

Conditions for Quotations and Tenders

Current Version 1.0 | Effective From 01/07/2018



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1. APPLICATION

- 1.1 A tender submitted by i2S shall be on condition that:
- (a) in all circumstances it is subject to and shall be read in conjunction with these Conditions. Any Contract shall be governed by these Conditions unless otherwise separately agreed in writing between the Purchaser and i2S;
 - (b) i2S may vary or withdraw its tender at any time prior to written acceptance by the Purchaser. Subject thereto, and unless otherwise stated by i2S in the tender, the tender shall remain valid and open for acceptance for a period of 30 days from the date of submission; and
 - (c) Any tender which quotes a budget, preliminary or estimate price is not a fixed or lump sum tender and shall not be considered an offer capable of acceptance until confirmed in writing by i2S.

2. SCOPE OF SERVICES

- 2.1 The Services shall be supplied in accordance with the scope of Services set out in the Contract, and the Purchaser is solely responsible for satisfying itself as to the suitability of such Services for the Purchaser's intended application.
- 2.2 i2S shall not be bound by any representation concerning the scope of supply, performance or characteristics of Services unless expressly incorporated in the Contract.

3. i2S' GENERAL OBLIGATIONS

- 3.1 i2S shall supply the Services in accordance with the requirements of the Contract and by the time(s) specified in the Contract or as may be extended from time to time as provided for in the Contract.

4. PURCHASER'S GENERAL OBLIGATIONS

- 4.1 The Purchaser shall pay i2S the Contract Price for the Services as may be adjusted from time to time as provided for in the Contract. The Purchaser shall, in a timely manner and so as to avoid any delay to i2S, provide all information (including but not limited to programming information), approvals, permits, authorisations, licences, customs clearances, instructions, materials, drawings, technical and survey information access and other things which may be required in relation to the performance of i2S' obligations and which is not expressly stated to be i2S' responsibility. The Purchaser shall provide to i2S any approval, direction or comment with respect to drawings or documents submitted by i2S to the Purchaser within seven (7) days from the date of the submission by i2S of such drawings and/or documents unless some other time is provided for in the Contract.

5. PAYMENT

- 5.1 Except as otherwise provided elsewhere in the Contract:
- (a) tax invoices for Services shall be submitted by i2S at the completion of the Services or on a monthly progress basis (whichever is the earlier);
 - (b) tax invoices shall be due and payable within the time specified in the tender but in any event no later than thirty (30) days of the date of the tax invoice;
 - (c) the Contract Price is exclusive of GST.
- 5.2 Should the parties fail to agree an adjudicator for the purposes of appointing an adjudicator under the Building and Construction Industry Security of Payment Act, then the Institute of Arbitrators and Mediators Australia shall be the nominating authority.
- 5.3 i2S shall be entitled to, in addition to the Contract Price, recover an additional amount on account of GST from the Purchaser. The additional amount on account of GST shall be equal to the Contract Price multiplied by the prevailing GST rate.
- 5.4 The Purchaser shall pay interest to i2S on any moneys outstanding on and from the due date up and until all such outstanding moneys are paid. The interest rate shall be the maximum per annum commercial overdraft rate determined by the Commonwealth Bank of Australia on the interest date plus 3%, accruing daily.

6. WARRANTY AND STANDARD OF PERFORMANCE

- 6.1 i2S warrants that it will perform the Services with reasonable care and skill, and in accordance with that standard acceptable amongst skilled contractors providing services of a similar kind to the Services under the Contract. i2S' obligation in respect of the Services and any breach of warranty or duty expressed or implied in connection therewith, is solely and exclusively limited to the re-performance of the Services in which any deficiency or omission becomes apparent and is notified by the Purchaser to i2S within 12 months of the performance, or non-performance (as the case may be), of the subject Services.

- 6.2 i2S warrants that any materials supplied shall, under proper use, be free from defects in workmanship and conform to the specification in the Contract. i2S' obligation under this warranty shall be limited to the making good by repair or replacement, at i2S' option, of any materials in which any defect appears and is notified by the Purchaser to i2S before the expiry of a period ending 12 months after first putting the Services into use or 18 months after dispatch from the supplier's premises, whichever is earlier. i2S' obligation under this warranty shall not extend to any failure caused by fair wear and tear, designs, specifications and items, which are outside i2S' scope of supply, accidents, misuse, neglect, lack of proper use, or repairs or modifications to the Services which have been made without i2S' approval.

- 6.3 i2S' liability and the Purchaser's remedies in respect of the Services and any loss or damage resulting therefrom, are solely and exclusively as stated in this clause 6, and i2S shall have no liability for any defect, omission or damage unless notified by the Purchaser to i2S prior to the expiry of the warranty period described above.

