

1. INTERPRETATION .....	2
2. FORMATION OF CONTRACT .....	2
3. PROVISION OF SUPPLIES, TERM & OPTION .....	2
4. PAYMENT .....	3
5. SUB-CONTRACTING, ASSIGNMENT AND NOVATION .....	3
6. SPECIFIED PERSONNEL.....	3
7. ORDERING ARRANGEMENTS .....	3
8. ACCESS TO CONTRACTOR'S PREMISES.....	4
9. SAFEGUARDING OF ANSTO MATERIAL .....	4
10. OWNERSHIP OF SUPPLIES .....	4
11. WARRANTIES AND CONDITIONS .....	4
12. INSURANCE .....	4
13. INDEMNITY .....	4
14. CONDUCT AT ANSTO PREMISES .....	4
15. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY .....	5
16. DEFAULT .....	5
17. TERMINATION AND REDUCTION FOR CONVENIENCE .....	5
18. RECOVERY OF MONIES.....	5
19. WAIVER .....	5
20. LAW GOVERNING THE CONTRACT.....	6
21. NOTICES.....	6
22. CO-OPERATIVE AGENCY PROCUREMENT .....	6
23. WITHHOLDING TAX .....	6
24. SPECIAL CONDITIONS.....	6
25. INTERNATIONAL SUPPLIES .....	6
26. CONFIDENTIALITY AND PRIVACY .....	6
27. DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (DEEWR) .....	7
28. DISPUTE RESOLUTION.....	8
29. COMPLIANCE WITH LAW AND POLICY .....	8
30. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL .....	9
31. INTELLECTUAL PROPERTY RIGHTS.....	9
32. CHECK/REVIEW/APPROVE/CONFIRM/AGREE .....	9
33. PACKAGING .....	9
34. DELIVERY .....	9
35. PUBLICITY.....	10

## **1. INTERPRETATION**

- 1.1. In this Contract and in all other documents associated with the Offer for the provision of Supplies to ANSTO, the following words will have the meanings assigned to them unless the contrary intention appears:

**"ANSTO Representative"** means the person specified by ANSTO or any authorised delegate as notified from time to time.

**"ANSTO Material"** means any material provided by ANSTO to the Contractor for the purposes of this Contract or derived at any time from the material.

**"Contract"** means this agreement between ANSTO and the Contractor, including all special conditions, specifications and other documents incorporated with and forming part of this Contract.

**"Contract Material"** means all Supplies:

- (a) created for the purposes of this Contract;
- (b) provided or required to be provided to ANSTO as part of the Supplies; or
- (c) derived at any time from the Supplies referred to in paragraphs (a) or (b).

**"Contractor"** means the person who by the Contract undertakes to provide the Supplies required by ANSTO and includes the officers, employees, agents, subcontractors, executors or administrators, successors and assigns of the Contractor.

**"Contractor's Representative"** means the person notified in writing to the ANSTO Representative.

**"Correct Invoice"** means an invoice rendered by the Contractor for goods and/or services supplied in accordance with the Contract or within the quoted price and terms for additional services, which is correct in relation to description, quantity and price.

**"Intellectual Property"** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**"Invitation Documents"** includes these Conditions of Contract, specifications, and drawings and/or written statement associated with any of these documents, and the completed form of Offer.

**"Proportionate Liability Legislation"** means:

- (a) section 82(1B) and Part VIA of the Trade Practices Act 1974 (Cth);
  - (b) Part 4 of the Civil Liability Act 2002 (NSW); and
  - (c) any similar applicable laws relating to proportionate liability;
- in each case which are capable of exclusion.

**"Purchase Order (PO)"** means a notice issued by ANSTO accepting, in accordance with the Invitation Documents, the Contractor's Offer.

**"Notice of Acceptance"** see Purchase Order.

**"Offer"** means the offer signed by the Contractor to enter into a contract pursuant to the Invitation Documents or any tender, quotation, or bid to provide the Supplies for a price and any other offer where goods and services are to be supplied for a price.

