



## Toll Group Standard Conditions of Contract for Procurement of Goods/Services

### 1 Agreement

1.1 These are the terms and conditions of purchase referred to in the Purchase Order, and these conditions apply to any Contract entered into by TOLL issuing a Purchase Order to the supplier nominated in the Purchase Order (the Supplier).

1.2 In these Standard Conditions:

*Anti-Bribery and Anti-Corruption Laws* refer to all applicable anti-bribery and anti-corruption laws and regulations, including but not limited to the Criminal Code 1995 (Cth), US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010, which among other things, prohibit commercial bribery, bribing government officials, making facilitation or expediting payments, and failing to maintain accurate books and records;

*Contract* means a contract for the procurement of Goods/Services comprising these Standard Conditions of Contract, the Purchase Order and the Special Conditions (if any);

*Force Majeure Event* includes any:

- (a) act of God;
- (b) war, riot, civil commotion, act of public enemies, national emergency (whether in fact or law), revolution, act of terrorism or blockade;
- (c) strikes, lock-outs or other industrial disturbances;
- (d) computer software or hardware defect, problem, virus or cyber-attack;
- (e) epidemic or pandemic; or
- (f) other cause,

but only where such events or circumstances are beyond the reasonable control of TOLL and are not caused or contributed to, in whole or in part, by a breach of the Contract by Toll.

*Goods/Services* means the goods or services to be supplied by the Supplier as specified in the Purchase Order;

*GST* means goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply", "tax invoice" and "adjustment event" have the same meanings as in that Act;

*Intellectual Property* means all industrial and intellectual property rights including:

- (a) any invention or discovery, technique, method or process;
- (b) any computer program, integrated circuit, circuit layout or semiconductor chip layout or design, plan, drawing or design, or scientific, technical or engineering information or document including any of these things;
- (c) any trade mark, service mark, trade or product name or domain name;
- (d) any customer list, database, trade secret, know-how, or right of secrecy or confidentiality in respect of any information or document or other Intellectual Property referred to in sub-paragraphs (a) or (b);

*Modern Slavery* means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws;

*Modern Slavery Laws* means laws, statutes, regulations or international standards related to human rights, slavery, forced or involuntary labour, servitude, debt bondage or bonded labour, child labour and human trafficking. Modern Slavery Laws include but are not limited to the Modern Slavery Act 2018 (Cth), Divisions 270 and 271 of the Criminal Code 1995 (Cth), the UK Modern Slavery Act 2015, the Californian

Transparency in Supply Chains Act 2015 and the ILO's International Labour Standards;

*Personnel* means the directors, employees, agents, contractors or subcontractors of the Supplier;

*Personal Information* means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

*Price* means the price payable by TOLL for the Goods/Services as set out in or determined by the Contract;

*Purchase Order* means an order, a purchase order, an offer to purchase, a letter of acceptance or notice of intention to proceed or the like in any form whatsoever for the provision of Goods/Services by the Supplier which shall be subject to the Standard Conditions unless otherwise agreed by TOLL and the Supplier in writing;

*Related Body Corporate* (a) has the meaning given to that term in the Corporations Act 2001 (Cth); or (b) if that Act does not apply, means an entity controlled by, controlling, or under common control with a party;

*Special Conditions* means any special terms and conditions agreed in writing between TOLL and the Supplier as applying to the supply of the Goods/Services. Unless expressly agreed in writing between the parties the Standard Conditions will prevail over any special terms and conditions to the extent of any inconsistency;

*Standard Conditions* means these Standard Conditions of Contract for Procurement of Goods/Services;

*Supplier* means the supplier identified in the Purchase Order;

*TOLL* means Toll Holdings Limited or the relevant Related Body Corporate identified in a Purchase Order;

*TOLL Equipment* means any equipment provided by TOLL to the Supplier for the purposes of providing the Goods/Services;

*TOLL's Supplier Code of Practice* means TOLL's supplier code of practice available at [www.tollgroup.com](http://www.tollgroup.com);

*Work Produced* means anything (whether tangible or intangible, and including without limitation documents, information, ideas and inventions) that is the product or other result of any work or other activity carried out or contributed to by the Supplier or its Personnel arising out of the Contract.

