

## **Schedule 1 - Customer Contract Terms**

### **Office Furniture Prequalification Scheme**

#### **Background**

The Supplier is a member of the Office Furniture Prequalification Scheme SCM0771 (the "Scheme") and has agreed to supply the Goods and/or incidental Services (the "Goods") listed in the Statement of Requirements attached to the Scheme and incidental services on receiving an order from a Customer, as either a:

1. Base Registered Supplier; or
2. Advanced Registered Supplier.

The Customer requires the provision of Goods from the Supplier set out in the Order it has given to the Supplier.

The Supplier has fully informed itself of all aspects of the Customer's requirements set out in the Order and has responded to the Customer representing that it is able to fill the Order.

#### **C.C.1 Relationship of the Parties**

Neither party is the employee, agent or partner of the other party. Neither party, by virtue of this Customer Contract, is authorised to bind or represent the other party.

In all dealings related to the Customer Contract, the parties agree to:

- (a) communicate openly with each other and co-operate in achieving the contractual objectives; and
- (b) act honestly and ethically;
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and others and workplaces.

#### **C.C.2 Entire Agreement**

The Customer Contract made under the Scheme represents the Parties' entire agreement in relation to the subject matter. Anything that occurred before the making of this Customer Contract shall be disregarded (unless incorporated into the Customer Contract in writing).

However, the Supplier represents that the information it provided to be a member of the Scheme and any information made when applying for any further regions or Categories were correct when made and remain correct.

No agreement or understanding varying or extending the Customer Contract is legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay does not operate to prejudice those rights.

#### **C.C.3 Precedence of Documents**

The Customer Contract is comprised of:

- (a) The Scheme Conditions;
- (b) Additional Contract Terms agreed between the Customer and the Supplier (if any); and
- (c) These Customer Contract Terms.

If there is ambiguity or inconsistency between documents comprising the Customer Contract, the document appearing higher in the list will have precedence.

#### **C.C.4 Survival**

Clauses C.C.9 (Liability of the Supplier), C.C.24 (Compliance with Laws), C.C.25 (Compliance with the NSW Government: Small and Medium Enterprise Policy Framework) and C.C.26 (Compliance with Policies) survive termination or expiry of the Customer Contract.

### **C.C.5 Governing Law**

The laws of NSW apply to the Customer Contract.

### **C.C.6 Conflict of Interest**

The Supplier has either declared any real or perceived conflicts of interest that might arise or states that no conflicts of interest exist or are anticipated relevant to the performance of its obligations under the Customer Contract.

If any conflict or potential conflict arises during the Customer Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict.

### **C.C.7 Assignment**

The Supplier may not assign any rights under the Customer Contract without the Customer's written consent. To seek consent, the Supplier must provide the Scheme Authority with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

### **C.C.8 Subcontracting**

Subcontracting any part of, or the entire Supplier's obligations under the Customer Contract, will not relieve the Supplier of any of its obligations under the Customer Contract.

The Supplier must make available to the Customer the details of all subcontractors engaged to provide the Goods under the Customer Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

To be clear, this includes where delivery or assembly services are provided by third parties.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Customer Contract, imposes on the subcontractor the same obligations that the Supplier has under the Customer Contract (including this requirement in relation to subcontracts).

### **C.C.9 Liability of the Supplier**

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any breach of the Supplier's obligations or representations under the Customer Contract except for "consequential loss."

Consequential loss includes means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the Customer Contract, as the probable result of the relevant breach; and includes loss of profit or loss of anticipated savings. Consequential loss does not include additional internal administrative and management costs and expenses, expenditure or fees rendered unnecessary, costs of procuring replacement Goods, cost of repairing Goods; or legal fees on a full indemnity basis.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier will maintain the following broadform liability insurance policies for the Contract:

- Base Registered Supplier: (\$10 million per occurrence) or (\$10 million in the aggregate per annum); or
- Advanced Registered Supplier: (\$20 million per occurrence) or (\$20 million in the aggregate per annum).

The Supplier must provide the Customer with proof when reasonably requested.

