

## Conditions of Contract – Tier 1

---

### 1. General

The contract between Power Generation Corporation trading as Territory Generation ABN: 72 687 980 755 (hereafter referred to as 'TGen') and the legal entity supplying TGen with goods and/or services (hereafter referred to as 'the Contractor') comprises of these Conditions of Contract, the purchase order issued by TGen for goods and/or services, TGen's request for quote (RFQ) and the Contractor's response to the RFQ (only as applicable in accordance with these Conditions of Contract) ('collectively referred to as 'the Contract'). If there is any inconsistency between any part of the Contract, a descending order (as listed in this paragraph) of precedence is to be accorded so that a former ranked document prevails over a later ranked document, to the extent of the inconsistency.

The Contractor warrants that no changes to the Contract are agreed by TGen unless approval for the changes has been provided by the person undertaking the role of General Counsel.

The Contract formed constitutes the entire agreement between the parties and supersedes any previous agreements or understandings in relation to those subject matters.

The Contract will be governed by and construed in accordance with the laws of the Northern Territory of Australia.

### 2. General Obligations

The Contractor will at all times act reasonably and diligently in performing its obligations and exercising its rights, and work together with TGen in a collaborative manner.

The Contractor must observe and comply with the requirements of all Acts of the Commonwealth of Australia, Acts of the Northern Territory, and with the requirements of all regulations, by-laws, orders or subordinate legislation made or issued under any such Act, and with the lawful requirements of any relevant authority, regulator or standard setting entity as in force affecting or applicable to the goods and/or services being provided under this Contract.

### 3. Directions

The Contractor must comply with any direction in relation to the goods and or services either orally or in writing as issued by TGen.

### 4. Contractor's Responsibilities and Obligations

#### For goods:

The Contractor warrants that:

- a) it has the right and will transfer title of goods to TGen (with such title passing on acceptance of the goods by TGen);
- b) the goods will be new and comply in all respects with the Contract;
- c) the goods will conform to the description, model number and the sample (if any) provided by the Contract;
- d) the goods will have an on-site warranty period being the period specified in the Contractor's response to the RFQ or, if no period is specified, 24 months;
- e) the goods have been manufactured or assembled at the place disclosed by the Contractor; and
- f) the goods are of a high standard, fit for purpose, are free from defects and conform to any applicable standards.

The Contractor must supply at its own cost everything necessary for the supply of the goods and the proper performance of its obligations under the Contract.

Where TGen is of the opinion that the goods do not meet the requirements of the Contract, TGen may reject the goods and direct that, at the Contractor's risk and cost, the goods are removed, refunded or replaced.

#### For services:

The Contractor warrants that:

- a) the services will be fit for purpose and carried out in accordance with the requirements of the Contract with all due care and skill and in accordance with appropriate standards, principles and practices;
- b) in addition to complying with the other provisions of this Contract, the Contractor must comply with all statements or representations as to its performance or the provision of the services contained in the Contractor's response to the RFQ;
- c) the services will be carried out by the Contractor or subcontractors approved by TGen;
- d) the services will be subject to a defects liability and on-site warranty period being the greater of the period specified in Contractor's response to the RFQ or 24 months;
- e) it will provide such further information in relation to the provision of the services as reasonably required by TGen; and
- f) the information contained in the Contractor's response to the RFQ is correct.

The Contractor must, unless the Contract otherwise provides, supply at its own cost everything necessary for the proper completion of the services and the proper performance of its obligations under the Contract.

Where TGen is of the opinion that the services have not met the requirements of the Contract, TGen may direct the Contractor to provide further rectification services at no risk or cost to TGen.

### 5. Contractor's Representative

The Contractor will appoint and advise TGen in writing of its representative ('the Contractor's Representative') to be the first point of contact with TGen. Any direction given to the Contractor's Representative will be deemed to be a direction issued to or served upon the Contractor.

### 6. Storage of Contractor's Material

The Contractor's materials and plant must only be stored in the location approved by TGen. If no storage facilities are available, it is the responsibility of the Contractor to provide storage facilities. All care will be taken to avoid inconvenience to persons occupying and visiting the site where the goods and/or services are being provided.

## Conditions of Contract – Tier 1

---

### 7. Power to remove persons

TGen may require the instant removal, of any person employed in connection with the goods and or services, whether directly employed by the Contractor or not who, in the opinion of TGen, misconducts themselves or is incompetent or negligent in the performance of their duties. The Contractor must immediately comply with such requirement.

### 8. Notices

Notice must be in writing and signed by a person duly authorised by the sender. Any notice given takes effect when it is: if hand delivered, on delivery; if sent by post, three (3) business days after the date of posting (or seven (7) business days after the date of posting if posted to or from a place outside Australia); and if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine unless, within eight (8) business hours after the transmission, the recipient informs the sender that it has not received the notice.

### 9. Site Rules

The Contractor, its employees and subcontractors required to enter a TGen site must ensure that they obtain any relevant site rules and comply with all rules in force at the site, including security screening and criminal history checks where required. The Contractor is responsible for obtaining all relevant permits and the payment of all associated fees and/or charges which are levied by any relevant authority.

### 10. Work Health and Safety Management

The Contractor must give priority to and is responsible for ensuring safe work practices. The Contractor must provide goods and services safely, so as to protect persons and property and must maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property as a result of providing the goods and or services.