1.3 If TOLL issues a Purchase Order to procure any Goods/Services from a Supplier, the Supplier is deemed to have accepted the Purchase Order if it acknowledges or confirms the Purchase Order or proceeds with the supply of the Goods/Services or otherwise acts in any other manner consistent with accepting the Purchase Order (for example, commencing to design or manufacture the Goods or commencing to provide the Services).

1.4 TOLL will not be bound by any terms other than those constituting the Contract, unless such terms are agreed in writing by TOLL and the Supplier as expressly forming part of the Contract and signed by duly authorized signatories of both parties. For the avoidance of doubt, any terms or conditions contained in, issued with or printed on any quotation, tender, proposal, offer, order acknowledgment, order confirmation, letter of acceptance, notice of intention to proceed or the like issued by the Supplier do not form part of the Contract and are of no effect whatsoever unless otherwise agreed in accordance with this clause 1.4.

1.5 Nothing in these terms creates an exclusive commercial relationship between TOLL and the Supplier. TOLL may purchase the Goods/Services it requires from any third party



- including where such goods/services are the same as or substantially similar to the Goods/Services set out in the Contract.
- 1.6 Nothing in these terms imposes on TOLL any volume commitments, minimum spending requirements or similar financial obligations.
- 2 Supplier's General Obligations**
- 2.1 The Supplier must supply the Goods/Services in accordance with the Contract and in accordance with all reasonable directions and requirements of TOLL.
- 2.2 The Supplier must maintain safe working conditions at all times, and comply with the relevant occupational health and safety and environmental laws and regulations, and at all times when on any TOLL controlled site comply with TOLL's occupational health and safety and environmental policies.
- 2.3 The Supplier must supply the Goods/Services by the time or times stipulated in the Contract.
- 2.4 The Supplier hereby represents and warrants to TOLL that the Goods/Services (as applicable):
- 2.4.1 correspond to the description in the Contract and conform to all relevant specifications, drawings, samples and/or descriptions referred to;
  - 2.4.2 are fit and sufficient for the purpose for which they are intended, and the Supplier acknowledges that TOLL has relied on the Supplier's skill and expertise in selecting the Goods or providing the Services;
  - 2.4.3 are of the quality specified in the Contract or, if no quality is specified the best merchantable quality;
  - 2.4.4 are free of all defects and will operate satisfactorily and reliably;
  - 2.4.5 are free of all liens and encumbrances and the Supplier has good title to them;
  - 2.4.6 and use of them, will not breach any Intellectual Property rights;
  - 2.4.7 will be faithfully and diligently performed with the degree of skill, diligence and care expected from an experienced supplier in the trade, industry or profession relevant to the Goods and/or Services;
  - 2.4.8 will be performed only by Personnel who hold all the relevant and appropriate qualifications, permits and licences as required in the trade, industry or profession to provide the Services; and
  - 2.4.9 strictly comply with all applicable laws, regulations, standards and codes.
- 2.5 The Supplier hereby represents and warrants to TOLL that the Supplier will:
- 2.5.1 comply with all applicable laws, regulations, standards and codes and TOLL's reasonable directions in relation to the performance of the Services or whilst on TOLL premises; and
  - 2.5.2 at all times act in accordance with TOLL's Supplier Code of Practice as amended from time to time.
- 2.6 The Supplier must not disclose the Contract, its terms or any information provided by TOLL to the Supplier in relation to the Contract directly or indirectly in any form to anyone else.
- 2.7 The Supplier must not, without TOLL's written prior approval:
- 2.7.1 issue any information, publication, document or article for publication concerning the Goods in any media; or
  - 2.7.2 take photographs or make sketches of the Goods or any part of TOLL's operations except for the purposes of the Contract.
- 2.8 The Supplier acknowledges that the obligations in this clause 2 are essential conditions of the Contract.
- 3 Price**
- 3.1 In consideration for the performance by the Supplier of its obligations under the Contract, TOLL will pay the Supplier the Price within the time or times stipulated in the Contract.
- 3.2 The Price is fixed and firm and, unless otherwise expressly provided in the Contract, the Price includes:
- 3.2.1 all duties, taxes and other imposts for which the Supplier is liable (except GST);
  - 3.2.2 if applicable, all costs and expenses associated with manufacturing, packing, transporting, delivering or testing the Goods to the address stipulated;
  - 3.2.3 all costs, expenses and expenditures associated with the provision of the Services;
  - 3.2.4 all insurance costs, including those arising from Clause 7.1;
  - 3.2.5 all amounts payable for the use of any patents, copyright, designs, trade marks or other Intellectual Property rights required for the manufacture or use of the Goods or required for the provision of the Services;
- 3.3 Any increase in the cost of manufacture, delivery and/or supply of the Goods/Services between the date of the order and the date of delivery or supply shall be borne by the Supplier.
- 3.4 Unless otherwise provided elsewhere in the Contract, the Price is exclusive of GST. TOLL must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Contract, provided that the Supplier must provide TOLL with a tax invoice in respect of that supply.
- 3.5 If there is an adjustment event in relation to the supply:
- 3.5.1 the Supplier must refund to TOLL the amount by which the amount reimbursed pursuant to clause 3.4 exceeds the adjusted GST on the supply; or
  - 3.5.2 TOLL must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 3.4.
- 4 Delivery, Completion and Testing**
- 4.1 Except as otherwise provided elsewhere in the Contract, subject to clause 4.2, delivery of the Goods and redelivery of any TOLL Equipment shall be deemed to have occurred when:
- 4.1.1 the finished Goods or the TOLL Equipment, in the condition required under the Contract, are delivered and offloaded at TOLL's premises or such other place specified in the Contract; and
  - 4.1.2 the Supplier has obtained from TOLL or its authorised agent a signed receipt or delivery docket; and
  - 4.1.3 the Goods or TOLL Equipment has passed any acceptance tests specified in the Contract or, if none are so specified, when TOLL has inspected the Goods or the TOLL Equipment and satisfied itself that they are apparently in conformity with the requirements of the Contract. For the avoidance of doubt, any inspection of the Goods or the TOLL Equipment does not relieve the Supplier of its obligations under the Contract and any acceptance by TOLL upon inspection does not amount to a waiver of any right