### **C.C.10 Delivery and Acceptance**

The Supplier must provide the Goods as specified in the Customer's Order and meet any requirements and standard specified in the Scheme and the Order including delivery place and time.

The Supplier represents and warrants that the Goods:

- (a) will meet the specifications and all other applicable requirements under the Customer Contract, including Schedule 6 – Statement of Requirements and its Appendices of the Scheme Conditions;
- (b) have been certified by an accredited testing laboratory on relevant Australian, British or Business and Institutional Furniture Manufacturers Association standards as required in the Schedule 6 – Statement of Requirements and its Appendices of the Scheme Conditions;
- (c) have been manufactured and assembled in factories with ISO 9001 Quality Management Systems certification to manufacture such Products; and
- (d) are of good quality, fit for purpose and free from defects and omissions in material, design or workmanship.

The Supplier represents and warrants that the services provided under the Customer Contract in connection with the supply of the Goods required in the Order:

- (a) will be performed with due care and skill and in accordance with industry best practice;
- (b) will meet or exceed the service levels;
- (c) will be used with materials:
  - i. that are fit for the purpose for which they are supplied and used; and
  - ii. will comply with applicable specifications or requirements.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods specified in the Order and advise the Customer when it will be able to so.

Any Goods must be delivered free from any security interest. Unless otherwise stated, Goods must be new and unused. Any services that are provided in connection with the Goods must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the Order.

The Customer may reject the Goods and/or services within 14 calendar days after delivery if the Goods and/or services do not comply with the requirements of the Contract. If the Customer does not notify the Supplier of rejection within 14 calendar days, the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. The Title on the Goods transfers to the Customer only on acceptance.

Acceptance of delivery into store shall not be taken to be acknowledgement by the Customer that the Goods meet the requirements in the Order and shall not prejudice the right of the Customer to reject any products not in accordance with contract requirements.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

- (a) The Supplier must provide the product certification consistent with the Standards specified under Schedule 6 – Statement of Requirements and its Appendices under Scheme Conditions, together with the Goods and Documentation.
- (b) The Supplier must provide the relevant ISO certification(s) consistent with the quality management system requirements specified under Schedule 6 – Statement of Requirements under Scheme Conditions, together with the Goods and Documentation.
- (c) The Supplier must deliver the Goods and Documentation in accordance with the Delivery and Installation Conditions specified in Schedule 6 – Statement of Requirements under Scheme Conditions.

### **C.C.11 Warranty repairs**

If the Goods are or become defective in any way during the warranty period referred to in the Statement of Requirements, then, at the Customer's absolute discretion:

- (a) the Supplier must immediately replace or repair the Goods at the Supplier's cost; or
- (b) the Customer may return the Goods to the Supplier and may terminate the Customer Contract in respect of identical Goods which have not yet been delivered. The Supplier must fully refund

any amounts paid for the Goods that the Customer does not retain.

If the defective Goods are FLF Products:

- (a) identical Goods at NSW public schools may be returned to the Supplier; and
- (b) Orders for NSW public schools for identical Goods that have not yet been delivered may also be cancelled.

The Supplier must arrange a full refund of any amounts paid for Goods returned and for any cancelled Orders.

#### **C.C.12 Facilities to repair**

The Supplier agrees to ensure that facilities for the repair of the Goods are available for the Warranty Period.

#### **C.C.13 Title and risk**

The parties acknowledge and agree that:

- (a) Goods becomes the property of the Customer on acceptance of the Goods to the Delivery Address;
- (b) the risk of loss or damage to the Goods passes to the Customer on delivery of the Goods to the Delivery Address in accordance with clause C.C.10 (Delivery and Acceptance); and
- (c) if any Goods are re-taken by the Supplier, the risk of loss or damage to the Goods passes back to the Supplier upon removal from the Customer's premises.

#### **C.C.14 Termination for Cause**

The Customer may terminate the Customer Contract in whole or in part if:

- (a) the Supplier does not deliver the Goods and/or services as specified in the Customer Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Order;
- (b) the Customer rejects the Goods and/or services in accordance with clause C.C.10 (Delivery and Acceptance) and the Goods and/or services are not remedied as required by the notice of rejection;
- (c) the Supplier breaches the Customer Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a breach of the Customer Contract which is capable of remediation within the period specified by the Customer in a notice of default issued to the Supplier; or
- (e) the Supplier:
  - i. is unable to pay all its debts when they become due;
  - ii. if incorporated - has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment under the Corporations Act 2001 (Cth) appointed to it; or
  - iii. if an individual becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966*.

