

1. DEFINED TERMS

Best Practice Principles means the best practice principles with respect to quality, safe workplaces in the Queensland Procurement Policy and any associated guidance mentioned in the Queensland Procurement Policy to support the application of the Best Practice Principles.

Contract has the meaning defined in clause 2 of these terms.

Contractor Supply Affiliate means a related body corporate of the Supplier or a subcontractor.

Consequential Loss means loss of profits, savings or revenue, loss of business opportunity, loss of reputation or goodwill, loss by reason of shut down or non-operation, increased costs of finance or loss of use or productivity (in each case whether direct or indirect) and any consequential, indirect, exemplary, special or punitive loss or damage of any kind, in each case whether caused by breach of contract, warranty, tort (including negligence), product liability, contribution or strict liability.

Dumped Goods has the meaning given to that term in the Queensland Procurement Policy.

Ethical Supplier Mandate means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" (as that document may be updated, reviewed, amended or replaced from time to time).

Ethical Supplier Requirements means:

- (a) all requirements which must be satisfied to meet the Ethical Supplier Threshold;
- (b) fulfilling any commitments given to Seqwater ("Seqwater") in relation to Local Benefits and the Best Practice Principles;
- (c) the Supplier, or any Contractor Supply Affiliates, not, at any time after the Ethical Supplier Requirements Start Date:
 - (i) breaching the Supplier Code of Conduct;
 - (ii) supplying, procuring, or using, Dumped Goods;
 - (iii) being sanctioned under the Ethical Supplier Mandate; or
 - (iv) accruing 20 demerit points under the Ethical Supplier Mandate.

Ethical Supplier Requirements Start Date means 1 August 2019.

Ethical Supplier Threshold means, the ethical supplier threshold referred to in Principle 2 of the Queensland Procurement Policy, as it may be updated or replaced from time to time.

Goods means the goods described in the Purchase Order ("PO"), including any part(s) of them.

Force Majeure Event means an event beyond the control of a party which causes delay in the performance of that party's obligations under the Contract and which cannot be prevented or remedied by that party's exercise of a high standard of care and diligence.

Legal Requirements means binding legal requirements such as acts, regulations, by-laws, orders, local laws, statute, and mandatory codes, decisions or directions of any competent authority, government department, regulatory body, minister or agency.

Local Benefits has the meaning given to that term in the Queensland Procurement Policy.

Modern Slavery Laws means the Modern Slavery Act 2018 (Cth) and Divisions 270 and 271 of the Criminal Code 1995 (Cth).

Queensland Procurement Policy means the Queensland Procurement Policy 2023 as published from time to time.

Relationship Agreement means an existing standing offer, preferred supplier, sole supplier or similar agreement between the Supplier and Queensland Bulk Water Supply Authority trading as Seqwater.

Services means the services described in the PO, including any part(s) of them.

Site Manager means the site manager appointed by Seqwater from time to time.

Supplier means the external party that provides goods and / or services to Seqwater under this PO.

Supplier Code of Conduct means the supplier code of conduct available at <https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/search-for-procurement-policies-resources-tools-and-templates/queensland-government-supplier-code-of-conduct-2023> and as updated and amended from time to time.

Work Health and Safety Laws means all Legal Requirements relating to work, health and safety.

2. APPLICATION OF TERMS

These terms are the only terms upon which Seqwater is prepared to deal with the Supplier and together with the PO they form the Contract to the exclusion of all other terms (other than the terms of any Relationship Agreement). No terms contained in any document of the Supplier will form part of the Contract and the Supplier waives any right to rely on such terms.

3. ETHICAL SUPPLIER REQUIREMENTS

- (a) The Supplier:
 - (i) warrants that neither it nor any Contractor Supply Affiliate has, prior to the date of this Contract, breached the Ethical Supplier Requirements; and
 - (ii) must at all times after the date of this Contract comply, and ensure the Contractor Supply Affiliates comply, with the Ethical Supplier Requirements.
- (b) The Supplier must notify Seqwater of any breach of the warranty or obligation in subclause (a) as soon as reasonably practicable after the Supplier becomes aware of the breach.
- (c) The Supplier must provide Seqwater with any information it reasonably requires at any time:
 - (i) in order for Seqwater to confirm the Supplier's compliance with subclause (a); or
 - (ii) relating to any breach of subclause (a).
- (d) The Supplier agrees that, if it breaches the Ethical Supplier Requirements:
 - (i) it will rectify the breach; and
 - (ii) if it fails to rectify the breach by the stated date and time, Seqwater may advise the Queensland Government Procurement Compliance Branch, Department of Housing, Local Government, Planning and Public Works (or anybody responsible for administration of the Queensland Procurement Policy) of the Supplier's failure to comply with the Ethical Supplier Requirements.

