

## Standard Supply Terms and Conditions

### PART A: INTERPRETATION

#### 1. DEFINITIONS

##### 1.1 Definitions

In this document, unless the context otherwise requires:

**Approval** means any licence, permit, consent, approval, determination, certificate or other requirement of any authority with jurisdiction in connection with the Supply or under any applicable Law.

**Background IP** means the Intellectual Property Rights of a party which were owned by the party prior to the date of the Contract or developed independently of the Supply and which are made available to the other party for the purposes of the Supply.

**Business Day** means a day excluding Saturday, Sunday, or public holiday in Brisbane.

**Club** means any Race Club that is taking the benefit of the Supply.

**Contract** has the meaning given in clause 2.1.

**Date of Completion** means the date upon which RQ confirms that completion of the Supply has been achieved.

**Defect** means any deficiency, fault, error, omission or non-compliance with the requirements of the Contract (and **Defective** has a corresponding meaning).

**Delivery Date** means the date for delivery of the Goods or completion of the Services or Works specified in the Contract, as may be extended in accordance with the Contract.

**Department** means the Queensland Department administering the *Racing Act 2002* (Qld) from time to time, being the Department of Local Government, Racing and Multicultural Affairs as at the date of this document.

**Documentary Deliverable** means any document, drawing, report, specification, data listing or other written or electronic creation required to be provided or delivered to RQ in order to complete the Supply.

**Fee** means the consideration payable by RQ to the Provider for the Supply as set out in the Purchase Order.

**Goods** means the goods, if any, described in the Purchase Order or otherwise required to achieve the Supply.

**GST and Tax Invoice** have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all intellectual and industrial protection rights throughout the world, including rights in respect of or in connection with any confidential information, copyright, moral rights, inventions (including patents), trade marks, service marks and designs, and includes unregistered, registrable, and registered rights.

**Law** means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity; and
- (c) consents, certificates, licences, permits, codes, standards and approvals.

**Provider** means the entity to which the Purchase Order is addressed.

**Purchase Order** means the purchase order for the Supply issued by RQ to the Provider containing, amongst other things, description of the Supply.

**RQ** means the Racing Queensland Board (trading as Racing Queensland) ABN 80 730 390 733.

**Safety Laws** means all work health and safety Laws, including but not limited to *Work Health and Safety Regulation 2011* (Qld).

**Site** means the location nominated in the Purchase Order, or otherwise notified by RQ, at which the Provider is to perform the Supply.

**Services** means the services, if any, described on the Purchase Order or otherwise required to achieve the Supply.

**Supply** means all obligations, duties and responsibilities of the Provider under the Contract and any incidental work that can be reasonably inferred as necessary or appropriate to:

- (a) supply the Goods;
  - (b) perform the Services; or
  - (c) perform the Works,
- (as applicable) in accordance with the Contract.

**Supply Terms** means these Standard Supply Terms and Conditions.

**Warranty Period** means the period of 12 months from the date on which the Supply is completed.

**Works** means the works, if any, described in the Contract or otherwise required to achieve the Supply.

#### 2. THE SUPPLY

##### 2.1 Entire Agreement

- (a) Where there is no signed contract in place between RQ and the Provider in relation to the Supply:
  - (i) the terms and conditions which apply to the Supply are comprised of:
    - (A) the Purchase Order; and
    - (B) these Standard Supply Terms and Conditions (irrespective of whether they are attached to the Purchase Order),**(Contract)**; and
  - (ii) this Contract constitutes the entire agreement between the parties, and supersedes all prior representations and agreements in connection with the Supply.

##### 2.2 Acceptance of the Contract

- (a) Acceptance of the Contract terms by the Provider occurs when the Provider accepts the Purchase Order in writing.
- (b) If the Provider does not accept or reject the Purchase Order in writing within 5 Business Days, it will be deemed to have accepted the Contract terms.
- (c) The Provider must perform the Supply in accordance with the Purchase Order, the Supply Terms and RQ's delivery instructions.

2.3 Where a Purchase Order relates to a Supply the subject of a signed contract between the Provider and RQ, the terms of that contract prevail.

2.4 To the extent the Provider's terms and conditions are provided with the Supply (including as printed on consignment notes or other documents) or otherwise provided by the Provider (including as part of its offer), those terms and conditions will be of no legal effect and will not constitute part of the Contract (even if any representative of RQ signs those terms and conditions or annexes those terms and conditions).