that TOLL may have under the Contract with respect to the condition or quality of the Goods.

4.2 Delivery or completion shall not have taken place until the Supplier has provided all designs, specifications and technical information including installation, operating, repair and maintenance manuals, and all other documents and things specified in the Contract or reasonably required in order to use the Goods for their intended purposes.

4.3 TOLL or any third party authorised by TOLL may, upon giving reasonable advanced notice, inspect and test the Goods at any time prior to their delivery or completion. If tests are required to be conducted by the Supplier under the Contract, the Supplier shall give TOLL at least five working days' prior notice, and TOLL or any third party authorised by TOLL may attend such tests.

## 5 Risk and Title

5.1 Risk of loss of or damage to the Goods or any of TOLL Equipment shall transfer to TOLL on delivery of the Goods or redelivery of the TOLL Equipment in accordance with clause 4.

5.2 Title in the Goods shall transfer to TOLL on the delivery of the Goods in accordance with clause 4 or upon payment to the Supplier of the Price (or part thereof), whichever happens earlier.

5.3 The Supplier must protect TOLL Equipment from and shall remain liable to TOLL for any theft, loss, damage or neglect of any TOLL Equipment prior to redelivery of the TOLL Equipment in accordance with clause 4. The Supplier must without delay inform TOLL of any theft, loss, damage or neglect of any TOLL Equipment which occurs whilst the TOLL Equipment is in the Supplier's care, control and custody. The Supplier shall immediately advise TOLL of any loss of or damage to the Goods or TOLL Equipment in transit.