The Supplier acknowledges that if it or any of the Contractor Supply Affiliates (regardless of whether the conduct of the Supplier or the Contractor Supply Affiliate is in connection with the Contract) do or cause to be done anything which is a type of non-compliance under the Ethical Supplier Mandate (regardless of whether the non-compliance is connected with the Contract), the Supplier can be liable for the imposition of a demerit or sanction under the Ethical Supplier Mandate.

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4. QUALITY

The Supplier must:

- (a) perform the Services or deliver the Goods in accordance with the Contract ensuring that the Goods/Services comply with:
 - (i) Modern Slavery Laws;
 - (ii) Work Health and Safety Laws;
 - (iii) any Legal Requirements; and
 - (iv) any applicable Australian Standards;
- (b) at all times exercise due skill, care and diligence in preparing and delivering the Goods or performing the Services;
- (c) supply the Goods/Services in a competent manner and in accordance with the Contract, any induction given and the reasonable directions of Seqwater's Site Manager;
- (d) not do or cause or allow to be done anything that would materially and adversely affect Seqwater's rights concerning the site, or any property on the site.

5. DESCRIPTION

The Goods/Services must comply with the specifications and the description in the PO, and must correspond with any sample of Goods provided by the Supplier.

6. DELIVERY

The Supplier must:

- (a) deliver the Goods/Services in the area specified by Seqwater on the specified date for delivery and in accordance with the Site Manager's directions;
- (b) ensure there is no damage to the Goods, the site or any party's property on the site;
- (c) when delivering Goods, provide full documentation identifying the contents of each package delivered and comply with clause 14; and
- (d) store its property in a safe manner according to the Site Manager's directions.

7. INSPECTION

Provided Seqwater complies with all reasonable safety measures required by the Supplier, Seqwater is at all reasonable times and at its own expense entitled to:

- (a) inspect the Goods before they are dispatched from the Supplier's premises to a site, and before Seqwater agrees to accept delivery of them;
- (b) inspect Services (and any related works) being carried out by the Supplier at a site.

8. ACCEPTANCE

- (a) Seqwater will not be deemed to have accepted:
 - (i) Goods until Seqwater has had a reasonable time to inspect them after delivery and issued a notice of acceptance; or
 - (ii) Services until Seqwater has had a reasonable time to inspect and test them.

- (b) If Seqwater deems, acting reasonably, any Goods to be defective, Seqwater may reject the defective goods by returning them to the Supplier or making good the defective goods.
- (c) If Seqwater deems, acting reasonably, any Services to be defective, Seqwater may reject the defective service by giving notice to the Supplier, with a proposed rectification strategy.
- (d) At Seqwater's option and request, the Supplier agrees, in respect of any defective Goods rejected by Seqwater under clause 8(b), to:
 - (i) refund to Seqwater any payments made by Seqwater (including any freight charges) in respect of any defective Goods that Seqwater rejects; or
 - (ii) make good any defective Goods that Seqwater rejects; or
 - (iii) reimburse Seqwater for any reasonable expense incurred in making good defective Goods.
- (e) Seqwater's inspection, testing or acceptance of Goods/Services does not affect Seqwater's rights to claim for any damage or loss suffered because of the Supplier's breach of warranty or failure to fulfil any other obligations under the Contract.
- (f) If Seqwater accepts any Goods/Services from the Supplier which do not comply with the Contract, Seqwater is not bound to accept future non-complying Goods/Services.

9. TITLE AND RISK

Title and risk in the Goods does not pass until Seqwater takes delivery of the Goods.

10. PERSONNEL

- (a) The Supplier must provide suitably qualified, competent and experienced personnel with appropriate safety equipment to perform the Contract.
- (b) The Supplier and its personnel must, prior to entering a Seqwater site, successfully complete all inductions and sign all reasonable undertakings required by Seqwater.
- (c) The Supplier must ensure that its personnel adhere to the Contract, and Seqwater's rules, practices, policies, procedures and reasonable requirements.
- (d) The Site Manager may, acting reasonably, direct the Supplier to remove from the site any of the Supplier's personnel or subcontractors.

