

# Conditions for Supply of Goods and Services

The following conditions will apply to every Purchase Order issued by Transgrid and will take precedence over the Supplier's conditions, unless expressly agreed in writing between Transgrid and the Supplier. These conditions do not apply where Transgrid and the Supplier have in place a Master Services Agreement or a Panel Agreement.

## Clause (1) Legal Construction

The Contract established by the issue of Transgrid's Purchase Order will be deemed to have been made in the State of New South Wales commencing on the date the Purchase Order is issued.

## Clause (2) Glossary of Terms

**"Agreed Commercial Return Value"** - means the purchase value of the Goods (excluding freight, if any) as per the Purchase Order, unless a different amount is agreed between Transgrid and the Supplier and stated on the Purchase Order as the Agreed Commercial Return Value, that the Supplier will refund to Transgrid in the event Transgrid returns the Goods, as referred to in clause 7.

**"Business Day"** – means any day other than:

- (a) Saturday, Sunday or public holiday, or
- (b) 27, 28, 29, 30 or 31 December.

**"Contract"** – means the Purchase Order, these conditions along with any specifications, designs, drawings, plans, instructions or documentation incorporated by reference and including, where relevant, the Supplier's accepted quotation documentation.

**"Data"** – means Transgrid load data less than 30 days old or information relating to the design and operation of Transgrid's electricity network.

**"Delivery Date"** – means the date by which that the parties have agreed that the Goods and/or Services will be delivered.

**"Goods"** – includes any goods, materials, document, report or plan.

**"Liquidated Damages"** – means the amount contained in the Contract, which reflects Transgrid's genuine pre-estimate of loss in the event the Supplier is unable to complete the Works by the agreed upon Delivery Date.

**"Purchase Order"** - means the document containing a unique purchase order number provided by Transgrid to the Supplier called the 'order', 'original order', 'purchase order' or other document of similar style or type and all Documents attached thereto or expressly incorporated therein and any other provisions, things or matters agreed between the Parties and expressly incorporated therein.

**"Services"** - includes the performance of any work, including those reasonably necessary to deliver the goods and materials.

**"Supplier"** – means the entity bound to carry out and complete the Works.

**"Supplier IP"** – means any design, materials, documents and methods of working provided by the Supplier.

**"Transgrid"** – means the trading name of NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee for NSW Electricity Networks Operations Trust ABN 70 250 995 390 trading as Transgrid.

**"Transgrid Information"** – means Personal Information as well as Transgrid's proprietary and confidential information.

**"Works"** – means the whole of the Work to be executed, in accordance with the Contract, including the provision of Goods and Services.

## Clause (3) Supply of Goods

The Supplier must:

- (a) supply the Goods specified in accordance with the Contract, in conformance with the Specifications and in compliance with all Laws, and;
- (b) ensure that the Goods are free from all encumbrances.

## Clause (4) Delivery

- (a) The delivery of only parts of a Good or components making up a Good will not be accepted unless agreed to in writing by Transgrid.
- (b) Goods will be deemed to have been delivered when the Supplier has fulfilled its obligations under the Contract and notified Transgrid is writing that all Goods have been delivered and implemented in accordance with the Contract.

## Clause (5) Risk and Property

The property in any Goods will pass to Transgrid upon being unloaded at the delivery point, including being delivered to a work site for incorporation into the Works, or at point of pick-up by Transgrid, as nominated in the Purchase Order. The risk in the Goods will also pass to Transgrid upon being unloaded however, in the event the Goods are being incorporated into the Works, the risk in the Goods will only pass to Transgrid upon Practical Completion of the Works. For the Goods being incorporated the Supplier will indemnify Transgrid against any claims for damage to the Works until Practical Completion.

## Clause (6) Rejection

Transgrid may, within a reasonable time after Goods are delivered, reject the same where they are not in accordance with the Contract. The defective Goods will be promptly removed from Transgrid's premises, by the Supplier at its expense and, unless Transgrid has exercised its right of cancellation, such Goods will be

replaced with goods or materials, which are in accordance with the Contract.

**Clause (7) Return of Goods**

- (a) Transgrid may, at its sole discretion, return any Goods to Supplier. The Supplier agrees it will accept the Goods if the Goods returned are undamaged, in the original container, were held in Transgrid's premises for less than four (4) months (unless a different period is specified in the Contract), the Supplier will refund the Agreed Commercial Return Value of the Goods to Transgrid.