### PART B: PERFORMANCE OF THE SUPPLY

#### 3. COMPLIANCE WITH LAWS AND DIRECTIONS OF RQ

3.1 The Provider must, in performing the Supply:

- (a) be aware of and comply with and ensure that the Provider's employees, agents and suppliers are aware of and comply with:
  - (i) all Laws and Safety Laws, including those dealing with asbestos;
  - (ii) licensing requirements applying under all Laws relating to any profession, trade or construction work constituting the Supply;
  - (iii) any policies, procedures, codes of conduct or compliance manuals of RQ which are brought to the Provider's attention or published on RQ's website, to the extent that they are applicable to the Supply; and
  - (iv) all lawful directions and orders given by RQ's representative or any person authorised by Law to give directions to the Provider;
- (b) ensure that the Provider's employees, agents and suppliers perform their tasks in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - (i) safe working practices;
  - (ii) safety and care of property; or
  - (iii) continuity of work and operations; and
- (c) provide all such information and assistance as RQ reasonably requires in connection with any statutory investigation in connection with the Supply.

#### 4. WARRANTIES

4.1 The Provider represents and warrants to RQ that the Supply (including all Goods, materials, plant, equipment and other items supplied as part of the Supply) will:

- (a) match any description referred to in the Purchase Order or sample or other description provided to RQ and otherwise comply with the terms of the Contract;
- (b) be delivered or performed (as applicable) in a proper, timely and efficient manner;
- (c) be new, of merchantable quality and fully conform with their description;
- (d) be fit for their intended purpose;
- (e) be free of Defects and will remain free of Defects for the Warranty Period;
- (f) comply with any warranties or guarantees provided by the Provider, any subcontractor or manufacturer;

- (g) comply with all Laws (including, without limitation, all Safety Laws);
  - (h) be at the standard of a prudent, competent, professional and experienced provider of similar supplies; and
  - (i) if the Supply relates to the performance of Services or Works, be performed with due skill and care, using appropriately qualified personnel, at the standard of a reasonably prudent, competent, professional and experienced provider of equivalent services or works.
- 4.2 RQ must receive the benefits of any warranties provided by manufacturers of the Goods or materials and other components which are used in the performance of the Supply where title in the Goods or materials ultimately passes to RQ.

**5. SITE REQUIREMENTS**

- 5.1 The Provider acknowledges that it accepts and understands the Site conditions.
- 5.2 The Provider must, in performing the Supply (and to the extent relevant to the Supply):
- (a) keep the applicable part of the Site clean and tidy to the satisfaction of RQ;
  - (b) take all measures necessary to protect people and property including but not limited to providing appropriate safety and protection barriers in accordance with all Safety Laws;
  - (c) avoid interference with the passage of people and vehicles (including operations and works being undertaken by others);
  - (d) prevent nuisance and unreasonable noise and disturbance to occupiers of the Site (such as trainers, horses and other animals, and any person domiciled on-site) and neighbouring properties;
  - (e) ensure that all delivery or working areas are clean and safe for public access at least 24 hours in advance of any race meetings to RQ and the Club's reasonable satisfaction;
  - (f) coordinate deliveries, parking, materials storage and handling with the representative(s) of the Club and RQ to minimise disruption; and
  - (g) reinstate any work areas to the condition they were in prior to the commencement of the Supply, following the Date of Completion (if applicable).
- 5.3 If applicable to the Supply, the Provider must disconnect services as required prior to commencing the Supply.
- 5.4 The Provider must coordinate the Supply with other works and activities being carried out by the Club or RQ and their contractors, employees, invitees and agents at the Site.
- 5.5 The Provider must not use the Site for any purpose other than the performance of the Supply.
- 5.6 RQ may direct the Provider to remove any person from the Site if RQ believes the person to be guilty of misconduct, incompetent or negligent.

**6. LABOUR AND EQUIPMENT**

- 6.1 The Provider must supply all things necessary for the completion of the Supply.
- 6.2 Where RQ agrees to provide any equipment to assist the Provider in the performance of the Supply (**RQ Equipment**), the RQ Equipment:
- (a) remains the property of RQ;
  - (b) may only be used for the Supply;
  - (c) must be repaired or replaced by the Provider if lost or damaged (fair wear and tear excepted);
  - (d) must be returned to RQ following the Date of Completion in good condition (fair wear and team excepted); and
  - (e) if not returned within 7 days after the Date of Completion of the Supply, the replacement cost will be a debt due and payable to RQ.

