

Goods and Services Contract

AGREEMENT made on <<insert day>> of <<insert year>>

BETWEEN:

Complete Business Solutions Australia (CBSA) ('the Purchaser')

AND:

<<insert supplier here>> ('the Supplier')

Agreement Details

| | |
|---|--|
| Purchaser | |
| Supplier | |
| Commencement Date | |
| Expiry Date | |
| Supplier's ABN | |
| Contract Managers | |
| Named Persons | |
| Details of Goods/Services | |
| Delivery Date | |
| Installation Date | |
| Warranty Period | |
| Reports and Manuals | |
| Milestone Dates | |
| Price and Payment | |
| Insurances | |
| Liability Limit | |
| Other Termination Rights | |
| Approved Subcontractors | |
| Additional Personnel Checks | |
| Notice Period for Termination for Convenience | |

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Standard Terms and Conditions

1. Contract length
 - a) This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.
2. Contract managers
 - a) The persons named in Agreement Details as the Contract Managers are the first point of contact between the Parties and are responsible for overseeing the effective administration of the Agreement including variations and extensions.
3. Supply of goods (if applicable)
 - a) If Goods are being supplied under this Agreement, then the Supplier must:
 - supply the Goods in accordance with this Agreement.
 - sell the Goods without encumbrance.
 - deliver the Goods to the Delivery Point on or before the Delivery Date.
 - comply with the Purchaser's reasonable directions and delivery instructions.
 - if requested by the Purchaser, provide the Purchaser with material safety data sheets with respect to the Goods delivered.
 - provide test evidence for the Goods if required; and
 - if indicated in Agreement Details, install the Goods on or before the Installation Date.
 - b) If the Supplier cannot comply with any of its obligations under clause 3.1, the Supplier must notify the Purchaser in writing immediately.
4. Inspection and acceptance of goods (if applicable)
 - a) The Purchaser may inspect the Goods to determine whether to accept or reject the Goods.
 - b) The Purchaser must accept the Goods if they conform with the requirements of this Agreement.
 - c) Subject to clause 4.4, the Goods are deemed to be accepted either:
 - on delivery if the Purchaser notifies the Supplier that it accepts the goods; or
 - if no notice is issued by the Purchaser, then 5 Business Days after delivery of the Goods to the Delivery Point.
 - d) If the Goods are consumable products and the Goods are found to be defective when first used, then the Purchaser may reject the Goods under clause 4.5.
 - e) If the Purchaser rejects the Goods due to non-conformity with the requirements of this Agreement, then the Purchaser must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at the Purchaser's election to either:
 - resupply the Goods and remove the non-conforming Goods from the Delivery Point; or
 - repair the Goods.
 - f) Acceptance of the Goods does not relieve the Supplier of any of its obligations under this Agreement.
 - g) The Supplier bears the risk in the Goods until delivery to the Delivery Point. Title in the Goods will pass to the Purchaser upon the Purchaser's acceptance of the Goods.
5. Warranty period (if applicable)
 - a) If during the Warranty Period, the Goods fail to comply with the warranties in clause 9.1 then the Purchaser may in its absolute discretion require that the Supplier at its expense:
 - replace the Goods within 10 Business Days of notification by the Purchaser (or such other time as is agreed); or

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- refund the Price.
6. Supply of services (if applicable)
- a) If Services are being supplied under this Agreement, then the Supplier must ensure that the Supplier's Personnel provide the Services described in Agreement Details in accordance with the terms and conditions of this Agreement.
 - b) Where Agreement Details specifies Named Persons then the Services must be delivered by those Named Persons.
 - The Supplier may substitute a Named Person with the consent of the Purchaser subject to the Purchaser being satisfied as to the expertise, experience, and suitability of the substitute.
 - c) The Supplier must ensure that Services are delivered:
 - to a standard that meets or exceeds the Service Levels.
 - in accordance with the warranties in clause 9.4; and
 - by any Milestone Dates.
 - d) The Purchaser's remedies for the Supplier's failure to meet a Service Level or for a breach of a warranty, includes resupply of the Services, a reduction of the price, termination, rebates, or any other remedy specified in the Special Conditions.
7. Reports and manuals (if applicable)
- a) The Supplier must provide those reports, manuals or other materials specified in Agreement Details.
8. Service variation (if applicable)
- a) If the Purchaser wishes to vary the scope of the Services ('Variation'), it must issue a written request to the Supplier and the Supplier must within 5 Business Days (or such other period as agreed) provide a written quote ('Quote') setting out:
 - any impacts on the timing of or completion of tasks.
 - the varied price and payment arrangements; and
 - any changes to the terms that apply to the performance of the Services.
 - b) The Parties must negotiate in good faith to agree on the price and other terms applicable to the Variation.
 - c) If the Parties agree in writing to the terms of the Variation, then:
 - the Supplier must perform the Services as varied by the Variation.
 - the Purchaser must pay the varied price.
 - the terms and conditions of the Agreement are varied by the terms of the Variation.
9. Supplier's warranties
- a) If Goods are being supplied under this Agreement, then the Supplier warrants that it has good and unencumbered title to the Goods and the Goods:
 - conform with any description applied and any sample provided by the Supplier.
 - are new (unless otherwise specified).
 - are free from defects in materials, manufacture, and workmanship.
 - conform to any applicable Australian Standards or other standards nominated in this Agreement.
 - conform to the Specifications and any technical Specifications provided by the Supplier.
 - are of merchantable quality.
 - are installed correctly (if the Supplier is responsible for installation);
 - are fit for their intended purpose; and

