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| Form: | **G-LC-FM-04540 Conditions of Contract - Simple Services (for use with Requests for Price Quotation)** | | | | | Zinfra Stack_300 |
| Document ID: | **G-LC-FM-04540** | Process Area: | Legal ＆ Commercial | Version: | 2.0 |

| **Conditions of Contract – Services** |
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# Definitions and interpretation

In this Contract, unless the context otherwise requires:

**Australian Standard** means a standard published by Standards Australia Limited.

**Business Day** means a day on which banks are generally open for business in Hobart (but does not include a Saturday, Sunday or public holiday generally observed in Hobart).

**Contract** means the contract for the supply of the Services by the Supplier to Zinfra.

**Contract Information Table** means the table included in Part C of the RFQ to which this Contract relates.

**Contract Material** means all material created by the Supplier as part of, or for the purposes of, performing the Services, including documents, information and data.

**Contract Sum** means the amount payable by Zinfra to the Supplier for the supply of the Services.

**GST** has the meaning in the *A New Tax System (Goods and Services) Act 1999* (Cwlth). Expressions defined in the GST Act have the same meaning when used in this RFP.

**RFP** means the request for price/quotation document number identified in the Contract Information Table (and includes all of its parts and attachments).

**Quotation** means an offer to supply the Services made pursuant to the RFP.

**Quotation Form** means the Quotation Form completed by the Supplier pursuant to the RFP.

**Services** has the meaning in Item 1 of the Contract Information Table.

**Specifications** has the meaning in Item 2 of the Contract Information Table.

**Zinfra** means the Zinfra company named in Item 1a of the Contract Information Table.

**Zinfra Material** means any document or information provided by, or on behalf of, Zinfra, to the Supplier, in relation to the Services.

**Supplier** means the supplier of the Services to Zinfra, being the person named as the Supplier in the Quotation (accepted by Zinfra) and includes that person's successors and permitted assigns.

1. headings do not affect the interpretation of this Contract;
2. words denoting the singular include the plural and vice versa;
3. words denoting any gender include all genders;
4. other grammatical forms of a defined term have a corresponding meaning;
5. an expression denoting a natural person, company, partnership, corporation or any government body includes any other of them;
6. a reference to anything or any property includes a part of that thing or property;
7. a reference to a party includes that party's successors and permitted assigns;
8. mentioning anything after the words **includes** or **including** does not limit the meaning of anything mentioned before those words; and
9. a reference to any legislation includes subordinate legislation made under it and any amendment to, or replacement for, any of them.

A reference to Zinfra includes any delegate acting on behalf of Zinfra.

# Supply of the Services

The Supplier must:

1. supply the Services to Zinfra;
2. supply the Services with the due care and skill, and to a standard, reasonably to be expected of a person both competent and experienced in providing services similar to the Services;
3. ensure that the Services conform to the Specifications;
4. supply the Services in accordance with the requirements set out in Item 3 of the Contract Information Table;
5. ensure that the Services comply with, and are delivered in accordance with, all applicable laws and applicable Australian Standards;
6. not infringe the intellectual property rights of any third person in connection with the delivery of the Services; and
7. ensure that it, and its employees, hold all accreditations, permits and licences necessary to deliver the Services.

# Named persons to undertake delivery of the Services

This clause applies if the Quotation Form required the Supplier to nominate specified persons to deliver the Services. The Supplier must ensure that the Services are delivered by the persons named in the Supplier's Quotation or by other persons approved in writing by Zinfra.

# Payment of the Contract Sum

The Contract Sum is payable in the manner provided for in Item 4 of the Contract Information Table.

No payment is due to the Supplier until Zinfra has received a correctly rendered tax invoice.

Zinfra is not required to make any payment to the Supplier if the Supplier is in breach of this Contract.

# Out-of-pocket expenses

Zinfra will pay or reimburse to the Supplier out-of-pocket expenses and disbursements (if any) in accordance with Item 5 of the Contract Information Table.

# Insurance

The Supplier must take out and maintain the insurances set out at Item 6 of the Contract Information Table. The Supplier must produce evidence of those insurances when requested by Zinfra.

# Indemnity by Supplier

The Supplier indemnifies Zinfra against:

1. claims in respect of any injury to, or death of, any person;
2. claims in respect of damage to the property of any person; or
3. loss of, or damage to, property of Zinfra,

arising from, or attributable to, supply of the Services.