11. SUBCONTRACTING

Save for delivery of Goods, the Supplier may only engage a subcontractor to supply or hire on the Supplier's behalf any of the Goods/Services with the prior written approval of Seqwater. The Supplier will be responsible for any acts or omissions of its subcontractors under the Contract.

12. AUTHORISATIONS

The Supplier must obtain and maintain at its cost all of the authorisations (including permits, approvals, licences, certificates and standards) required to supply the Goods/Services.

13. PRICE

- (a) Seqwater agrees to pay the Supplier the price in the PO ("Price") for the Goods/Services in accordance with clause 14.
- (b) Unless stated otherwise in the Contract, the Price is inclusive of all costs incurred by the Supplier in complying with its obligations under the

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Contract including charges for packaging, packing, insurance and delivery of the Goods and any taxes.

- (c) The Price may not be increased without Seqwater's prior written consent.

14. PAYMENT AND INVOICING

14.1 Payment

Seqwater will pay correctly rendered invoices within 30 days of receipt of invoice:

- (a) the amount complies with all Legal Requirements and reflects the amount in the PO;
- (b) in Seqwater's reasonable opinion, the Goods/Services supplied comply with all of the requirements in the Contract and:
 - (i) comply with the warranties in clause 18.2;
 - (ii) for the Goods, they have not been rejected by Seqwater; and
 - (iii) the Supplier has not been requested to make changes to the Goods/Services to make them comply with the Contract.

14.2 Correctly Rendered Invoices

An invoice is correctly rendered if:

- (a) the invoice is in accordance with the PO in all respects,
- (b) the invoice:
 - (i) identifies the Goods/Services supplied, the Seqwater contact and PO number;
 - (ii) specifies the relevant location(s) and/or Seqwater site(s);
 - (iii) details the amount claimed and the calculation of that amount (including records of time spent by personnel verified by the Site Manager);
 - (iv) certifies that the Goods/Services comply with the Contract;
 - (v) includes any other details reasonably required by Seqwater;
 - (vi) identifies the GST exclusive amount and the GST amount separately;
 - (vii) is a tax invoice for GST purposes and allows Seqwater to make a claim for input tax credits
 - (viii) complies with Legal Requirements.

14.3 Disputed Invoices

Where Seqwater considers an invoice is not correctly rendered, Seqwater will issue within 10 business days a notice setting out the reasons and identifying amounts in dispute. The Supplier must cancel the old invoice and issue a new invoice for the undisputed amount. If an amount under a disputed invoice is later agreed to be payable by Seqwater ("Resolved Amount"), the Supplier may add the Resolved Amount to the next correctly rendered invoice.

14.4 Set off

Seqwater may, acting reasonably, withhold, retain or set off from any payment due to the Supplier under the Contract amounts Seqwater deems necessary to protect it against any costs, expenses and damages for which the Supplier may be liable under

or in connection with the Contract. This right does not limit Seqwater's right to recover those amounts in any other way.

15. GOODS AND SERVICES TAX

15.1 Interpretation

Words or expressions used in this clause 15 are defined in Commonwealth legislation concerning tax and tax arrangements for the supply of the Goods/Services.

15.2 Consideration is GST inclusive

Any consideration to be paid for a supply made under or in connection with the Contract, unless described as 'GST exclusive', is deemed to include an amount of GST.

15.3 Gross up of consideration

Despite any other provision in the Contract, if a party ("GST Supplier") makes a supply under or in connection with the Contract on which GST is imposed and is specifically described in the Contract as 'GST exclusive':

- (a) the consideration payable or to be provided for that supply under the Contract but for the application of this clause 15 (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the GST Supplier, an amount equal to the GST payable by the GST Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the GST Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable.

15.4 Reimbursements

If a payment to a party under or in connection with the Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

15.5 Adjustment Events

If, at any time, an Adjustment Event arises for any supply made by a party under the Contract, a corresponding adjustment must be made between the parties for any amount paid under clause 15.3. Payments to give effect to the adjustment must be made between the parties and the GST Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

16. WITHHOLDING TAX

If a law requires Seqwater to deduct an amount in respect of taxes from a payment under the Contract, then Seqwater agrees to deduct the amount for the taxes and pay an amount equal to that amount to the relevant authority as required by applicable law. Any amount withheld is deemed to have been paid to the Supplier on the date on which the remainder of the payment is paid to the Supplier. The Supplier has no claim against Seqwater for any amounts withheld and paid to the Commissioner of Taxation under this clause.