**7. INSPECTION AND TESTING AND WARRANTY PERIOD**

- 7.1 If required by RQ, the Provider must:
- (a) allow RQ to inspect and conduct tests in relation to any aspect of the Supply at any time; and
  - (b) provide such additional information as RQ may require.
- 7.2 RQ may issue a notice to the Provider requiring the Provider to rectify any aspect of the Supply that is Defective.
- 7.3 If all or any part of the Supply is or becomes Defective during the Warranty Period, RQ may issue a notice requiring the Provider to rectify the Defects.
- 7.4 If RQ issues a notice to the Provider under clause 7.2 or clause 7.3 requiring the Provider to rectify any Defects in the Supply, the Provider must comply with such notice, at its own cost, promptly.
- 7.5 If the rectification of the Defects in the Supply has not been effected promptly, RQ may in its absolute discretion, have the Defects rectified by another party, the costs of which will be a debt due and payable by the Provider.

- 7.6 No inspection, examination or testing by RQ, its employees or agents will relieve the Provider of its obligations under the Contract.
- 7.7 No action taken by RQ under clauses 7.2 to 7.5 inclusive will affect RQ's rights to claim damages at common law for breach of the Contract or to exercise a right under clause 20.

**8. OBLIGATIONS SPECIFIC TO SUPPLY OF GOODS**

- 8.1 If the Supply relates to the provision of Goods, the Provider must:
- (a) provide the Goods on time and in full;
  - (b) unload the Goods at the Site, and RQ is not required to provide any equipment or personnel to assist; and
  - (c) ensure that the Goods are accompanied by appropriate delivery documentation including but not limited to all documentation that may reasonably be required for the installation, operation, maintenance or use of the Goods and such other documentation as RQ may reasonably require.

**PART C: TIME, COMPLETION, TITLE AND RISK**

**9. TIME FOR PERFORMANCE**

- 9.1 The Provider must perform the Supply with due expedition and without delay, and complete the Supply by the Delivery Date in accordance with the Contract, and RQ's instructions.
- 9.2 Unless otherwise approved in advance, the Provider is not permitted to perform the Supply on the Site:
- (a) outside of the hours of 8.30am to 5.00pm from Monday to Saturday; and
  - (b) during any of the dates upon which race meetings are scheduled to be held at the Site (as published on RQ's website and amended from time to time), and must ensure that the Supply does not otherwise impact on any race meeting or operations.
- 9.3 If the Provider gives notice it will be delayed by an event wholly outside its control, RQ will (acting reasonably) agree an extension to the Delivery Date. RQ may also grant any extension to the Delivery Date at any time, without providing any reason.
- 9.4 If the Provider is wholly prevented from performing the Supply, it must provide RQ with detailed notice as to the reason that it is prevented from performing the Supply.

**10. TITLE AND RISK**

- 10.1 The risk of any loss or damage to the Supply remains with the Provider until:
- (a) for the performance of Works or Services, the Date of Completion; and
  - (b) for the supply of Goods, the date the Provider has safely removed the Goods off its transport and deposited the Goods at the Site.
- 10.2 The Provider must ensure that the Supply is adequately protected, secured and insured at all times that the Provider is responsible for the risk of the Supply.
- 10.3 If the Supply relates to the provision of Goods:
- (a) the Provider warrants that it has title in and ownership of the Goods and that it will supply and deliver the Goods to RQ free of any encumbrance or security interest; and
  - (b) ownership in and title to the Goods, free of any encumbrance, passes to RQ upon the earlier of payment of the Fee and delivery of the Goods to the Site.

**PART D: DOCUMENTATION AND INFORMATION**

**11. DOCUMENTARY DELIVERABLES**

- 11.1 This clause 11 is applicable if the Provider is required to prepare and submit Documentary Deliverables to RQ as part of the Supply.
- 11.2 The Provider must submit any Documentary Deliverables to RQ for review on a progressive basis throughout the time the Supply is being performed, for RQ to review and comment on the Documentary Deliverables.
- 11.3 Upon submission of the Documentary Deliverables, RQ will have 7 Business Days to:
- (a) accept the Documentary Deliverables; or
  - (b) if the Documentary Deliverables do not meet RQ's requirements, request amendments to the Documentary Deliverables.
- 11.4 If RQ provides notification of amendments to the Documentary Deliverables in accordance with clause 11.3(b), the Provider will have 3 Business Days to resubmit the Documentary Deliverables to RQ at no additional cost to RQ.
- 11.5 No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, the Documentary Deliverables (including design documents) or any other document or

- information prepared or submitted by the Provider, by RQ or anyone on behalf of RQ will:
- (a) relieve the Provider from, or alter or affect the Provider's liabilities or responsibilities whether under the Contract or otherwise according to law;
  - (b) prejudice RQ's rights against the Provider whether under the Contract or otherwise according to law; or
  - (c) affect any warranty given by the Provider under the Contract.
- 11.6 The Provider must supply to RQ 2 hard copies, an electronic copy (in native file format) and a Portable Document Format copy of any Documentary Deliverables to be supplied by the Provider.