**Clause (8) Supply of Services**

The Supplier must:

- (a) ensure that the Services are supplied in accordance with the Contract and in compliance with all applicable standards and Laws.
- (b) pay any fees required in order to ensure the Services conform with all Laws and with the orders, directions or requirements of Local Government and other Authorities; and
- (c) if so, requested by Transgrid and within a reasonable time after such request, demonstrate at the Supplier's own expense that compliance with the requirements of clause 8(a) have been met.

**Clause (9) Defects Liability**

- (a) Where a defect or damage to the Goods due to faulty materials, workmanship or design becomes apparent within 12 months after delivery, the Supplier will replace and deliver to Transgrid replacement Goods that comply with the requirements of the Contract.
- (b) If the Services performed by the Supplier are unsatisfactory or does not meet the agreed upon standard, the Supplier will perform the Services again at no cost to Transgrid or, where the Services cannot be performed again, the Supplier will refund Transgrid the sum Transgrid paid for the Services.

**Clause (10) Delay**

- (a) Where the parties have agreed that the Goods and/or Services will be delivered in accordance with a schedule or by a particular date, this date will become the Delivery Date for the Goods or Services. A Contract may have several Delivery Dates, all of which will be subject to these Conditions.
- (b) The Supplier must notify Transgrid, within seven (7) days of becoming aware of any reason which will delay the Supplier and result in the Supplier being unable to provide the Goods and/or Services by the Delivery Date. The Supplier must also advise Transgrid of the actions it is

taking to reduce the delay and any other information that Transgrid may seek in relation to the delay.

- (c) Where the delays are outside of the control of the Supplier, or for another reason at Transgrid's sole discretion, Transgrid may grant the Supplier an extension of time to the Delivery Date.
- (d) Transgrid may seek Liquidated Damages from the Supplier as a result of any delay in achieving the Delivery Date. The amount of Liquidated Damages will form part of the Contract. The Supplier must pay liquidated damages at the rate and to a maximum value as set out in the Contract. In the event the rate and/or the maximum value is not set in the Contract, then the liquidated damages shall be calculated at the rate of half percentage (0.5%) per day of delay to a maximum value of ten percent (10%) of the value of the Purchase Order.

**Clause (11) Variation**

- (a) The Supplier may request a variation to the conditions of this Contract by providing Transgrid with the following:
  - (i) A marked up version of the Contract showing the variations;
  - (ii) A detailed explanation as to the reason for the variation;
  - (iii) A breakdown of any costs and scheduling implications arising from the variation, and;
  - (iv) Any other information sought by Transgrid.
- (b) Transgrid may request a variation to the conditions of this Contract by providing the Supplier with the following:
  - (i) A marked up version of the Contract showing the variations;
  - (ii) A detailed explanation as to the reason for the variation, and;
  - (iii) Any other information sought by the Supplier.
- (c) Where Transgrid requests a variation, the Supplier must provide Transgrid with, in writing and within seven (7) days of Transgrid's request, a breakdown of any costs and scheduling implications arising from the variation
- (d) For a variation to be effective and for the Supplier to be paid for carrying out the Works associated with the variation, both parties must agree to the variation.

**Clause (12) Warranties**

- (a) The Supplier warrants that the Goods and/or Services:
  - (i) conform with the requirements of the Contract,

- (ii) be of good merchantable/professional quality and fit for the intended purpose,
  - (iii) be new (unless otherwise specified),
  - (iv) be free from all Security Interests, liens, encumbrances and other interests (whether arising by operation of law or otherwise) and the Supplier has good marketable title thereto.
- (b) The Supplier warrants to Transgrid in relation to the Services as follows:
- (i) the Supplier will perform the Services, in a proper and workmanlike manner and to a standard of professional care, skill, judgment and diligence expected of a Supplier experienced in carrying out such work of a nature similar to the Services;
  - (ii) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, have all necessary qualifications, licenses, skill and experience;
  - (iii) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, will comply with all applicable Laws, standards and codes, and any direction given by Transgrid;
  - (iv) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, do not interfere with Transgrid's activities or the activities of any other person at the Site;
  - (v) any supplies and materials incorporated in the Services will comprise the best available material suitable for purpose and will be of good and merchantable quality free from latent defects;
  - (vi) the Services are of merchantable quality and are free from defects in design, materials and workmanship; and
  - (vii) the Services are fit for the purpose communicated by Transgrid to the Supplier prior to the date of the Purchase Order or, if no such purpose is communicated, for the purpose of which Services of that type are usually acquired and otherwise correspond to the description given in the Specification.
- (c) These warranties are in addition to any other warranty specified implied by law including, but not limited to, standard trade or manufacturer's warranties, supplier assigned warranties or those specified by Transgrid.