17. INSURANCE

- (a) The Supplier must effect and maintain any insurance required by Legal Requirements in connection with the supply of Goods/Services or by Seqwater under any Relationship Agreement.
- (b) Before the Supplier commences the supply of Goods/Services and whenever requested by Seqwater, the Supplier must produce evidence to Seqwater's satisfaction that the insurances required have been effected and maintained.
- (c) If the Supplier fails to produce evidence of insurance, Seqwater may, acting reasonably, effect and maintain one or more insurance policies, and the costs of such insurance will be a debt due and payable from the

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Supplier to Seqwater. Seqwater may withhold payment to the Supplier and/or suspend the supply of Goods/Services until evidence of compliance with insurance obligations is produced or Seqwater is reimbursed for debt.

18. WARRANTIES & INDEMNITY

18.1 Supplier Warranties

The Supplier warrants that the Supplier:

- (a) has met the insurances and compliance requirements in the Contract;
- (b) will exercise due skill, care and diligence in preparing and delivering the Goods or carrying out the Services;
- (c) will comply with any material conditions imposed by an authorisation.

18.2 Supplier warranties about the Good or Services

- (a) The Supplier warrants that all Goods/Services supplied will be of merchantable quality and fit for the purpose for which Seqwater intends to use them.
- (b) The Supplier warrants that Goods will be free of encumbrances at the time of delivery, and remain so until Seqwater accepts ownership of them under clause 9.

18.3 Continuing Representation

The representations and warranties set out in clauses 18.1 and 18.2 survive the termination of the Contract.

18.4 Indemnity

To the extent caused or contributed to by the Supplier, its servants, employees or agents, the Supplier indemnifies Seqwater for any loss arising out of:

- (a) the performance or breach of the Contract;
- (b) claims by a third party arising out of the acts or omissions of the Supplier, its servants, employees or agents under the Contract;
- (c) personal injury or death of any person (including the Supplier and its personnel);
- (d) loss of, damage to or loss of use of any property;
- (e) the breach of any Legal Requirements;
- (f) any act, default or omission of the Supplier and its servants, employees or agents ; and
- (g) any actual or alleged infringement of intellectual property rights under the Contract,

except to the extent that the loss is caused or contributed to by Seqwater, its servants, employees or agents, including by its own negligence, breach, or failure to mitigate, or is not otherwise recoverable by law.

18.5 Exclusion of Consequential Loss

Notwithstanding anything else in this Contract, to the extent permitted by law neither party will be liable for any Consequential Loss.

19. INTELLECTUAL PROPERTY

19.1 Intellectual Property Rights in works

The Supplier assigns to Seqwater all intellectual property rights in any material created in the course of performing its obligations under this Contract, except to the extent material is pre-existing material of the Supplier at the date of the Contract. The Supplier grants Seqwater a perpetual, non-exclusive, non-transferable, irrevocable, royalty-free licence to use such material in any manner for the purpose of Seqwater carrying on its business.

19.2 Intellectual Property warranty

The Supplier warrants that it will not infringe the intellectual property rights of any person in providing the Goods/Services.

20. CONFIDENTIALITY

- (a) Each party undertakes that it will not (except as necessary to comply with its obligations under the Contract) disclose to any person any information of or relating to the other party including the terms of the Contract.
- (b) Nothing in the Contract prohibits disclosure of information which:
 - (i) is in the public domain otherwise than as a result of a breach of this clause 20;
 - (ii) is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this clause 20; or
 - (iii) is required to be disclosed by law or government having authority over a party.
- (c) The obligations under this clause 20 survive termination of the Contract.

21. DISPUTES

- (a) A party must comply with this clause 21 before commencing legal proceedings.
- (b) Where a party considers that a dispute exists, that party must give the other party a written notice of dispute ("Notice of Dispute") within 10 business days, detailing the nature of the dispute.
- (c) Within 10 business days after the service of a Notice of Dispute the CEO of Seqwater, or their delegate and the Supplier's business owner, must confer at least once to attempt to resolve the dispute and, failing resolution, to attempt to agree on an alternative method of resolving the dispute. Nothing in this clause 21 prevents either party commencing proceedings to seek interlocutory relief, to preserve a superior position with respect to creditors or to avoid the expiry of any applicable limitations period.