## 12. INFORMATION PROVIDED BY RQ

The Provider acknowledges that RQ:

- (a) has endeavoured to ensure that any information provided to the Provider in connection with the Supply (**Information**) is accurate, sufficient and complete;
- (b) does not accept any liability for and has not made any representation about, the accuracy, sufficiency and completeness of the Information and the use of it by the Provider; and
- (c) has provided the Information for the convenience of the Provider and it does not form part of the Contract unless specified.

## 13. GOVERNMENT AND RQ RIGHTS

- 13.1 The Provider must keep and maintain full and accurate records and accounts as required by Laws or otherwise reasonably specified by RQ.
- 13.2 The Provider will give, and will procure that all of its representatives give, upon two (2) Business Days' notice, full and free access and reasonable assistance to RQ and the Department, its representatives and nominated auditors to:
- (a) access workplaces or worksites of the Provider and its subcontractors;
  - (b) speak to the persons associated with the Supply;
  - (c) examine, inspect and copy the records and accounts in the possession of the Provider which are relevant to the Supply;
  - (d) examine and inspect the Supply;
  - (e) locate and make copies of any of the Provider's accounts, records, documents and other material that relate directly or indirectly to the Supply.
- 13.3 RQ's and the Department's right of access under clause 13.2 may be exercised for any reasonable purpose, including for financial or compliance audits, or reviews of the Provider's performance of the Supply.
- 13.4 The Department may issue public statements or release information about the Supply or to any aspect arising in connection with funding of them, and general details of the Provider, the Supply does not constitute confidential information and the Department may disclose such details at its option.

## 14. CONFIDENTIAL INFORMATION

- 14.1 Where the Provider has access to any confidential RQ information (**Confidential Information**), the Provider must keep the Confidential Information confidential and not (except to the extent required by Law) disclose it to any person without the prior written consent of RQ.
- 14.2 The Provider must not, without prior written approval:
- (a) issue or provide any information, publication, document or article for publication concerning the Supply in any media;
  - (b) take photographs or make sketches of RQ property except for the purposes of performing the Supply.

## 15. INTELLECTUAL PROPERTY

### 15.1 Documents relating to the Services

- (a) Subject to each party retaining title to its Background IP, Intellectual Property Rights created by the Provider for or in connection with the Supply, including but not limited to any Documentary Deliverables, (**Provider's Documents**) vest in RQ on creation and RQ grants the Provider an irrevocable licence to use the Provider's Documents in connection with the Supply.
- (b) The Provider grants or shall procure the granting to RQ of a royalty-free and irrevocable licence to use the Provider's Background IP in connection with the Supply and the use of any Documentary Deliverables.
- (c) RQ may sub-license use of the Provider's Background IP in connection with the Supply without the consent of the Provider.
- (d) The Provider must do everything required to give RQ, or RQ's nominee, full legal ownership of the Intellectual Property Rights.

## 15.2 IP Indemnity

The Provider indemnifies RQ and its employees, contractors and agents from and against any and all claims alleging infringement of Intellectual Property Rights belonging to a third party in the Supply or any Documentary Deliverable, except to the extent the infringement relates solely to requirements or information specified by RQ.

## PART E: PAYMENT

### 16. FEE

- 16.1 RQ will pay the Provider the Fee for the Supply.
- 16.2 The Fee is inclusive of all costs incurred by the Provider in performing the Supply.
- 16.3 Signature of delivery documents or payment of the Fee by RQ is not evidence that the Supply complies with the requirements of the Contract or that RQ has accepted the Supply.
- 16.4 The Provider will at all times remain responsible for making, and indemnifies RQ against, all necessary deductions in respect of any personnel including any legislation concerning income, payroll or fringe benefits tax, superannuation, workers' compensation or leave entitlements.