- 6.4 The Trade Practices Act, 1974, implies warranties, terms and conditions in consumer Contracts which cannot be excluded or modified except as permitted under that Act. In the event i2S may be in breach of any such warranty, term or condition as is implied in this Contract, the liability of i2S shall be limited:

- (d) in respect of Services, at i2S' option, to the re-performance of the Services or the cost of reperforming the Services;
- (e) in respect of materials, at i2S' option, to the repair or replacement of the materials or the cost of repairing or replacing the materials.

7. COMPLETION

- 7.1 Any times quoted for performance of the Services are approximate only, provided that i2S shall make all reasonable efforts to supply the Services hereunder within the time stated in the Contract.

- 7.2 i2S shall be entitled to a reasonable extension of time for the performance of its obligations hereunder where any of the following causes delay to i2S:

- (a) variation in the scope of supply in accordance with clause 8 herein;
- (b) any act, matter or thing which could not have been reasonably foreseen by i2S;
- (c) delay due to industrial relations disputation;
- (d) changes in law;
- (e) any error, act or omission of the Purchaser or any contractor [other than i2S], consultant, representative or agent of the Purchaser;
- (f) delays of municipal, government or statutory authorities.

- 7.3 The Purchaser shall pay i2S the reasonable costs incurred by i2S as a result of obstruction and/or delay caused by the matters referred to in clause 7.2(a), (b), (c), (d), (e) or (f).

- 7.4 In the event the Purchaser fails to make payment when due, i2S may suspend performance of the Contract until such time as payment is made and i2S shall be entitled to a corresponding extension of time for performance. If i2S suspends the Contract under this clause 7.4, the Purchaser shall pay i2S the reasonable costs incurred for the period of the suspension in addition to any other monies due under clause 5.4.

- 7.5 If, notwithstanding clauses 7.1 and 7.2, i2S incurs liability to the Purchaser by reason of failure to perform its obligations hereunder by the time or times set out in the Contract, then such liability shall be limited to the payment of damages not exceeding 0.25 % of the Contract Price for each full week of delay provided always that the liability of i2S for or in respect of any and all delays shall not in the aggregate exceed 5% of the Contract Price. Any damages that may become payable to the Purchaser under this clause 7.5 shall represent the Purchaser's sole remedy for recovery of damages due to i2S' late completion.

8. VARIATIONS

- 8.1 Unless otherwise agreed, any variation to the Services to be supplied hereunder shall be valued in accordance with i2S' schedule of rates for labour and variations (a copy of which shall be issued to the Purchaser on request) existing at the time the Services the subject of the variation are supplied. i2S shall be under no obligation to carry out any variation unless approved in writing by the Purchaser.

- 8.2 Where any of the matters referred to in clause 7.2(b),(c),(d) or (e) reasonably require a change in the Services to be supplied or the conditions in which i2S is to perform its obligations hereunder, then i2S shall be entitled to vary the Services in such manner as i2S reasonably considers necessary and the value of such variation valued in accordance with clause 8.1 shall be added to or deducted from the Contract Price as the case may be.

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9. DRAWINGS AND DOCUMENTATION

9.1 All designs, drawings, data and other technical information relating to the Services, including any software provided by i2S under the Contract ("technical information"), and the intellectual property rights therein, shall be and remain the property of i2S.

10. LIMITATION OF LIABILITY

10.1 Notwithstanding any other provision of the Contract, except for damages for delay as set out clause 7.5, i2S shall have no liability to the Purchaser for any loss of use, production, profit, business, contracts, revenues or anticipated savings, any increase in operating costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Purchaser or by any third party.

10.2 Subject to clause 10.1, the total liability of i2S to the Purchaser shall not in any event exceed in the aggregate an amount equal to 50 percent of the Contract Price.

11. TERMINATION

11.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the Contract pursuant to this clause 11 to the other party (the "defaulting party") in the event that the defaulting party:

- (a) abandons or repudiates the Contract;
- (b) commits a continuing and substantial breach of the Contract;
- (c) suspends performance of the Contract for a significant time, or fails to pay monies due under the Contract, without reasonable cause;
- (d) purports to assign the whole of the Contract without the other party's consent; or
- (e) appears likely to become subject to an Insolvency Event described in clause 12.

11.2 Unless the defaulting party takes all practicable steps available to it to remedy or overcome the event complained of within fourteen (14) days after receipt of such notice, the notifying party may thereafter by notice in writing terminate the Contract forthwith.