## 6 Payment

6.1 The Supplier must submit valid tax invoices to TOLL for payment in accordance with the payment terms specified in the Contract.

6.2 Without limiting TOLL's rights under any other provision of the Contract, TOLL may deduct from or set off against any moneys which may be or thereafter become payable by TOLL to the Supplier being:

6.2.1 any debt due from the Supplier to TOLL; and

6.2.2 any amount claimed or claimable by TOLL from the Supplier under or by virtue of any provision of the Contract or otherwise at law or in equity.

6.3 TOLL shall pay the Supplier the undisputed amount of a valid tax invoice minus any deductions or set-off in accordance with Clause 6.2 within 60 days of the end of the month in which a valid tax invoice is received.

## 7 Liability, Indemnity and Insurance

7.1 During the Contract and for as long as any obligations remain, the Supplier shall at its own cost effect and maintain appropriate insurance policies, including but not limited to the following:

7.1.1 insurance of the Goods up to the time of delivery;

7.1.2 public liability insurance with cover not less than \$20M for each occurrence;

7.1.3 workers compensation as required by law; and

7.1.4 any other insurance as specified in the Contract.

7.2 Upon request by TOLL, the Supplier shall provide to TOLL copies of any certificate of currency evidencing that all such insurances have been effected.

7.3 The Supplier shall indemnify and keep indemnified TOLL, its officers, employees and agents from and against all loss, damage, injury or expense sustained or incurred as a result, whether directly or indirectly, of any breach of the Contract by the Supplier or any act or omission of the Supplier, or of any claim for alleged infringement of any patent, copyright, design, trade mark or any other Intellectual Property right by reason of the purchase, possession or use of the Goods or the provision of the Services.

7.4 TOLL will not pay any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, business, anticipated savings or claims, even if TOLL know they are possible or otherwise foreseeable.

7.5 To the extent permitted by law, TOLL's total liability under or in connection with the Contract (whether in tort (including negligence), for breach of contract or breach of statute, indemnity or otherwise) will not exceed an amount equal to the amount actually paid by TOLL to the Supplier in the twelve months prior to the date of the most recent liability occurring.

## 8 Defects Liability

8.1 Without limiting any of TOLL's rights under the Contract or law, the Supplier hereby guarantees the Goods/Services against any omissions, defects or poor workmanship (whether or not apparent) at any time from the date of delivery of the Goods or provision of the Services until the date 12 months from such date, notwithstanding that any latent omissions, defects, poor workmanship or failures may come to the attention of TOLL at any time after expiry of that period.

8.2 Without limiting any other rights of TOLL, if TOLL becomes aware of any omission, defect or poor workmanship in the Goods/Services it will notify the Supplier, and the Supplier:

8.2.1 must correct that omission, defect or poor workmanship without delay and at no cost to TOLL; and

8.2.2 shall be liable for all resulting costs and expenses incidental to the discharge of the Supplier's obligations under this clause 8.2, including but not limited to, any costs and expenses incurred by TOLL in recovering the Goods, returning them to the Supplier, reinstalling and recommissioning them.

8.3 If the Supplier does not comply with its obligations under clause 8.2, TOLL may, at its option, have any repair, modification or replacement of the Goods or resupply of the Services undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier.