### 17. INVOICING

- 17.1 Within 30 days of completion of the Supply, the Provider must provide to RQ a valid tax invoice which must include the following:
- (a) sufficient detail to enable RQ to verify the cost of the Supply (including a reference to the Purchase Order and the line item numbers on the Purchase Order); and
  - (b) supporting documentation as necessary or as RQ reasonably requires to enable RQ to verify that amounts claimed are properly due and payable.
- 17.2 RQ may withhold money due to the Provider if the Supply (or any part of the Supply) is Defective.
- 17.3 Subject to clauses 17.2, 17.4 and 17.5, RQ will pay all invoices that comply with clause 17.1 within 30 days of the date of the invoice. Payments by RQ will be made by electronic funds transfer to the bank account nominated by the Provider.
- 17.4 RQ may deduct or set-off from any amounts that RQ owes to the Provider under the Contract any amount required by Law to be deducted or any amounts that RQ (acting reasonably) determines are due and owing (or likely to become due and owing) by the Provider to RQ under the Contract or otherwise.
- 17.5 To the extent applicable to the Contract, RQ will respond to payment claims and pay the Provider in accordance with the *Queensland Building and Construction Commission Act 1991* (Qld) and the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

### 18. GOODS AND SERVICE TAX (GST)

- 18.1 All amounts stated are exclusive of GST, unless specified to be GST inclusive.
- 18.2 If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply (**GST exclusive consideration**) is increased by an amount equal to the GST payable (unless the consideration is stated to be GST-inclusive), provided a Tax Invoice has been issued for the supply.

## PART F: LIABILITY AND TERMINATION

### 19. INDEMNITIES AND INSURANCE

- 19.1 The Provider acknowledges that it is responsible for any loss or damage to RQ or any third party arising from any breach of the Contract, negligence of the Provider or its workers or Defects.
- 19.2 The Provider indemnifies RQ against all liabilities, costs (including legal costs), claims or actions brought against RQ or incurred by RQ, regardless of their form, arising out of or in connection with the Contract (including without limitation in respect of Defects) except to the extent that the liability, loss, cost, expense, claim, demand, judgment or action was caused by RQ or any of its officers, servants or agents.
- 19.3 The Provider must take out and maintain the following insurance:
- (a) workers' compensation insurance as required by applicable Laws and Safety Laws;
  - (b) public liability insurance with a limit of indemnity of not less than \$10,000,000;
  - (c) if the Supply relates to the provision of professional services, professional indemnity insurance with a limit of indemnity not less than \$10,000,000;
  - (d) if the Supply relates to the supply of Goods, product liability insurance with a limit of indemnity of not less than \$10,000,000;

- (e) any other insurance specified on the Purchase Order or required by RQ (acting reasonably), and must provide evidence or a copy of such insurance upon request.

**20. TERMINATION**

- 20.1 RQ may terminate the Contract by notice in writing to the Provider:
- (a) if the Provider fails to complete the Supply by the Delivery Date;
  - (b) if the Supply is Defective and the Provider fails to comply with a direction under clause 7 within 10 Business Days;
  - (c) if the Provider fails to remedy a breach of any other term or condition of the Contract within 5 Business Days of written request by RQ; and
  - (d) in its absolute discretion at any time and for any reason by giving the Provider 14 days written notice.
- 20.2 Immediately upon the termination of the Contract, the Provider will:
- (a) cease the Supply;
  - (b) unless otherwise directed by RQ, remove all of its property from Site; and
  - (c) provide to RQ all confidential information, any items in respect of which Intellectual Property Rights are held by RQ, and any property, including records or information, belonging to RQ or relating to the Supply.
- 20.3 If the Contract is terminated pursuant to clause 20.1(d), RQ will reimburse the Provider for its reasonable out of pocket expenses reasonably incurred as a direct consequence of the termination. The Provider must take all reasonable steps to minimise those expenses.

**PART G: MISCELLANEOUS****21. MISCELLANEOUS**

- 21.1 The Law applicable to the Contract is the Laws of the State of Queensland.
- 21.2 Any part of these Standard Supply Terms and Conditions that is held to be unlawful, unenforceable or void by a court of competent jurisdiction is severed and the remaining provisions will continue to operate.
- 21.3 A notice given under the Contract must be in writing addressed to the recipient at the address on the Purchase Order.
- 21.4 RQ may assign or novate all or any part of the Contract at any time, in its absolute discretion and the Provider must take all steps as may be reasonably required by RQ to effect any assignment or novation.
- 21.5 The Provider must not assign the Provider's rights, novate the Provider's rights or obligations or subcontract the Provider's obligations under this Agreement without the prior written consent of RQ, which consent must not be unreasonably withheld.
- 21.6 It is the intention of RQ and the Provider that their relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.