The Supplier's liability under the indemnity is to be reduced proportionately to the extent that the claim, loss or damage is caused or contributed to by an act or omission of Zinfra or any of its employees or agents.

The indemnity is a separate and independent obligation of the Supplier. The indemnity survives the termination of this Contract.

# Default and termination

Zinfra may terminate this Contract immediately, by written notice, if the Supplier:

1. being an individual, becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cwlth), or any action is taken which could result in that event;
2. being a company, becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001* (Cwlth)) or a person becomes a controller (as defined in section 9 of the *Corporations Act 2001* (Cwlth)) of any of its property;
3. breaches any of its obligations under this Contract, and that breach continues for a period of 5 Business Days after the date on which Zinfra serves notice on the Supplier specifying the breach;
4. repudiates this Contract by its conduct;
5. ceases, or threatens to cease, to carry on its operations, or threatens to dispose of all, or a substantial part, of its undertaking; or
6. convenes a meeting of its creditors or proposes or enters into any scheme of arrangement, reconstruction or composition with all or some of its creditors.

Without limiting the conduct that may constitute repudiation of this Contract by the Supplier, the Supplier will be taken to have repudiated this Contract for the purposes of paragraph (d) if the Supplier commits 4 or more breaches of this Contract in any period of 20 consecutive Business Days (being breaches which have been the subject of notice under paragraph (c) and regardless of whether those breaches have been rectified).

# Amounts payable on termination pursuant to clause 8

This clause applies if this Contract is terminated pursuant to clause 8.

If the Contract Sum is a lump sum amount, the amount payable by Zinfra to the Supplier, in respect of the termination of this Contract, is limited to the Relevant Proportion of the Contract Sum *less* any payments in respect of the Contract Sum previously paid by Zinfra. The **Relevant Proportion of the Contract Sum** is that amountwhich bears the same proportion to the Contract Sum as the proportion of the total Services completed up to the date of termination.

If the Contract Sum is calculated on the basis of rates, the amount payable by Zinfra to the Supplier, in respect of the termination of this Contract, is limited to the amount payable for any Services actually provided by the Supplier up to date of termination, calculated in accordance with the applicable rates, and not previously paid for by Zinfra.

In addition to any amounts payable pursuant to this clause, Zinfra must pay or reimburse to the Supplier any out-of-pocket expenses or disbursements (if any) incurred by the Supplier before the date of termination, and which Zinfra is required to pay or reimburse in accordance with clause 5.

Except to the extent provided for in this clause, no other amounts are payable by Zinfra to the Supplier in respect of the termination of this Contract pursuant to clause 8.

# Termination for convenience

1. Zinfra may terminate this Contract for convenience by giving the Supplier notice in writing.
2. Subject to the paragraph (c), if Zinfra terminates this Contract for convenience pursuant to paragraph (a), Zinfra must pay to the Supplier:
3. the amount that would have been payable to the Supplier under clause 9 if the termination of this Contract had occurred pursuant to clause 8; and
4. any loss incurred by the Supplier as a result of the early termination of this Contract, being a loss that the Supplier cannot reasonably avoid or mitigate.
5. The maximum amount payable by Zinfra to the Supplier in respect of the termination of this Contract pursuant to paragraph (a) is not to exceed the amount of the Contract Sum that has not been paid to the Supplier as at the date of termination.

# Intellectual property matters

* 1. The title to, and property (including all intellectual property) in, all Contract Material vests in Zinfra upon its creation. If required by Zinfra, the Supplier must, as directed by Zinfra, formally transfer to Zinfra all intellectual property rights in the Contract Material.
  2. On the expiration or earlier termination of this Contract the Supplier must, at its expense, promptly deliver all Contract Material and all Zinfra Material, in its possession or control, to Zinfra.
  3. Zinfra Material remains the property of Zinfra. On the expiration or earlier termination of this Contract, the Supplier must immediately return all Zinfra Material to Zinfra. The Supplier must pay the cost of delivery.
  4. The Supplier warrants that the use of the Contract Material by Zinfra will not infringe the intellectual property rights of any third party.
  5. The Supplier unconditionally consents to any infringement of its moral rights in relation to any use of the Contract Material. If any third party has moral rights in any Contract Material, the Supplier must obtain the unconditional consent in writing of that third party to any infringement of those moral rights.
  6. In this clause **moral right** means a moral right granted under the *Copyright Act 1968* (Cwlth).