11.3 Termination of the Contract pursuant to this clause 11 shall be without prejudice to the rights of either party accruing up to the date of termination.

11.4 If the Contract is terminated for any reason whatsoever, then, without prejudice to the rights of either party accruing up to the date of termination, i2S will be entitled to payment for: materials delivered and Services performed to the date of termination; the cost of Services reasonably ordered but not delivered (the property in which shall become the Purchaser's upon payment of all monies then payable to i2S) or of cancelling such orders where possible; costs reasonably incurred by i2S in expectation of completing the Contract.

12. BANKRUPTCY

12.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the Contract forthwith.

13. ENTIRE CONTRACT

13.1 Except as otherwise expressly provided in the Contract, i2S excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied relating to i2S' tender, the materials or the Services or their delivery or supply, being provisions that might otherwise form part of the Contract or be collateral to or form part of any agreement that is collateral to the Contract.

14. SEVERANCE

14.1 If any provision or part of any provision of these Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of these Conditions.

15. WAIVER

15.1 Any waiver by i2S of strict compliance with these Conditions shall not be deemed a waiver unless it is in writing and signed by an authorised officer of i2S.

16. PROPER LAW

16.1 The Contract shall be governed by the law in the State or Territory in which the majority of the Services are performed and the parties agree to submit to the jurisdiction of those courts and any courts having appellate jurisdiction from them.

17.1 ASSIGNMENT AND TRANSFER

17.1 Neither i2S nor the Purchaser shall assign or transfer the whole of the Contract or any interest therein or in any monies payable thereunder without the prior written consent of the other party.

17.2 Unless expressly stated otherwise in the Contract, nothing contained in this clause 17 shall prevent i2S from subletting any part of the work under the Contract as i2S deems appropriate.

18. INTERPRETATION

- (a) Clause headings shall not form part of, and shall not be used in the interpretation of, the Contract.
- (b) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- (c) Words importing a gender include every gender.

19. DISPUTE RESOLUTION

19.1 Any dispute between the Purchaser and i2S arising out of or in any way connected with the Contract or the materials and Services the subject of the Contract which is not resolved within fourteen (14) days of a notice by either party shall be referred to mediation. Should the mediation be unsuccessful either party may refer the matter to arbitration by a person agreed between the Purchaser and i2S or failing agreement a person nominated by the Chairperson of the State or Territory Institute of Arbitrators and Mediators in which the Services are performed.

20. OWNERSHIP

20.1 The legal and equitable title to any goods constituting part of the Services will only be transferred from i2S to the Purchaser when the Purchaser has met and paid all sums owed to i2S on any account whatsoever.

20.2 All technical documents shall be treated as confidential by the Purchaser. The documents remain i2S' intellectual property. The Purchaser may not use, reproduce, copy out, transmit to any third party or disclose such information unless it receives the prior written consent of i2S.

21. DEFAULT

21.1 The Purchaser shall be in breach of Contract if:

- (a) the Purchaser breaches any provision of these Conditions;
- (b) payment for the Services has not been received by i2S by the due date for payment;
- (c) the Purchaser commits an act of bankruptcy or becomes insolvent under administration;
- (d) the Purchaser becomes an externally administered body corporate or has an application for winding up filed against it.

21.2 If the Purchaser defaults, i2S may:

- (a) treat the whole of the Contract and any other contract with the Purchaser as repudiated and sue for breach of contract; and/or
- (b) refuse to supply any Services to the Purchaser; and/or
- (c) claim the return of any Services in the Purchaser's possession where title has not passed to the Purchaser; and/or
- (d) without notice to the Purchaser, withdraw or vary any credit i2S has provided to the Purchaser; and/or
- (e) without notice to the Purchaser, make all monies owing by the Purchaser to i2S on any account immediately due and payable.

22. DEFINITIONS

22.1 The following terms used in this document shall have the meanings as assigned to them:

"Contract" means the agreement that eventuates between i2S and the party requesting the Services the subject of the tender;

"Contract Price" means the price set out in the Contract for the provision of the Services by i2S;

"i2S" means Intelligent Infrastructure Solutions ABN 78 609 630 800

"GST" means the "New Tax System (Goods and Services Tax) Act 1999";

"Purchaser" means the party requesting the Services;

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“Services” means the services under the Contract and shall include the supply of any and all goods required in order to deliver the Services;

“tax invoice” has the same meaning as assigned in the GST;

“tender” means a tender, submission, proposal, offer (including counter-offer) or quotation in connection with the Services;

“these Conditions” means the terms and conditions for the provision of Services set out by this document;