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- are manufactured and supplied without infringing any person's Intellectual Property Rights.
- b) The Supplier must ensure that the Purchaser receives the full benefit of any manufacturer's warranties in respect of the Goods.
- c) During any Warranty Period any defects in the Goods must be rectified at the Supplier's expense.
- d) If Services are being supplied under this Agreement, then the Supplier warrants that the Services will:
 - comply with the description of the Services in Agreement Details.
 - be provided with due care and skill.
 - be provided in a timely and efficient manner.
 - be provided in accordance with the best practices current in the Supplier's industry.
 - be supplied without infringing any person's Intellectual Property Rights.
 - be performed by the Supplier and/or the Supplier's Personnel; and
 - be supplied in the most cost-effective manner consistent with the required level of quality and performance.

10. Supplier's personnel

- a) The Supplier, if required by the Purchaser, must give its consent to, and procure the consent of the Supplier's Personnel, to the conduct of a Police Check or any Additional Personnel Checks specified in Agreement Details.
- b) If the Purchaser gives the Supplier notice in writing requiring those persons to be withdrawn from supplying the Goods or providing the Services, and the Supplier must immediately comply with the notice and provide replacement Personnel acceptable to the Purchaser.
- c) The Supplier and the Supplier's Personnel must only use the Purchaser's computer systems with the specific authorisation of the Purchaser and only in the manner as directed by the Purchaser from time to time.
- d) The Purchaser reserves the right to refuse entry to any of the Purchaser's premises to any of the Supplier's Personnel.

11. Price and payment

- a) In consideration for the supply of the Goods and/or the Services, the Purchaser will pay the Price.
- b) Unless otherwise expressly stated the Price is inclusive of GST.
- c) The Supplier is entitled to invoice the Purchaser for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 4, and the Services have been supplied in accordance with this Agreement.

12. GST

- a) Subject to clause 12.2 the Supplier represents that:
 - the ABN shown in Agreement Details is the Supplier's ABN; and
 - it is registered under the A New Tax System (Australian Business Number) Act 1999 (Cth)
- b) If the Supplier is not registered for GST, then GST must not be charged on supplies made under this Agreement.

13. Intellectual property rights

- a) Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
- b) The Supplier grants to the Purchaser and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any Intellectual Property Rights in any reports or manuals required to be supplied under this Agreement.

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14. Insurance

- a) The Supplier must affect and maintain the policies of insurance specified in Agreement Details for not less than the amounts specified in Agreement Details.
- b) The policies of insurance referred to in clause 14.1 must be held until the expiry of the Agreement.

15. Liability limit

- a) The Supplier's liability to the Purchaser under this Agreement is limited to the amount specified in Agreement Details.

16. Confidential information

- a) Subject to this clause 16, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the purpose of this Agreement.
- b) A Party may disclose Confidential Information belonging to the other Party:
 - to an employee, agent, or adviser of that Party, on a 'need to know' and confidential basis.
 - as required by law or a court order.
 - in accordance with any Parliamentary or constitutional convention.
 - to the Australian Competition and Consumer Commission (ACCC) if the party reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; or
 - for the purposes of prosecuting or defending proceedings.
- c) The Parties may mutually agree to disclose Confidential Information.

17. Set-off

- a) Any claim the Purchaser may have against the Supplier may be set off against monies owed to the Supplier under this Agreement.