**"Order"** see Purchase Order.

**"Period Contract"** means an agreement for the supply and delivery of such number or quantity of Supplies as may be ordered during the specified period and not for any definite number or quantity of Supplies.

**"Specifications"** mean the specifications, any special conditions and any variations in writing as may be agreed between ANSTO and the Contractor.

**"Specified Personnel"** means the personnel as agreed to be the personnel required to perform all or part of the work constituting the Supplies.

**"Supplies"** mean goods and/or services that are to be furnished or performed under the Contract and includes materials, information and the subject matter of any category of intellectual property rights.

## **2. FORMATION OF CONTRACT**

- 2.1. The Contract shall be deemed to have been made when ANSTO by its relevant officer has issued the Purchase Order (PO). The PO will specify if this is a Period Contract and confirm the term.

## **3. PROVISION OF SUPPLIES, TERM & OPTION**

- 3.1. The Contractor must perform its obligations, including provision of the Supplies in accordance with the Specification and any Order issued during the term of this Contract, liaise with the ANSTO Representative and

provide any information and comply with any reasonable request made by the ANSTO Representative.

#### **4. PAYMENT**

- 4.1. ANSTO agrees to pay the contract price subject to clause 4.2 and the terms of any Order.
- 4.2. Unless otherwise agreed payment will not be made prior to the receipt by ANSTO of the specified goods and or services required to be supplied under the PO and a correct Invoice.
- 4.3. The Contractor must forward correctly addressed invoices to ANSTO by including the following information:
- (a) PO number;
  - (b) Invoice reference number of Contractor;
  - (c) Name of the designated ANSTO officer;

and must be accompanied by any essential supporting documents to the reasonable satisfaction of ANSTO.

- 4.4. The due date for payment by ANSTO is 30 days after delivery of a correctly rendered invoice (subject to the provisions of Cl. 4.2) unless otherwise agreed in writing. ANSTO reserves the right to specify from time to time the manner in which invoices are to be lodged, including electronically.
- 4.5. ANSTO will be entitled, in addition to any other right it may have, to delay payment or any instalment of the contract price until the Contractor has completed to the satisfaction of ANSTO that part of the Supplies to which the payment relates.
- 4.6. **Advance Payments:** It is ANSTO policy not to make any Advanced Payments. However in certain circumstances ANSTO at its sole discretion may agree to Advanced Payments subject to the Contractors agreement to provide the following;
- (a) The Contractor provides an appropriate discount, and
  - (b) The Contractor must provide security, at the Contractors expense, in the form of an Unconditional Undertaking from a recognised Bank. It is preferred that the security be provided in the form of a Bank Guarantee issued in ANSTO's favour for the full amount of the Advanced Payment.

ANSTO will only make advanced payments upon receipt of the Bank Guarantee, which will be retained until the specified goods and or services have been delivered and accepted in accordance with the provisions of the PO.

#### **4.7. Prices Subject to Foreign Exchange Variation**

- 4.7.1. Where it has been agreed that all or part of the Goods and/or Services offered are subject to exchange rate variation, such variation will be calculated in accordance with the methodology stated in the following Clause 4.8.

#### **4.8. Settlement of Exchange Rate Adjustments**

- 4.8.1. Unless otherwise agreed exchange rate adjustments must be based on the exchange rate applicable on the date that the Australian Contractor settles their overseas account, calculated as follows:

$\frac{\text{Quoted Price} \times \% \times \text{Quoted Exchange Rate}^{**}}{\text{Exchange Rate at Date of Settlement}} - \text{Quoted Price} \times \% = \text{Exchange Rate Adjustment}$
--

\* Is the % subject to exchange rate variation, as specified in the Contractors original tender submission.

\*\* Is the Exchange Rate quoted in the Contractors original tender submission.