## 9 Breach and Termination

9.1 TOLL may, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or part by notice in writing to the Supplier if the Supplier:

9.1.1 fails to deliver the Goods or provide the Services by the date required by the Contract;

9.1.2 is in breach of any material term of the Contract and fails to remedy the breach within 5 days of the receipt by it of a notice in writing from TOLL specifying the breach;

9.1.3 comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Law, or an order has been made for the purpose of placing the corporation under external administration, or an application is filed with a court of competent jurisdiction seeking the appointment of a liquidator, receiver or other external administrator; or



- 9.1.4 undergoes a change of control (as defined in the Corporations Act 2001 (Cth)) without the prior written consent of TOLL.
- 9.2 Upon termination under clause 9.1, TOLL can:
- 9.2.1 cease payments under the Contract;
- 9.2.2 recover from the Supplier all sums paid for undelivered Goods/Services; and
- 9.2.3 procure similar Goods/Services from alternative suppliers and claim by way of indemnity from the Supplier any loss it may incur in doing so.
- 9.3 TOLL may cease ordering Goods/Services from the Supplier at any time.
- 10 Liquidated Damages**
- 10.1 Without prejudice to TOLL's right to terminate the Contract under clause 9, if the Supplier fails to perform its obligations to supply the Goods/Services by the time(s) stipulated in the Contract, the Supplier shall be liable to TOLL for liquidated damages at the rate and up to the limit specified in the Purchase Order. The parties agree that these liquidated damages represent a fair and genuine pre-estimate of the losses which TOLL is likely to suffer as a result of the delay in delivery of the Goods/Services. If these liquidated damages are found to be a penalty, the Supplier shall be liable to pay general damages at law in respect of its breach of the obligation to supply the Goods/Services by the time or times stipulated in the Contract.
- 11 Force Majeure**
- 11.1 If TOLL is prevented from performing any obligations required by the Contract, including payment (or part payment) of the Price by reason of a Force Majeure Event, then, provided that TOLL provides the Supplier with notice of the Force Majeure Event:
- 11.1.1 the relevant obligations of TOLL will be suspended from the time that the Force Majeure Event prevents the performance of such obligations until the time that such obligations are no longer affected by the Force Majeure Event (**Force Majeure Suspension Period**); and
- 11.1.2 TOLL will have no liability to the Supplier in respect of the failure to perform such obligations during the Force Majeure Suspension Period to the extent that such failure is caused by the Force Majeure Event.
- 12 Intellectual Property**
- 12.1 TOLL retains and owns the Intellectual Property rights in the Work Produced for TOLL by the Supplier's Personnel.
- 12.2 At TOLL's request, the Supplier shall execute all documents and do anything else to secure TOLL, or a third party nominated by TOLL, the full benefit of the Intellectual Property rights in any Work Produced. The Supplier shall do so promptly and without additional compensation or payment from TOLL.
- 13 Confidentiality, Data Security and Privacy**
- 13.1 The Supplier acknowledges that it may obtain knowledge of or access to proprietary and confidential information of TOLL and agrees to keep such information strictly confidential.
- 13.2 The Supplier agrees to be bound (and will ensure that its Personnel are bound) by applicable privacy and data protection laws including the Privacy Act 1988 (Cth) with respect to any act done or practice engaged in by the Supplier under the Contract.
- 13.3 The Supplier must give TOLL notice as soon as the Supplier becomes aware that use or disclosure of the Personal Information is required or authorised by or under any laws.
- 13.4 The Supplier may only use any Personal Information collected or accessed in connection with the Contract to the extent necessary.
- 13.5 If the Supplier collects or has access to Personal Information in connection with the provision of Goods/Services, the Supplier:
- 13.5.1 may disclose the Personal Information to its Personnel but only those who need to know for the purpose of providing the Goods/Services (and only to that extent) without the prior written consent of TOLL; and
- 13.5.2 may only disclose the Personal Information to any other person with the prior written consent of TOLL.
- 13.6 If the Supplier becomes aware that it (or any of its respective Personnel) is using or disclosing, or has used or disclosed, Personal Information in contravention of the Contract, the Supplier must promptly give TOLL notice of the full details of the contravention.
- 14 Ethical Business Conduct**
- 14.1 The Supplier represents and warrants that it:
- 14.1.1 and its Personnel comply and shall continue to comply with all applicable laws concerning ethical business conduct, including Modern Slavery Laws and Anti-Bribery and Anti-Corruption Laws;
- 14.1.2 does not have any conflict of interest that may be relevant to the Contract or provision of the Goods/Services;
- 14.1.3 takes all reasonable steps to conduct its business in a manner which complies with Anti-Bribery and Anti-Corruption Laws and Modern Slavery Laws and to ensure there is no bribery and corruption or Modern Slavery in its operations and supply chain;
- 14.1.4 has adequate documented processes in place to ensure that the Supplier and its Personnel act in accordance with Anti-Bribery and Anti-Corruption Laws and Modern Slavery Laws when providing the Goods/Services;
- 14.1.5 shall ensure that all of its Personnel undertake training necessary to ensure such persons or parties are able to carry out its obligations and provide the Goods/Services in compliance with the requirements of this clause 14;
- 14.1.6 has not, and its Personnel have not, been found guilty or entered a plea of guilt in respect of any criminal offence and have not otherwise been notified or become aware that they are the subject of any official investigation or inquiry into alleged violations of laws, statutes or regulations relating to bribery and corruption, Modern Slavery or any other criminal conduct or conduct relevant to business ethics; and
- 14.1.7 will provide information as requested by TOLL from time to time which is reasonably required to comply with the TOLL's obligations under Modern Slavery Laws.
- 14.2 The Supplier shall promptly notify TOLL in writing if:
- 14.2.1 any of the warranties and/or representations in this clause 14 are no longer accurate or may no longer be accurate; or
- 14.2.2 it has knowledge or reasonable grounds to suspect that the Supplier or any of its Personnel have violated any of the provisions in this clause 14.