### **Clause (13) Liabilities and Indemnities**

#### **Infringement of Intellectual Property Rights**

- (a) The Supplier warrants that any design, materials, documents and methods of working provided by the Supplier (**Supplier IP**) will not infringe any Intellectual Property Rights. The Supplier will pay

all royalties and expenses, and will indemnify Transgrid against all claims by a third party that the Supplier IP infringes that third party's Intellectual Property Rights, provided that Transgrid (1) notifies the Supplier of any such claim promptly in writing after receiving notice of such claim, (2) gives the Supplier sole control over the defence and settlement of any such claim and any negotiation for its settlement or compromise, (3) does not take a position that is adverse to the Supplier and (4) at the Supplier's expense and request, provides reasonable assistance in the defence and settlement of any such claim.

- (b) Transgrid will indemnify the Supplier against claims arising from infringement of Intellectual Property Rights, where such infringement results from (i) a modification of the Supplier IP made by or at the request or direction of Transgrid, (ii) the combination of the Supplier IP with an item not supplied or authorised by the Supplier, or (iii) compliance by the Supplier with Transgrid's instructions in relation to designs prepared by Transgrid, provided that the Supplier (1) notifies Transgrid of any such claim promptly in writing after receiving notice of such claim, (2) gives Transgrid sole control over the defence and settlement of any such claim and any negotiation for its settlement or compromise, (3) does not take a position that is adverse to Transgrid and (4) at Transgrid's expense and request, provides reasonable assistance in the defence and settlement of any such claim.

#### **Limitation of Liability**

With the exception of damage to persons and property (below), the Supplier's liability for all claims, demands or proceedings under this Contract whether in contract, or in tort, or breach of statutory duty or otherwise or under any indemnity will be capped at value of the Purchase Order, unless stated otherwise in the Contract, and will be reduced proportionately to the extent that any act or omission of Transgrid caused or contributed to the loss.

#### **Damage to persons and property**

The Supplier will indemnify Transgrid against claims by any person against Transgrid in respect of (i) personal injury or death, or (ii) loss of or damage to third party property, resulting from the negligence, statutory or contractual breach or the commission of a tort by the Supplier or its subcontractor and their employees and agents in carrying out the Services but the Supplier's liability to indemnify Transgrid will be reduced proportionally to the extent that the negligence, statutory or contractual breach or the commission of a tort by Transgrid or employees or agents of Transgrid has contributed to the loss, damage, death or injury.

#### **Exclusion of Consequential Loss**

Neither party will be liable under this Contract for any indirect, special or consequential damages or loss

including loss of actual or anticipated revenue, loss of business or goodwill, loss of use or operation or loss of opportunity howsoever caused or arising under this Contract.

#### **Time for Notification of Claims**

Transgrid will not be liable for any claim arising out of or associated with the Contract unless and only to the extent that within 28 days after the first Day on which the circumstances giving rise to the claim occurred the Supplier has given to Transgrid written notice specifying the basis and the calculation of the amount of the claim in detail.

#### **Clause (14) Insurance**

The Supplier will, prior to commencing Work under the Contract, take out and hold for the duration of the Work, current insurance policies covering Public Liability and Worker's Compensation. The Supplier is responsible for ensuring it obtains and holds all insurances relevant for the provision of the Works, with coverage to an amount to meet its obligations.

#### **Clause (15) Terms of Payment**

##### **Invoicing**

In all cases, the Supplier must submit the relevant invoice pertaining to the Goods and Services via their Supplier SAP Ariba Profile, ibuy. It is mandatory for all Supplier invoices to include the Transgrid Purchase Order number. Any invoices received from a Supplier which do not reference a valid Purchase Order will be rejected. Transgrid reserves its right not to pay any Supplier who undertakes Services or provides Goods without a valid Purchase Order. For further information, please visit Transgrid's website at the following address: <https://www.Transgrid.com.au/being-responsible/Suppliers/Pages/default.aspx>.

##### **Payment of Accounts**

Transgrid must pay an invoice by the end of the calendar month following the month in which the Supplier issues the invoice. If payment is not made within that time, the matter can be taken up with Transgrid's Procurement Officer named on the Purchase Order or by writing to [procurement.enquiries@transgrid.com.au](mailto:procurement.enquiries@transgrid.com.au). Specific complaints in respect to overdue payments may be taken up with Transgrid's Accounts Payable Team.

Payments will be made by Transgrid by EFT or BPAY to a nominated Australian bank account of the Supplier.