- 4.8.2. In claiming any exchange rate adjustments the Contractor must provide evidence of the following:
- (a) the date that the Contractor settled their overseas account, and
  - (b) confirmation that the claim is based on the application of the above formula.
- 4.8.3. Failure to supply this evidence may result in payments being delayed, in which case ANSTO will not accept, or take responsibility for, any delay claims.

#### **5. SUB-CONTRACTING, ASSIGNMENT AND NOVATION**

- 5.1. The Contractor must not assign or sub-contract its rights and obligations or consult with any person for the purposes of novation of the Contract without prior written approval from ANSTO. ANSTO may impose any terms and conditions it considers appropriate when giving its approval.

#### **6. SPECIFIED PERSONNEL**

- 6.1. The Contractor agrees that any Specified Personnel stipulated in the PO or Specification will perform work in relation to the Supplies in accordance with this Contract. If Specified Personnel are unable to perform the work, the Contractor must notify ANSTO immediately and, if necessary, provide at no additional cost replacement personnel acceptable to ANSTO as soon as possible.

#### **7. ORDERING ARRANGEMENTS**

- 7.1. **General:** The Contractor must comply with the terms of any Order issued from time to time for Supplies under

the Contract in relation to packing, delivery, testing and acceptance or as otherwise notified from time to time by the ANSTO Representative.

7.2. The Supplies will not be deemed to be accepted until ANSTO has issued a notice accepting the goods and/or services. ANSTO must be satisfied that the Supplies and any accessories have been delivered to ANSTO and the Supplies comply with and conform to this Contract.

7.3. If the Supplies are rejected by ANSTO, the Contractor, at its expense, must arrange to remove the rejected Supplies within seven (7) days of notification and provide Supplies to ANSTO that comply with the requirements of the Contract.

7.4. **Period Contracts:** Supplies under a Period Contract may be ordered from time to time.

7.4.1. Orders in writing and issued by the ANSTO Representative will be deemed to be accepted by the Contractor on delivery in accordance with Clause 21 or as otherwise arranged from time to time by agreement.

7.4.2. Each separate Order placed will be subject to the conditions in the Period Contract.

7.4.3. If ANSTO gives the Contractor not less than twenty (20) working days written notice before the termination date of this Contract that it requires the provision of the Supplies for a further term as set out in the PO, the Contractor must enter into an agreement with ANSTO for the further term and the provisions of that agreement shall be the same as for this Contract.

## **8. ACCESS TO CONTRACTOR'S PREMISES**

8.1. The Contractor must give to the ANSTO Representative or to any persons authorised in writing by the ANSTO Representative, reasonable access to premises occupied by the Contractor where any work in relation to the Supplies is being performed, and permit those persons to inspect material relevant to the Supplies.

## **9. SAFEGUARDING OF ANSTO MATERIAL**

9.1. The Contractor is responsible for the proper care, use and safe return on demand by ANSTO of all ANSTO Material and must comply with any directions from the ANSTO Representative in relation to ANSTO Material.

## **10. OWNERSHIP OF SUPPLIES**

10.1. Subject to Clause 7 (Ordering Arrangements), ownership of any Supplies vests on creation in ANSTO and the Contractor warrants ANSTO has the right to use the Supplies. The Contractor agrees to take any action or execute any documents necessary to give effect to this clause.

## **11. WARRANTIES AND CONDITIONS**

11.1. The Contractor must provide such specific warranties as are required by the Specifications.

11.2. The Contractor warrants against any failure of Supplies due to quality of components, workmanship, factory assembly or other causes for the warranty period specified in the Specification or Notice of Acceptance which must be replaced free of charge by the Contractor.

11.3. The Contractor warrants that good title is given, that the Supplies correspond with their description, are of merchantable quality and are fit for the purpose for which such Supplies are normally acquired or for any particular purpose specified in the Invitation Documents and are free from defects in materials and workmanship, and meet any relevant Occupational Health and Safety requirements.

