

# Holy Cross Services - Terms and Conditions of Contract

- 1 These general terms form the contract ('the Contract') between Holy Cross Services and the Supplier. The Contract does not include any other terms and conditions or other documents unless they have been expressly agreed in writing by Holy Cross Services and are referenced in or attached to this document. No prior correspondence, discussion, or other terms and conditions form part of the Contract unless stated in this document. Where any ambiguity or discrepancy exists between these terms and conditions and any attached document, these terms and conditions shall take precedence.
- 2 In providing the Goods and/or Services, the Supplier shall:
- 2.1 use a high degree of skill, care and diligence;
  - 2.2 make all reasonable inquiries of Holy Cross Services to ascertain its requirements;
  - 2.3 work in accordance with any directions, instructions, schedule, or budget provided by Holy Cross Services;
  - 2.4 warrant to deliver the Goods/Services free from defect and with no infringement on patent;
  - 2.5 communicate with Holy Cross Services by and through the Supplier's Representative, who shall have the authority to bind the Supplier on all matters related to the Goods/Services;
  - 2.6 submit to Holy Cross Services for its approval, a program of manufacture and/or delivery of the Goods/Services within 3 days of receipt of the Contract;
  - 2.7 deliver the Goods/Services in accordance with the approved program and by the Date for Delivery (Date for Completion). Holy Cross Services shall not be liable for the Payment (or part thereof) where this condition is not complied with;
  - 2.8 immediately notify Holy Cross Services if the Supplier is unable to comply with clauses 2.6 and 2.7 at any time. Notwithstanding any other remedy or right it may have, Holy Cross Services shall be entitled to:
    - require the Supplier to deliver to Holy Cross Services the Goods/Services and all associated parts in an incomplete, disassembled state. The Supplier shall pay the reasonable cost incurred by Holy Cross Services in completing and assembling the Goods/Services. Holy Cross Services shall pay the Supplier a portion of the Payment as reasonably represents the value of the Goods/Services so delivered by the Supplier provided that Holy Cross Services is entitled to withhold so much of the payment as it deems fit to set off against any damages or loss Holy Cross Services may have sustained arising out of the non-fulfilment of and/or the Supplier's obligations under the Contract; or
    - terminate the Contract without any payment to the Supplier or any other compensation and/or reclaim any payments made on account as a liquidated debt;
  - 2.9 deliver the Goods/Services to the place and in the manner specified by Holy Cross Services. Risk in the Goods/Services shall not pass to Holy Cross Services until they are delivered to Holy Cross Services in accordance with its directions. The Supplier shall insure and adequately store and protect the Goods/Services until they are delivered to Holy Cross Services. Once delivered, the Goods/Services shall become the property of Holy Cross Services with no reservation of ownership on the part of the Supplier unless Holy Cross Services agrees otherwise in writing;
  - 2.10 if applicable, render invoices for payments due from Holy Cross Services at monthly intervals (unless otherwise agreed herein). The Supplier will provide reasonable records setting out the rates, charges and expenses incurred to support each invoice if so required by Holy Cross Services;
  - 2.11 notify Holy Cross Services in writing in advance if the Supplier considers that additional Goods/Services which constitute a Variation are required and obtain Holy Cross Services approval in writing prior to commencing the additional Goods/Services. If a dispute on a Variation occurs, the Supplier shall still perform the Goods/Services as if no dispute exists;
  - 2.12 keep confidential any information disclosed or documents provided by Holy Cross Services to the Supplier or of which the Supplier becomes aware in respect of the project/department for which the Goods/Services are supplied, unless such disclosure is approved or agreed in writing by Holy Cross Services. The Supplier shall return all such information or documents to Holy Cross Services immediately after delivery of all the Goods/Services or upon request by Holy Cross Services;
  - 2.13 hereby assign the copyright and all intellectual property rights (unless otherwise agreed herein) in all documents and material it produces to Holy Cross Services;
  - 2.14 comply with all relevant laws and statutory requirements and (unless otherwise agreed in writing) obtain and maintain adequate worker related public and product liability, professional indemnity and motor vehicle insurances. Holy Cross Services shall be endorsed as an insured on the Supplier's public and product liability insurance policies, which policies shall contain a waiver of subrogation clause and a requirement that the insurer give Holy Cross Services 30 days prior written notice of any intention to cancel such policy;
  - 2.15 immediately upon request by Holy Cross Services re-perform or replace at the Supplier's own cost or pay the cost of re-performance by others of any part of the Goods/Services that is not in accordance with the requirements of the Contract;
  - 2.16 indemnify Holy Cross Services against any loss or damage it may sustain either directly or indirectly, including consequential loss and any action by a third party against Holy Cross Services, as a result of the provision of the Goods/Services by the Supplier;
  - 2.17 provide Holy Cross Services at any time and for any reason with access to an inspection of all records and documents kept in relation to the provision of Goods/Services;
  - 2.18 return to Holy Cross Services any materials issued to the Supplier 'free of charge'. Such materials remain the property of Holy Cross Services. The Supplier shall keep the materials in good condition and order and shall replace any such material which is damaged whilst in its possession. The supplier shall keep such materials in its possession and only use them in conjunction with the Goods/Services.