#### **Clause (16) Termination**

##### **Termination for convenience**

Transgrid may terminate the whole or any part of the Work under this Contract, by written notice addressed to the Supplier seven (7) days prior to the termination date.

The Supplier must after receipt of a notice for termination for convenience, cease work under the Contract in accordance with the directions of Transgrid.

As soon as practicable after ceasing work under this clause, the Supplier must submit to Transgrid a statement of the amount for the Works completed to the earlier of:

- (a) the date of cessation of performance under the Contract; and
- (b) the date by which the Supplier was required to cease work under the Contract, including the cost of any materials ordered in accordance with the Specifications. The statement must be accompanied by supporting information as reasonably required by Transgrid.

#### **Termination generally**

A party may terminate the Contract immediately in writing if the other party:

- (a) commits a fundamental or material breach of the Contract;
- (b) indicates (by its words or conduct) that it intends not to perform its obligations under the Contract in the future;
- (c) suffers an Insolvency Event;
- (d) commits a breach of the warranties in this Contract;
- (e) commits a breach of any term of the Contract and fails to remedy that default within 10 Business Days after being requested to do so by the first mentioned party; or
- (f) commits a breach of any term of the Contract after having been requested on two previous occasions to remedy other breaches of the same term of the Contract.

#### **Supplier's Continuing Liability**

Termination by Transgrid will not release the Supplier from liability in respect of any breach of, or non-performance of any obligations pursuant to, this Contract arising prior to the date of termination.

#### **Effect of Termination**

Termination of this Contract by either party is without prejudice to any accrued rights for remedies of each party.

The Supplier must, on or as soon as practicable after the expiration or termination of this Contract, deliver to Transgrid all material brought or required to be brought into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means, but the Supplier may retain a copy of such material for its internal records.

#### **Adjustment of the Purchase Order Value on Termination**

In the event that Transgrid terminates the Contract, in respect of any Goods supplied and Services performed under this Contract, the Supplier will be entitled only to payment of the prorated value of the Goods delivered and Services performed under this Contract. As soon as practicable after ceasing supply, the Supplier must lodge with Transgrid a statement of the amount of the



Fees claimed by the Supplier to be payable for the Goods supplied or Services performed up to the earlier of:

- (a) the date of cessation of the terminated Goods and Services, and
- (b) the date by which the Supplier was required to cease the supply of Goods and Services.

The statement must be accompanied by supporting information as reasonably required by Transgrid.

Upon termination of this Contract by the Supplier, Transgrid will pay the Supplier for the Services performed by the Supplier as at the date of termination in full and final satisfaction of any claim the Supplier has or may have.

#### **Survival**

Any indemnity and any obligation of confidence under this Contract is independent and survives termination of this Contract. Any other term by its nature intended to survive termination of this Contract survives that termination.

**Clause (17) Goods and Services Tax (GST)** - The tendered prices are exclusive of GST. Transgrid will pay the Supplier the amount of GST payable under the GST legislation, provided the Supplier has issued Transgrid with a valid Tax Invoice. The Supplier will notify Transgrid within seven (7) days if the Supplier ceases to be GST registered.

#### **Clause (18) Site Security, Health, Safety and Environment**

- (a) The Supplier will comply with the relevant Transgrid's Health, Safety, and Environment Requirements applicable for the Works under this Contract, and which are available from Transgrid's Representative.
- (b) The Supplier must comply with, and must ensure that each of its employees, contractors and subcontractors involved in carrying out the Services complies at all times with all applicable environmental Laws, codes of practice and guidelines, authorisations and Specification requirements in the performance of its obligations under this Contract.
- (c) The Supplier must comply with, and must ensure that each of its employees, agents, contractors and subcontractors involved in carrying out the Services, complies at all times with:
  - (i) all applicable WHS Laws;
  - (ii) any other directions, procedures and policies relating to work health and safety, and security pertaining to the use of Transgrid's premises and facilities.
- (d) The Supplier must:
  - (i) must only allow access to Transgrid's premises and facilities, by its employees, contractors or subcontractors or other persons that have been

authorised to access these premises and facilities by Transgrid; and

- (ii) ensure that any keys, electronic security cards or passwords provided to the Supplier (including its employees, contractors or subcontractors) by Transgrid, are not made available to anyone unless expressly authorised in writing by Transgrid.