If TGen considers there is a risk of injury to people or damage to property, there is an unsafe or potentially unsafe practice or there is a breach of any site rules then in addition to any other rights it has under the Contract, TGen may direct the Contractor to change its manner of working or suspend the performance of the Contract and not lift the suspension until the work area is made safe and the unsafe practice removed.

All costs, delay and disruption caused by any action taken under this clause are the responsibility of the Contractor.

### 11. Conflict of Interest

The Contractor warrants that at the date of the Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract and it will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subcontractor. The Contractor must inform TGen of any matter, which may give rise to an actual or potential conflict of interest of the Contractor at any time during the currency of the Contract. This information will be treated confidentially.

### 12. Confidentiality and Publicity

For the purposes of this clause, "Confidential Information" means any information or material relating to the Contract or the goods or services including (without limitation): any information that by its nature is confidential; any information designated as confidential; and any information that the Contractor knows is confidential.

The Contractor must hold all Confidential Information in confidence and will not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and must not disclose or permit or cause the Confidential Information to be disclosed to any person, except: as authorised by TGen; to its employees or subcontractors, to the extent needed to perform their obligations under the Contract; and where the disclosure is required to be disclosed by law.

The Contractor must ensure that its employees and all subcontractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause.

### 13. Media and Publicity

The Contractor must not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising eg for subcontractors), award nomination, document or article for publication concerning the Contract, the services or the site in any media without the prior written approval of TGen.

The Contractor must ensure that its employees and all subcontractors, and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause and obtain TGen's prior written approval (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this clause.

### 14. Liabilities

The Contractor must indemnify TGen and employees or agents of TGen against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person or for damage to any property arising from the carrying out or in connection with the goods and or services and from any costs and expense that may be incurred in connection with any such loss, claim, action or proceeding.

### 15. Insurances

The Contractor must ensure for the duration of the Contract that it, and its subcontractors, have valid: workers compensation insurance, public liability (in the amount of \$20 million for any one occurrence) and professional indemnity insurance (as required by TGen's RFQ). The Contractor must ensure that any subcontractors (including self-employed contractors and persons employed under labour hire agreements) comply with the same insurance requirements in this clause.

The Contractor must provide TGen with copies of certificates of currency for all insurance policies required under this clause immediately upon request.

### 16. Intellectual Property

The intellectual property produced from this Contract is owned exclusively by TGen. The Contractor warrants that any intellectual property embodied in or used in connection with the provision of the goods and or services is the sole property of the Contractor or the Contractor is legally entitled to use same and

## Conditions of Contract – Tier 1

---

grants to TGen a perpetual world-wide, royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that intellectual property to the extent required to receive full benefit of the goods and or services.

### **17. Invoicing and Payment**

The Contractor must provide TGen with a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the date of formation of this Contract. The Contractor must provide any further details in regards to the goods and or services and/or tax invoice upon request by TGen.

TGen will make payment where, in the opinion of TGen, the goods and or services have completely been provided in accordance with this Contract.

The Contractor warrants that all costs for freight are included in their invoice and that no further cost will be payable.

Payment by TGen into the Contractor's nominated account will be made thirty (30) days from acceptance of the goods supplied or services rendered or receipt of a correctly rendered tax invoice, whichever is the later. The tax invoice must include the Order number and the name and phone number of the Supplier.

### **18. Assignment**

The Contractor must not assign the Contract, mortgage, charge or encumber any of the monies payable under the Contract or any other benefit whatsoever arising under the Contract, without the consent of TGen.

### **19. Subcontracting**

Should the Contractor desire to subcontract any part of the Contract it must submit to TGen for approval the names of the proposed subcontractors, the nature and value of the goods and or services, that it is intended they provide. No subcontractor is to be employed in connection with the Contract unless such approval is first obtained.

The Contractor will be fully liable to TGen for the goods and/or services of the subcontractor or any employee or agent of the subcontractor. Nothing contained in the Contract will in any way be construed as relieving the Contractor of their responsibility for the performance of the Contract.

### **20. Termination**

Without prejudice to any other remedy of TGen at law, if the Contractor fails to carry on the Contract at a rate of progress satisfactory to TGen, neglects or omits to carry out any instruction of TGen in respect of the Contract, commits a breach of its work health and safety obligations, fails to complete the whole of the Contract within the period required by TGen, indicates (in the opinion of TGen) that the Contractor is unwilling or unable to complete the Contract, becomes insolvent or bankrupt, being a company goes into liquidation, TGen may by notice in writing:

- a) terminate the Contract whereupon all sums of money which may remain in the hands of TGen may be forfeited to TGen and on being so forfeited will become vested in or become payable to TGen; or
- b) take the Contract wholly or partly out of the control of the Contractor and complete the Contract by any other means TGen so decides.

Should TGen take action pursuant to this clause then all losses, costs, charges and expenses incurred or sustained by TGen will be deemed to be a debt due to TGen by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies are less than the amount so deductible the amount of the deficiency will be a debt due by the Contractor to TGen.

### **21. Novation**

Without limiting TGen's other rights under the Contract, TGen may require the Contractor to enter into a deed of novation to novate TGen's or the Contractor's rights under the Contract. The Contractor must comply with any direction given by TGen including the provision of information, assistance, corporation and the execution of the deed.

### **22. Adherence to Corporate Values**

The Contractor must adhere to Territory Generation's corporate Values which are Focus, Integrity, Respect, Safety and Teamwork known by the acronym FIRST, for the duration of the Contract. The Values are more comprehensively defined in Territory Generation's Code of Conduct which can be obtained from Territory Generation.