- 3 In requesting the Goods/Services, Holy Cross Services agrees to:
- 3.1 provide to the Supplier instructions and directions in respect of the Goods/Services;
  - 3.2 inform the Supplier of any changes to its requirements or any Variations, and respond to requests for information or directions;
  - 3.3 obtain all necessary approvals, access and certifications other than those specified within this Contract;
  - 3.4 communicate with the Supplier by and through the Supply Manager who shall have the authority to bind Holy Cross Services on all matters related to the Goods/Services;
  - 3.5 make payments, including any additional payment due to Variations, by paying progressive sums representing work properly and fully completed on or before the 30 days EOM after the date of receipt of the Supplier's invoice provided that Holy Cross Services has obtained proof of delivery to the satisfaction of the Supply Manager;
  - 3.6 comply with all relevant laws and statutory requirements and (unless otherwise agreed in writing) obtain and maintain worker related, public liability and motor vehicle insurances;
    - 3.6.1 an extension of the Date for Completion of the Goods/Services equivalent to the duration of any delay to the Goods/Services caused by any matter or event that is within Holy Cross Services direct control.
- 4 Unless otherwise agreed, packages, packing material and packing charges are included in the Payment and no additional payment shall be made. The Supplier shall pack the Goods/Services so as to ensure they are delivered in an undamaged condition. Holy Cross Services shall not be obliged to accept delivery of any damaged Goods/Services. Packing material shall be retained or returned by Holy Cross Services in its discretion.
- 5 The Goods/Services and the Payment may be varied by written direction of Holy Cross Services to the Supplier requiring:
- a) an increase, decrease or omission of any part of the Goods/Services;
  - b) a change in the character, quality, timing or sequence of the Goods/Services;
  - c) additional Goods/Services; or
  - d) a suspension of the work involving all or part of the Goods/Services.
- Whenever any of the events set out above (collectively and individually called 'Variations') occur, the Payment and the Date for completion of The Goods/Services may be adjusted by Holy Cross Services to properly reflect the cost and time for the varied Goods/Services.
- 6 Holy Cross Services shall not be liable to the Supplier for:
- 6.1 any changes, alterations or additions to the Goods/Services made by the Supplier without the express prior written approval of Holy Cross Services;
  - 6.2 any Goods/services performed not in accordance with the Contract;
  - 6.3 the accuracy of information or documents provided to the Supplier (unless otherwise agreed in writing);
  - 6.4 delay costs, loss of interest, earnings, profit, or opportunity; or any other special indirect or consequential damages. The Supplier expressly indemnifies and holds harmless Holy Cross Services, its Board, Executive, Directors, staff, officers, contractors or employees from any such claim or demand.
- In addition to the limitations set out above, the liability of Holy Cross Services to the Supplier arising out of the Contract or the Goods/Services including liability pursuant to the *Trade Practices Act 1974* (Cwlth), for breach of contract or negligence, or howsoever arising shall not exceed \$2000.
- 7 The Supplier may cancel the Contract only with Holy Cross Services consent and only on the basis that the Supplier meets all loss, damage, cost and expense, including loss of profits and any costs associated with obtaining replacement Goods/Services incurred by Holy Cross Services as a result of cancellation.
- 8 Holy Cross Services may cancel the Contract at any time at its absolute discretion. If Holy Cross Services so acts, it shall pay the Supplier's reasonable costs incurred directly as a result of the termination and such payment shall be the Supplier's sole remedy. Notwithstanding the foregoing, the Supplier shall not be entitled to any payment if it has breached any of the terms and conditions of the Contract and has not remedied such a breach within 3 days of receipt of a written notice from Holy Cross Services requiring it to remedy that breach, or if it has evinced an intention not to be bound by the Contract.
- 9 Holy Cross Services shall not be taken to have agreed to any amendment or waiver of any provision of the terms and conditions of the Contract unless so agreed in writing by Holy Cross Services. No terms and conditions referred by the Supplier after the date of this document shall form part of the Contract unless expressly agreed to in writing by Holy Cross Services.
- 10 The Contract and the Goods/Services shall not be transferred, assigned or subcontracted by the Supplier without Holy Cross Services consent. Notwithstanding such consent, the Supplier shall remain fully responsible for all Goods/Services.
- 11 In addition to any other method of service permitted by law, notices shall be deemed to be properly served if sent to the recipient by prepaid mail, personal delivery or facsimile.
- 12 The Contract shall be governed by the laws of the State of Queensland, Australia