#### **Clause (19) Subcontracting**

- (a) The Supplier must not subcontract this Contract in whole or in part, including any supply of Goods under this Contract, or allow a subcontractor of the Supplier to subcontract the Services (or any part thereof) without the prior written approval of Transgrid (not to be unreasonably withheld).
- (b) Any written request by the Supplier to subcontract the Services or any part thereof must include the particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Supplier must provide to Transgrid other information that Transgrid reasonably requests, including the proposed subcontract document without pricing.
- (c) An approval given by Transgrid permitting the Supplier to subcontract any portion of the Contract does not relieve the Supplier from its obligations and liabilities pursuant to this Contract.

#### **Clause (20) Assignment of Contract**

Transgrid or the Supplier will not, without the written approval of the other and except on such terms and conditions as agreed in writing by the other, assign the Contract or any payment there under.

#### **Clause (21) Transgrid Business Ethics**

All dealings by the Supplier with Transgrid, employees, suppliers and sub-suppliers will be undertaken in compliance with "Transgrid's Business Ethics, a Guide to Suppliers, Customers and Suppliers", which is available from Transgrid's Representative or on Transgrid's Tender Opportunities web page [www.transgrid.com.au](http://www.transgrid.com.au).

By entering into this Contract with Transgrid, the Supplier declares that to its knowledge, its employees, contractors, agents and anyone performing services for or on behalf of Transgrid do not and will not directly or indirectly:

- (a) offer;
- (b) give or agree to give;
- (c) authorise;
- (d) solicit, or;
- (e) accept the giving of money; or
- (f) anything else of value or grant any advantage or gift to any person, company or undertaking whatsoever.
- (g) This includes any:
  - (i) government official or employee;

- (ii) political party official;
- (iii) candidate for political office;
- (iv) person holding a legislative, administrative or judicial position of any kind, or;
- (v) official of a public international organisation

for the purpose of corruptly influencing such person in their official capacity, or for the purpose of rewarding or inducing the improper performance of a relevant function or activity by any person in order to obtain or retain any business for Transgrid or to gain any advantage in the conduct of business for Transgrid.

#### **Clause (22) Compliance with Modern Slavery Laws, Social and Sustainable Procurement**

##### **Compliance with Modern Slavery Laws**

The Supplier will, and take all steps to ensure its contractor, agents or other associated parties will, comply with all relevant laws pertaining to Modern Slavery and not engage in any Modern Slavery practices.

The Supplier must notify Transgrid upon becoming aware of any complaint or allegation that the Supplier or its contractors, agents or other associated parties have engaged in Modern Slavery. The Supplier will provide Transgrid with all relevant information as reasonably sought by Transgrid in relation to such a complaint or allegation.

##### **Social and Sustainable Procurement**

Social benefit (or social value) is the positive impacts on people, places or communities generated through procurement practices in addition to the goods and services being delivered. The supplier will carry out all procurement in a responsible and sustainable manner, considering social, economic, and environmental perspectives.

#### **Clause (23) Information Security**

##### **Confidentiality**

The Supplier acknowledges it may receive Personal Information and proprietary, confidential information from Transgrid (**Transgrid Information**). The Supplier agrees that it must handle Transgrid Information in accordance with this clause at all times.

The Supplier must not access or use Transgrid Information unless it is needed for the Works.

The Supplier must not disclose Transgrid Information except to the extent necessary to perform the Works or comply with any statutory requirements or government policy.

The Supplier must promptly report to Transgrid any actual or suspected loss, damage, unauthorised access or misuse of Transgrid Information.

The Supplier must not, without the prior written consent of Transgrid, at any time issue any statement or communication or make any representation directly or indirectly in connection with any supply or proposed supply under the Contract to any person or entity who is not a party to the Contract.

#### **Use and Return of Transgrid Information**

The Supplier must return or destroy any Transgrid Information, including copies, immediately upon request by Transgrid.

The Supplier agrees it will only use Transgrid Information for the purpose of providing the Works.

The Supplier is responsible for compliance by its employees, subcontractors, consultants or agents with all the confidentiality obligations under this Contract, and is liable for any breach of such obligations by the Supplier or any of its employees, subcontractors, consultants or agents.

#### **Data Protection and Privacy**

The Supplier must take all reasonable steps to protect any Personal Information obtained in the course of providing the Works in accordance with all Australian privacy laws, including the *Privacy Act 1988 (Cth)* and must provide all reasonable assistance to ensure Transgrid complies with all Australian privacy laws.

In respect of any of the Data, the Supplier must not

- (a) host Data,
- (b) transfer Data (other than to Transgrid),
- (c) permit the transfer of Data outside of Australia,
- (d) permit access to the Data by any third party without Transgrid's consent.