22. TERMINATION

22.1 For breach

Either party may terminate the Contract with immediate effect, by giving written notice to the other party if the other party breaches a provision of the Contract and:

- (a) if the breach is capable of remedy, fails to remedy the breach within a reasonable time (not exceeding 20 business days) after receiving notice of the breach; or
- (b) the breach cannot be remedied.

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23. MISCELLANEOUS PROVISIONS

23.1 Governing law

The Contract is governed by the laws of Queensland and each party irrevocably and unconditionally submits to the jurisdiction of the courts of Queensland.

23.2 Notices and other communications

A notice, demand, consent or communication under the Contract ("Notice") must be in writing, in English and signed by a person duly authorised by the sender and hand delivered or sent by prepaid post or email to the recipient's contact address specified in the PO, as varied by any notice given by the recipient to the sender.

23.3 Force Majeure

- (a) If a Force Majeure Event occurs, and it affects either party ("Affected Party"), the Affected Party may give the other party a written notice of the Force Majeure Event and notifying that the obligations of the Affected Party are suspended to the extent that they are affected by the event, from the date of the written notice until cessation of the Force Majeure Event.
- (b) On cessation of the Force Majeure Event, the Affected Party must within a reasonable time give written notice to the other party of the cessation of the event; and resume performance of the obligations suspended as a result of the event.

23.4 Assignment

- (a) Seqwater may assign any of its rights under the Contract, or may novate its rights and obligations under this agreement without the consent of the Supplier. The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 23.4(a).
- (b) The Supplier must not assign, sub-licence or novate the Contract or any right under the Contract unless it has Seqwater's written consent (which must not be unreasonably withheld). Seqwater may grant consent subject to conditions considered reasonably necessary by Seqwater to protect its legal, commercial or financial interests.

23.5 Successors and permitted assigns

The Contract is binding upon and takes effect for the benefit of the parties, and their respective successors and permitted assigns.

23.6 Relationship

The Supplier is an independent supplier for the purposes of the Contract and nothing in the Contract creates a relationship of partnership, joint venture or employer and employee.

24. TRUSTEE PROVISIONS

24.1 Trustee Warranty

If the Supplier enters into this Contract as a trustee, the Supplier in its personal capacity and in its capacity as trustee of the Trust ("Trust") warrants that:

- (a) the Trust is validly created and is in existence;

- (b) the Trust has not been determined, wound up or ceased to exist and will remain in force during the term of the Contract and the Supplier has no knowledge of any event or circumstance which may give rise to the termination, winding up or cessation of the Trust;
- (c) the Supplier is the sole trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Supplier under this Contract;
- (d) the Supplier has the power to enter into and observe its obligations under this Contract in its capacity as trustee of the Trust;
- (e) the Supplier has all authorisations necessary to:
 - (i) enter into this Contract;
 - (ii) perform its obligations under this Contract; and
 - (iii) allow those obligations to be enforced against it,
 (including all authorisations under the trust deed of the Trust);
- (f) the Supplier is not in material default under the trust deed of the Trust;
- (g) the Supplier is entitled to be indemnified out of the property of the Trust in relation to all of the obligations and liabilities incurred by the Supplier under this Contract and the property of the Trust is sufficient to satisfy that right in full and the Supplier has not released or disposed of its equitable lien over the property of the Trust;
- (h) there is no limitation on the Supplier's right of indemnity against the property of the Trust other than when there has been a breach of trust, breach of duty or fraud on the part of the Supplier; and
- (i) the Supplier is not acting in breach of its duties as trustee of the Trust such that its entry into this Contract or the performance or carrying out of its obligations would cause the Supplier to not be indemnified out of the property of the Trust.

24.2 Liability of the Supplier

The Supplier is liable under this Contract in its personal capacity and as trustee of the Trust.

24.3 Change of trustee

For the purposes of clause 23.4, an assignment will be deemed to occur if:

- (a) the Supplier ceases to act as trustee of the Trust;
- (b) another person is appointed as trustee of the Trust; or
- (c) the trust deed for the Trust is amended so that the Supplier would no longer be able to make any of the warranties in clause 18.

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