Termination of a Contract under this clause does not change the Customer's obligation to pay any correctly rendered invoice.

#### **C.C.15 Termination where Supplier removed from the Scheme**

The Supplier agrees to fulfil any Customer Contracts made prior to the end of the Supplier membership under the Scheme.

The Customer may terminate the Customer Contract in whole or in part if the Supplier is suspended or removed from the Scheme by notice in writing to the Customer.

#### **C.C.16 Termination or Reduction for Convenience**

In addition to any other rights either Party has under the Customer Contract, the Customer acting in good faith, may at any time terminate the Customer Contract or reduce the scope or quantity of the Goods by providing a Notice to the other Party.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

The Customer will pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Customer Contract not performed.

#### **C.C.17 Disengagement Period**

For 6 months following the expiry or termination of a Customer Contract (or part thereof), the Supplier will provide such assistance reasonably requested by the Customer for the supply of the Goods (as applicable) to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer, including:

- (a) acting in good faith to the Customer and providing reasonable co-operation with a third party supplier nominated by the Customer; and
- (b) providing the Customer data, information and materials that may be required to enable transacting with a new provider as requested by the Customer.

#### **C.C.18 Transition in**

The Supplier must act in good faith, and do all things necessary, to assume the provision of the Goods and services as required by the Customer Contract, including ensuring that it complies with the requirements of, and dates specified in, any agreed transition in plan.

#### **C.C.19 Dispute Resolution**

For any dispute arising under the Customer Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract manager claiming that there is a dispute will give the other Contract manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract manager within five business days, each Contract manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) if the proposed solution is not accepted by the more senior representatives within five business days, each Contract manager will refer the dispute to the Scheme Authority who will appoint an officer (who has not had prior direct involvement in the dispute) to consider the dispute and seek to settle the dispute by direct negotiation;
- (e) failing settlement within a further ten business days, the Customer will, without delay, refer the dispute to a mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within 30 business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Customer Contract.

This procedure for dispute resolution does not apply to action relating to Termination for Cause under clause C.C.14 or to legal proceedings for urgent interlocutory relief.

### **C.C.20 Specified Personnel**

The Supplier must ensure that the Specified Personnel (if any) set out in the order, perform that part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

### **C.C.21 Licences Approvals and Warranties**

The Supplier must obtain and maintain all licenses or other approvals required for the lawful provision of the Goods and arrange any necessary customs entry for any Goods.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of material consents in writing, to the use by the Customer of the material, even if the use may otherwise be an infringement of their Moral Rights.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with the warranties required by the Statement of Requirements attached to the Scheme or, if none are required in that document, all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

### **C.C.22 Invoice**

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a correctly rendered invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is not evidence that the obligations under the Contract are accepted, evidence of the value of the obligations performed by the Supplier, or an admission of liability, but is payment on account only.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any correctly rendered invoice.

### **C.C.23 Payment**

The Supplier agrees to accept any amount due under the Customer Contract to be paid by credit/debit or virtual card by the Customer.

The Customer must pay the amount of a correctly rendered invoice to the Supplier within 30 calendar days after receiving it, or if this day is not a business day, on the next business day. Where payment is not made within the period specified in clause CC.23, the Customer must pay simple interest on the unpaid amount calculated daily from the day after payment was due up to and including the day that payment is made, where interest exceeds AUD \$20. The interest rate is determined under section 22 of the *Taxation Administration Act 1996*. The appropriate interest rate is available from the NSW Office of State Revenue website at [www.osr.nsw.gov.au/taxes/other/taa/rates/](http://www.osr.nsw.gov.au/taxes/other/taa/rates/).

### **C.C.24 Compliance with Laws**

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Customer Contract is performed.

To be clear, the jurisdiction is New South Wales and Australia for any Customer Contracts with the Department of Education for Flexible Learning Furniture.