18. Dispute resolution

- a) Subject to clause 18.4 a Party may not commence legal proceedings without first referring the dispute to the other Party under this clause.
- b) Either Party may give the other a notice in writing ('dispute notice') setting out the details of the dispute.
- c) Within 5 Business Days or such other period as may be agreed by the Parties, representatives must meet and use reasonable endeavours to resolve the dispute.
- d) A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.

19. Ending this contract

- a) The Purchaser may terminate this Agreement immediately upon giving notice in writing to the Supplier if:
 - the Purchaser reasonably forms the opinion that the Supplier will be unable to perform its obligations under this Agreement.
 - the Supplier is in breach of this Agreement and has not rectified such breach within 10 Business Days of the Purchaser giving notice in writing to the Supplier requiring the rectification of such breach.
 - the Purchaser becomes aware that the Supplier is in breach of its statutory obligations with respect to its employees.
 - the Supplier fails to comply with a notice issued under clause 10.2; or
 - the Supplier fails to disclose a conflict of interest.
 - any Other Termination Right occurs; or

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- the Supplier suffers or, in the reasonable opinion of the Purchaser, is in jeopardy of becoming subject to any form of insolvency administration or bankruptcy.
- b) The Purchaser may terminate this Agreement without cause by giving the Supplier the period of notice specified in Agreement Details ('Notice Period for Termination for Convenience').
- c) If the Purchaser terminates this Agreement in accordance with clause 19.2:
 - the Supplier has no claim against the Purchaser arising out of or in relation to such termination other than the right to be paid for Goods accepted and/or Services provided before the effective termination date; and
 - the Supplier must comply with all reasonable directions given by the Purchaser.
- d) The Supplier may terminate this Agreement immediately upon giving notice in writing to the Purchaser if the Purchaser is in breach of this Agreement and has not rectified such breach within 14 days of the Supplier giving notice in writing to the Purchaser requiring the rectification of such breach.

20. Effect of ending this contract

- a) Any termination of this Agreement by either Party does not affect any accrued right of either Party.
- b) Despite termination or completion of this Agreement, this clause 20 and clauses 9, 13, 14, 15, 16, 17 and those Special Conditions that by their nature remain in force, shall survive.

21. Subcontracting

- a) Apart from the Approved Subcontractors described in Agreement Details, the Supplier must not engage any subcontractor without the prior written permission of the Purchaser.
- b) The Supplier remains responsible for obligations performed by the Approved Subcontractors to the same extent as if such obligations were performed by the Supplier.

22. Conflict of Interest

- a) The Supplier must disclose in writing to the Purchaser all actual and potential conflicts of interest that exist, arise, or may arise (either for the Supplier or the Supplier's Personnel) while performing its obligations under this Agreement as soon as practical after it becomes aware of that conflict.

23. Compliance with Laws

- a) The Supplier must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.

24. Governing Law and Jurisdiction

- a) This Agreement is governed by the laws in the State of New South Wales.
- b) The courts of the State of New South Wales have exclusive jurisdiction in connection with this Agreement.

25. Entire Agreement

- a) The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

26. No Assignment

- a) The Supplier must not assign, encumber, or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Purchaser which approval shall not be unreasonably withheld.
- b) Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Purchaser and all the Purchaser's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

27. Modification

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- a) No addition to or modification of any provision of this Agreement will be binding upon the Parties unless made by written instrument signed by the Parties.

28. Severance

- a) Each word, phrase, sentence, paragraph, and clause of this Agreement is severable.
- b) Severance of any part of this Agreement will not affect any other part of this Agreement.

29. Counterparts

- a) This Agreement may be executed in any number of counterparts each of which is taken to be an original. All those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

30. Work Health & Safety

- a) The Supplier must always comply with the Work Health and Safety Regulation 2017 (NSW), regardless of whether the Purchaser issues direction in that regard or not.
- b) If all or part of the work under this Agreement is to be provided on the premises of the Purchaser and under the direction of the Purchaser, the Supplier must comply with the Purchaser's work health and safety policies, procedures, and instructions. If the Supplier becomes aware of any potentially hazardous situation on the Purchaser's premises, the Supplier must immediately bring it to the Purchaser's attention.

31. Acting ethically

- a) The Supplier must conduct itself in a manner that does not invite, directly or indirectly, the Purchaser's officers, employees, or agents to behave unethically, to prefer private interests over the Purchaser's interests or to otherwise contravene the Code of Ethics for the Purchaser.

32. Special conditions

- a) The special conditions (if any) form part of this Agreement and to the extent of any inconsistency, take precedence over the other terms of this Agreement.