11.4. The Contractor warrants that all Services which are necessary for the proper performance of the Contract shall be provided with all reasonable skill, care and diligence and by the time specified in the Contract.

11.5. No statutory terms and conditions applicable to this Contract are excluded or limited.

## **12. INSURANCE**

12.1. The Contractor agrees, for so long as any obligations remain in connection with this Contract to effect and maintain the following insurance (at its own expense) and upon request, provide proof of insurance acceptable to ANSTO:

(a) workers' compensation insurance for an amount required by the relevant State or Territory legislation; and

(b) public liability insurance for an amount of not less than \$10,000,000.00;

12.2. The Contractor shall also provide product liability insurance and/or professional indemnity insurance if required by ANSTO and for the amount specified by ANSTO.

## **13. INDEMNITY**

13.1. The Contractor must indemnify ANSTO (including its officers, employees and agents) from and against any liability, loss or expense incurred by ANSTO or loss or damage to property of ANSTO arising from any act or omission by the Contractor, its officers, employees, agents or subcontractors in connection with this Contract or any breach by the Contractor of its obligations or warranties under this Contract irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense. This clause will survive the expiration or termination of this Contract.

## **14. CONDUCT AT ANSTO PREMISES**

14.1. The Contractor, when using ANSTO's premises or facilities for the purposes of this Contract, must comply with

all reasonable directions and procedures relating to occupational health, environmental protection, safety and security in operation at those premises or in regard to those facilities including but not limited to the following:

- 14.2. **Site Security:** The Contractor shall comply with all ANSTO standard security requirements. ANSTO has site specific security constraints that the Contractor shall give due consideration to in the preparation of their offer, in particular relation to costs and project program. The Contractor should note that the processing of security forms for each individual is undertaken by a Commonwealth Agency outside ANSTO, and a period of Six weeks should be allowed for each person to be processed, following the receipt of the necessary completed documentation.
- 14.3. **Photo Passes:** are required for all Contractors' staff attending site. Security clearance passes are only issued on Mondays, Tuesdays and Thursdays between 9am and 11am.
- 14.3.1. An acceptable form of photographic identification is to be submitted at the time of Site entry.
- 14.3.2. In order to ensure that Security and Safety communication requirements are met, it is recommended that all individuals requiring site access have accepted English language skills.
- 14.3.3. The Contractor shall ensure that arrangements are made for all personnel required to be on the project to have the appropriate security clearance and pass issued prior to being required on site. ANSTO will not accept any claims for Extensions of Time or associated costs from delays resulting from the Contractor not having obtained appropriate and timely security clearance. It is possible that some personnel may not receive clearance to enter the site. In such cases no reason or explanation will be given and no negotiation is permitted.
- 14.4. **Site Safety Induction Course:** All Contractors and their representatives are required to attend and successfully complete an ANSTO Site Safety Induction Course [duration approximately one-hour] prior to commencement of work.
- 14.5. Passes will not be issued prior to completion of the course.
- 14.6. ANSTO is a smoke-free work-place

#### **15. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 15.1. The Contractor is not by virtue of this Contract and must not represent itself, and will use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of ANSTO.

#### **16. DEFAULT**

- 16.1. If the Contractor fails to deliver any part of, or provide, the Supplies as and when specified, or fails to comply with each and every condition of the Contract, ANSTO may by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- 16.2. If the Contractor becomes bankrupt, enters into a scheme of arrangement with creditors, goes into liquidation or a receiver is appointed, ANSTO may terminate this Contract immediately without prejudice to any right which might have accrued or may accrue.