- 14.3 If TOLL notifies the Supplier of its belief or suspicion that there has been a violation of any of the provisions in this clause 14, the Supplier shall respond promptly and in reasonable detail to any such notice and cooperate in good faith with TOLL and its representatives.
- 14.4 The Supplier must keep adequate books and records and allow TOLL and its representatives to access, inspect and copy those books and records, interview Supplier's Personnel, and inspect Supplier's operations at any time to audit the Supplier's compliance with its obligations under clause 14.
- 14.5 The Supplier agrees that its directors must supply TOLL with statutory declarations as to the Supplier's compliance with clause 14 on an annual basis, and on request from time to time.
- 14.6 If the Supplier or its Personnel breach this clause 14, then:
- 14.6.1 the Supplier must promptly take appropriate remedial actions, keep TOLL notified of the actions and the extent to which they address the relevant breaches; and
  - 14.6.2 TOLL may terminate the Contract immediately by notice to the Supplier.

## **15 Miscellaneous**

- 15.1 The Contract constitutes the entire agreement between the Supplier and TOLL and supersedes all previous communications, whether oral or written, relating to the subject matter of the Contract.
- 15.2 If any provision or part of any provision of the Contract is invalid, illegal or unenforceable, such provision or part thereof shall be severed herefrom and the remainder shall continue in full force and effect.
- 15.3 Any waiver by TOLL of strict compliance with the Contract shall not (i) be deemed a waiver unless it is in writing and signed by an authorised officer of TOLL; (ii) be deemed a continuing waiver of compliance.
- 15.4 The Supplier acknowledges and agrees that at all times the Supplier shall be an independent contractor of TOLL and neither the Supplier nor its Personnel shall be an employee or agent of TOLL for any purpose whatsoever. Except to the extent authorised by TOLL in writing, neither the Supplier nor its Personnel shall represent themselves in any manner as being an agent of TOLL not have any authority to enter into any commitments on behalf of TOLL.
- 15.5 The Contract shall be governed by the law of the Victoria, Australia and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the supply of any Goods pursuant to the Contract.
- 15.6 The Supplier must not, without consent in writing from TOLL, subcontract the whole or any part of the work of manufacture or supply of the Goods or performance of the Services.
- 15.7 The Supplier must not assign any of its rights or transfer any of its liabilities under the Contract to any person without TOLL's prior written consent.