# Confidentiality in relation to Contract Material and Zinfra Material

The Supplier must not, and must ensure that none of it employees, publicly disclose, or use for a purpose other than for the purposes of this Contract, any Contract Material or Zinfra Material.

Nothing in this clause prevents the Supplier from disclosing Contract Material or Zinfra Material: that is available to the public generally otherwise than as a result of a breach of this clause by the Supplier; if the disclosure of is required by law; if the disclosure is necessary to obtain an approval or licence under a law; or if the disclosure is to the Supplier's professional advisers who, in relation to that disclosure, agree with Zinfra to keep the information confidential.

# Confidentiality in relation to this Contract

Despite any confidentiality or intellectual property rights subsisting in this Contract, either party may publish, without reference to the other, all or any part of this Contract. Nothing in this clause derogates from a party’s obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

# Professional Standards Legislation

If no scheme (as defined in the *Professional Standards Act 2003* (Vic) or equivalent) applies to the Supplier, the Supplier waives all present and future rights, as against Zinfra, to claim any limitation of liability provided by any future scheme, in connection with claims concerning or arising out of this Contract. If a scheme applies to the Supplier as at the date of this Contract, the level of the Supplier’s liability under this Contract will be limited by the scheme.

# No agency

The Supplier is not the agent of Zinfra for the purposes of carrying out the Services. The Supplier must not represent itself to be, and must ensure that none of the Supplier's employees represent themselves to be, an employee or agent of Zinfra.

# Notices

The addresses and facsimile numbers of the parties for the receipt of any Notice are:

1. in the case of Zinfra, as set out in Item 7 of the Contract Information Table, or as subsequently notified by Zinfra to the Supplier; and
2. in the case of the Supplier:
3. if there is no formal instrument of agreement, as set out in the Quotation Form, or as subsequently notified by the Supplier to Zinfra; or
4. if there is a formal instrument of agreement, as set out in the Details part of that agreement, or as subsequently notified by the Supplier to Zinfra.

A Notice may be served by: delivering it by hand to the party; leaving it at the party's address referred to above; or by sending it by facsimile transmission to the party's facsimile number; or sending it by prepaid ordinary post to the party's address.

A Notice is taken to have been received: if hand delivered to the party, when delivered; if left at the party's address, when left; if sent by facsimile transmission to the party's facsimile number, upon completion of sending; and if sent by post to the party's address, on the fifth Business Day after the day of posting.

A Notice must be in legible writing in the English language.

**Notice** means a notice or other communication for the purpose of this Contract.

# Governing law and jurisdiction

This Contract is governed by the law of Victoria. The parties submit to the jurisdiction of the courts of Victoria.

# Safety

The Supplier must comply with all relevant occupational work health and, safety, environmental and rehabilitation/workers compensation legislation including all Acts, regulations, codes of practice and Australian Standards. Without limiting its obligations under relevant legislation, where relevant the Supplier must:

1. ensure, and demonstrate through documented evidence, that any plant and equipment used by it is appropriate for the task and is adequately maintained and safe for use;
2. ensure that its workers are competent and qualified to undertake the work associated with the Services and have been provided with adequate information, instruction and training (including induction training);
3. conduct risk assessments by appropriately qualified and competent persons and in consultation with relevant workers;
4. identify and control all hazards and risks associated with the Supplies, including ensuring adequate documentation regarding the implementation and maintenance of controls of such hazards and risks is maintained.
5. notify Zinfra of any sub-contractors it may wish to engage to provide the Services and, upon request, provide Zinfra with documentary evidence of any of the matters set out in this clause 18 in relation to the sub-contractors upon request;
6. immediately verbally notify Zinfra of any safety incident or "near-miss" safety incident (whether a person is injured or not);
7. immediately verbally Zinfra if it is issued with any statutory notices by a regulator and provide a copy of any statutory notice to Zinfra;
8. comply will all work health and safety, environment and workers compensation/ rehabilitation rules, requirements and directions of Zinfra relating to the Services;
9. consult, co-operate and co-ordinate its activities with any other person or company who has a work health and safety duty in relation to the Services;
10. stop work if there are any changes to risks, tasks, scope of work, the working environment or personnel, and review, and amend if necessary, any relevant risk assessment(s) and work procedures. The Supplier must conduct any refresher training required as a result of those changes and retain documented evidence to demonstrate that this has occurred;
11. ensure adequate supervision is provided at all times by appropriately qualified personnel;
12. inform Zinfra if there are changes to supervisory personnel during provision of the Services; and
13. (o) the Supplier must ensure the health and safety of Zinfra’s workers where relevant, and any other persons that may be affected by its undertaking.
14. The Supplier must, upon request by Zinfra, provide documented evidence of the Supplier’s and its authorised subcontractor’s compliance with any of the matters in this clause 18.