### **C.C.25 Compliance with the NSW Government: Small and Medium Enterprise Policy Framework**

To the extent that the Small and Medium Enterprise Policy Framework applies to the provision of goods or services under the Customer Contract, the Supplier must comply with the requirements of the Small and Medium Enterprise Policy Framework as follows:

- (a) Depending on the threshold value of the procurement to be made via competitive quotes, the

Supplier acknowledges that it may be required to complete a Small and Medium Enterprises Participation Plan (SMEPP);

- (b) The Supplier acknowledges that, where a SMEPP is required in competitive quotes, reliance will be placed on SMEPP in the evaluation of the quotation submitted by the Supplier and by the Customer entering into any agreement with the Supplier;
- (c) The Supplier agrees to comply with the requirements and commitments provided for any future SMEPP tendered by the Supplier and to take all steps reasonably required to enable the Customer to monitor compliance by the Supplier with any future SMEPP; and
- (d) The Supplier and the Customer agree that the Customer may establish mechanisms to monitor compliance by the Supplier with the requirements and its commitments under any future SMEPP. The Supplier and the Customer agree that non-compliance by the Supplier with any future SMEPP commitments will entitle the Customer to terminate the Customer Contract for cause. Further, the Supplier agrees that the Customer may take into consideration non-compliance by the Supplier with any tendered SMEPP when evaluating tenders submitted by the Supplier in the future for other agreements.

### **C.C.26 Compliance with Policies**

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all laws and policies relevant to the Goods.

This general obligation is not limited by the following clauses:

- (a) **Access to Supplier's Premises:** The Supplier agrees to give the Customer, or its nominee, all assistance reasonably requested for any purpose associated with the Contract or any review of the Supplier's performance under the Customer Contract. This will include, but is not limited to, access to premises, material, records and personnel associated with the Goods and the Contract.
- (b) **Security and Safety:** When accessing any Customer premises, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer. Without limiting the Supplier's obligations to comply with all applicable laws, the Scheme Authority or Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors engaged in the performance of this Customer Contract or any Order to comply with any Working with Children Check requirements and comply with the *Child Protection (Working with Children) Act 2012* (NSW) and all related laws concerning child protection. This will be at the Suppliers cost.
- (c) **Confidential Information:** The Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Customer Contract or the Goods, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information. If, at any time, the Customer requires, the Supplier to arrange for its employees, agents or subcontractors to give a written under-taking relating to the nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Customer Contract confidential to the extent it has agreed in writing to keep specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information.

- (d) **Privacy and Personal Information Protection Act NSW Requirements:** In providing the Goods, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the NSW Privacy and Personal Information Protection Act and not to do anything, which if done by the Customer would breach that Act.

The Supplier will immediately notify the Customer if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause C.C.26(d).

- (e) **Government Information (Public Access) Act ("GIPA Act") Requirements:** The Supplier acknowledges that the Customer may be required to publish certain information concerning the Customer Contract in accordance with ss 27 – 35 of the GIPA Act. If the Supplier reasonably believes that any part of the Customer Contract contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier

should immediately advise the Customer in writing, identifying the provisions and providing reasons so that the Customer may consider seeking to exempt those provisions from publication. In addition, where the Customer has received GIPA Act request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract and is required to be provided under the GIPA Act, the Supplier must promptly provide the document to the Customer, on request, at no cost.

- (f) **Record Keeping:** The Supplier must maintain proper business and accounting records relating to the supply of the Goods and allow the Customer or its authorised representative to inspect those records when requested. The Supplier will provide any assistance and information required should the Principal wish to conduct an audit of the Supplier's accounts and records under the Scheme.

The Supplier must not transfer, or permit the transfer of, custody or the ownership of any state records record (as defined in the *State Records Act*) without the prior written consent of the Customer. All state records must be returned to the Customer at the conclusion of the Customer Contract.

The Supplier must provide to the Scheme Authority the reports according to the Reporting Template under the Scheme.

### **C.C.27 Definitions**

The definitions in Clause 32 of the Scheme Conditions apply to these Customer Contract Terms.