.

7.2 All confidential information of the other party obtained or received by a party in connection with this Contract must be kept strictly confidential by the receiving party and must be used only by the receiving party as necessary to exercise its rights or to perform its obligations under the Contract. Any confidential information must not be disclosed (other than to that party's Personnel and professional advisers on a strict "need-to-know" basis or as may be required by applicable law, or by PWC to the Northern Territory of Australia, to a Minister or Cabinet, or to the Legislative Assembly of the Northern Territory of Australia or a committee of the Legislative Assembly of the Northern Territory of Australia) without the prior written consent of the disclosing party. Both parties must keep all confidential information secure and must return it to the other party or destroy it on demand.

7.3 Unless stated otherwise in this Contract, all intellectual property rights (including patents, trademarks, copyright, design rights, database rights and moral rights, whether registered or unregistered, and any application or right to apply for registration of any of the foregoing) (IPRs) in any Goods and any Deliverables will be owned by the Supplier. The Supplier hereby grants to PWC a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, transferable and sub-licensable licence to use, copy and modify any and all IPRs in any Goods and any Deliverables for any purpose whatsoever. The Supplier hereby waives (and must procure that all Supplier Personnel waive) all moral rights that the Supplier or all Supplier Personnel may have in any Goods and any Deliverables.

## **8. TERMINATION**

8.1 PWC may in its absolute discretion at any time immediately suspend or terminate this Contract for any reason, in whole or in part, by written notice to the Supplier. If PWC issues such a notice, the Supplier must:

- (a) cease all work in accordance with the notice; and
- (b) comply with any directions given by PWC.

8.2 Where this Contract is suspended or terminated under clause 8.1, PWC will pay the outstanding proportion of the Charges (if any) which relates to any relevant Goods and/or Services provided prior to the written notice. All other

costs, damages and expenses of the Supplier arising from or in connection with the suspension or termination will be borne by the Supplier in full.

- 8.3 PWC may also immediately suspend or terminate this Contract, in whole or in part, by written notice if the Supplier:
- (a) suffers an insolvency event, including but not limited to if the Supplier is wound up, a liquidator or administrator is appointed in respect of the Supplier, the Supplier is unable to pay its debts or the Supplier commits an act of bankruptcy;
  - (b) breaches this Contract and fails to remedy it within 10 business days of a written demand to do so; or
  - (c) commits a breach of this Contract which, in the opinion of PWC, is incapable of remedy.
- 8.4 If PWC suspends or terminates this Contract under clause 8.3 then, without limiting any other rights it may have, PWC will not be obliged to make any further payments to the Supplier (in the event of any suspension or termination in part, to the extent of such suspension or termination) and all other costs, damages and expenses of the Supplier arising from or in connection with the suspension or termination will be borne by the Supplier in full.

## 9. COMPLIANCE WITH RING-FENCING GUIDELINE

9.1 This clause applies notwithstanding any other clause in this Contract.

9.2 In this clause:

- (a) **National Electricity Rules** means the 'National Electricity Rules' as defined in the National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA), having force as a law of the Northern Territory under section 6 of the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT); and
- (b) **Ring-Fencing Guideline** means the Australian Energy Regulator's Electricity Distribution Ring-Fencing Guideline made under clause 6.17.2 of the National Electricity Rules, as that guideline applies in the Northern Territory from time to time.

9.3 The Supplier acknowledges that PWC must comply with the Ring-Fencing Guideline.

9.4 The Supplier must, and must ensure that Supplier Personnel:

- (a) take all necessary steps to understand PWC's obligations under the Ring-Fencing Guideline as they apply to the provision of Goods and/or Services under this Contract, including attending training from time to time as reasonably required by PWC;
- (b) provide the Goods and/or Services and otherwise conduct themselves in a manner that strictly complies with the obligations (including the non-discrimination and confidentiality obligations) set out in the Ring-Fencing Guideline as if the Supplier was acting as PWC; and
- (c) not engage in any conduct that, if engaged in by PWC, would breach or be contrary to PWC's obligations under the Ring-Fencing Guideline (including, in particular, the obligations under clause 4 of the Ring-Fencing Guideline).

9.5 The Supplier acknowledges that:

- (a) the application of the Ring-Fencing Guideline to PWC may change overtime (including, for example, where obligations under the Ring-Fencing Guideline which do not currently apply to PWC commence to apply to PWC); and
- (b) the operation of this clause will change accordingly.

9.6 The Supplier must notify PWC in writing as soon as reasonable possible after becoming aware of the occurrence, or the suspected or potential occurrence, of a material breach of the Supplier's obligations under this clause.

9.7 The Supplier must cooperate with PWC, and promptly comply with all reasonable directions given by PWC, to ensure that the Services are provided by the Supplier in a manner that is consistent with the requirements of this clause.

9.8 The Supplier must cooperate with, and promptly provide assistance to, PWC, to the extent reasonably required by PWC to comply with PWC's obligations under the Ring-Fencing Guideline, including any obligation to report or provide information to a regulatory authority, or otherwise cooperate with any investigation conducted by a regulatory authority.

9.9 The Supplier must provide PWC with such written reports, evidence or other information concerning the Supplier's compliance with this clause as may be requested by PWC from time to time.

9.10 The Supplier must make and keep, and must ensure that all Supplier Personnel make and keep, accurate records of the performance of the Supplier's obligations under this clause. PWC will have the right, at no cost to PWC, to inspect and copy any record relating to this clause at any time.

9.11 PWC or its nominated representative has the right (at no cost to PWC) at all reasonable times and on reasonable notice to visit the Supplier's and the Supplier Personnel's premises and audit and inspect all records, procedures and

systems of the Supplier and Supplier Personnel which relate to the Supplier's compliance with this clause. The Supplier must (and must ensure that Supplier Personnel fully co-operate with PWC in relation to any such audit or inspection).

## **10. GENERAL**

- 10.1 The Supplier must not subcontract, assign, novate, transfer or otherwise dispose of any or all of its rights and/or obligations under this Contract without the prior written consent of PWC (which may be withheld in PWC's absolute discretion).
- 10.2 The Supplier:
  - (a) must ensure that all Supplier Personnel comply with the Supplier's obligations under this Contract; and
  - (b) will be liable for the acts and omissions of all Supplier Personnel as if such acts and omissions were those of the Supplier itself.
- 10.3 The laws of the Northern Territory of Australia apply to this Contract and the parties submit to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia to settle disputes arising in connection with this Contract.
- 10.4 This Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter, including any correspondence, invoices or documents issued by the Supplier.
- 10.5 In this Contract, any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words.
- 10.6 If a party does not exercise (or delays exercising) any of its rights, that failure or delay does not waive those rights.
- 10.7 No variation of this Contract is effective unless made in writing and signed by each of the parties. Subject to any express provisions to the contrary, each party must pay its own costs of and incidental to the negotiation, preparation, entry into and carrying out of this Contract.
- 10.8 The Supplier is an independent contractor and nothing in this Contract constitutes, or will be deemed to constitute, a partnership or agency relationship between the parties, nor does it create any relationship of employment between PWC and the Supplier or any Supplier Personnel.