# GST

In this clause, **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this clause.

If GST is imposed on any supply made by a party under this Contract, the recipient of the supply must pay to the person making the supply, in addition to any consideration payable, or to be provided by, the recipient under this Contract for that supply, an additional amount equal to the GST payable by the person making the supply for that supply. The additional amount is to be paid at the same time and in the same manner as the supply to which the GST relates.

# Special conditions

The special conditions in Item 8 of the Contract Information Table form part of this Contract.

If there is any inconsistency between the special conditions in Item 8 of the Contract Information Table and any another provision of this Contract, the special conditions override the other provision to the extent of the inconsistency.

A special condition in Item 8 of the Contract Information Table is taken not to be inconsistent with another provision of this Contract if the special condition and the other provision are both capable of being complied with.

# Miscellaneous

Zinfra may set off against an amount otherwise payable by Zinfra to the Supplier any amount due from the Supplier to Zinfra. For the avoidance of doubt, this clause does not exclude any other right of set off at law.

An obligation or liability on the part of two or more persons binds them jointly and severally.

The Supplier must not assign this Contract or any of its Rights under this Contract.

This Contract may only be amended or supplemented in writing signed by the parties.

The non-exercise of, or delay in exercising, any Right does not operate as a waiver of that Right. A single exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right. A Right may only be waived in writing, signed by the party to be bound by the waiver. A waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

Each Right provided in this Contract is exclusive and independent of each other Right in this Contract, and all other Rights at law or in equity.

In this clause, **Right** includes a right, power, remedy, authority and discretion.

Contract Information Table

|  |  |  |
| --- | --- | --- |
|  | **Services to be supplied:** | The following services (**Services**) are to be supplied:  click here to enter detailed description of Services |
| **Item 1a** | **Legal ＆ Commercial** | Zinfra means:  click here to enter details of Zinfra company making the purchase |
|  | **Specifications applicable to the Services to be supplied:** | The Services must comply with the following specifications (the **Specifications**):  click here to enter specification applicable to Services |
|  | **Timing for the delivery of the Services:** | The Services are to be delivered as follows:  This should include all major milestones, e.g. the contract commencement and completion dates, dates when deliverables are due, etc. |
|  | **Payment of the Contract Sum:** | The Contract Sum is payable as follows:  For example, a lump sum payment on completion of the delivery of the Services; monthly in arrears; or in accordance with defined milestones or events |
|  | **Out-of-pocket expenses and disbursements:** | Zinfra will pay to the Supplier the following out-of-pocket expenses and disbursement properly and reasonably incurred by the Supplier for the delivery of the Services:  For example, 'Domestic airfares, accommodation and meal expenses at the rates from time to time set by the Department of ##', and payable to a person employed in that Department. Airfares to and from Melbourne are to be charged at the cheapest available option but are not to exceed economy class charges If not applicable insert 'Not applicable'. |
|  | **Insurance:** | click here to enter policy types, amounts, and periods, of insurance required |
|  | **Zinfra's address details:** | For the purposes of clause 16 of the Conditions of Contract, Zinfra's details for the service of Notices are as follows: |
|  |  | **Address:** click here to enter address  **Email:** click here to enter email address  **Facsimile** click here to enter fax number  **Attention** click here to enter contact officer and or position |
|  | **Special conditions forming part of Conditions of Contract:** | The following special conditions apply:  click here to enter any special terms and conditions or, if there are none, insert 'Nil' |