#### **17. TERMINATION AND REDUCTION FOR CONVENIENCE**

- 17.1. ANSTO may, by written notice, terminate this Contract or reduce the number of Supplies to be supplied under this Contract immediately. The Contractor shall immediately do everything possible to mitigate consequential losses and continue work on the supply of any Supplies not affected by the notice.
- 17.2. If the Contract is terminated under clause 17.1, ANSTO will be liable only for payments under clause 3 for Supplies supplied before the effective date of termination and reasonable costs incurred by the Contractor and directly attributable to the termination.
- 17.3. Where there has been a reduction in the number of the Supplies to be supplied, ANSTO's liability to pay the Contract, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the number of Supplies to be supplied.
- 17.4. ANSTO will not be liable to pay compensation under this clause in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceeds the contract price and the Contractor will not be entitled to compensation for loss of prospective profits.

#### **18. RECOVERY OF MONIES**

- 18.1. Any money due to ANSTO under this Contract and any damages costs and expenses recoverable by ANSTO (including any sum payable as liquidated damages) in consequence of the Contractor's breach of this Contract may be claimed from the security (if any) or deducted by ANSTO from any monies then due, or may become due, from ANSTO to the Contractor under the Contract. If the security or money then due or thereafter becoming due to the Contractor is not sufficient for that purpose, the balance of such damages, expenses, and liquidated damages shall be a debt due by the Contractor to ANSTO and may be recovered in any court of competent jurisdiction.

#### **19. WAIVER**

- 19.1. If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as

a waiver of those rights. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right. In this clause 'rights' means rights or remedies provided by this Contract or at law.

## **20. LAW GOVERNING THE CONTRACT**

- 20.1. The Contract shall be construed and take effect in accordance with the laws in force for the time being in the State of New South Wales and the parties submit to the jurisdiction of the courts of that State.
- 20.2. The Contractor agrees, in carrying out this contract, to comply with any obligations it, or its subcontractors, have under the Charter of the United Nations (Anti-terrorism Measures) Regulations 2001.
- 20.3. To the extent permitted by law, the Proportionate Liability Legislation is excluded and does not apply to any claim arising under this Contract.

## **21. NOTICES**

- 21.1. Any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:
  - (a) if given by the Contractor to ANSTO - marked for the attention of the ANSTO Representative at the address of New Illawarra Road, Lucas Heights, NSW, 2234 or as otherwise notified by ANSTO; or
  - (b) if given by ANSTO to the Contractor - signed by the ANSTO Representative and sent to the address agreed by the parties to be the Contractor's address or as otherwise notified in writing to ANSTO.

## **22. CO-OPERATIVE AGENCY PROCUREMENT**

- 22.1. Co-Operative Agency Procurement refers to procurements involving more than one agency as the purchaser. Agencies procure cooperatively by approaching the market together (known as clustering) or by joining contractual agreement or standing offer arrangement of another agency (known as piggybacking).
- 22.2. In responding to this tender the Contractor agrees to participate in a "Co-Operative Procurement Agreement", where that requirement forms part of this request for tender.
- 22.3. Participation by Contractors in such an arrangement is at the sole discretion of ANSTO after receiving approval from participating agencies.

## **23. WITHHOLDING TAX**

- 23.1. The Contractor acknowledges that where the payment of an amount under this contract is subject to the provisions of Division 12 of Schedule 1 of the Taxation Administration Act 1953, amounts will be withheld as required by this Division.
- 23.2. Such withholdings include withholdings under Sub division 12-FB which will apply where a payment is made under this contract to a Foreign Resident of an amount covered by Regulation 44C, which deals with Construction and Related Activities.

## **24. SPECIAL CONDITIONS**

- 24.1. The Contractor must comply with any special conditions notified to the Contractor prior to the issue of the Notice of Acceptance or as otherwise agreed by the parties.
- 24.2. Special Conditions prevail to the extent of any inconsistency with the other provisions of this Contract.

## **25. INTERNATIONAL SUPPLIES**

- 25.1. The United Nations Convention on Contracts for the International Sale of Goods **shall not apply** to this Contract.
- 25.2. **Incoterms 2000** may be incorporated by reference into this Contract subject to ANSTO's agreement.

## **26. CONFIDENTIALITY AND PRIVACY**

- 26.1. Confidential Information not to be disclosed:
  - 26.1.1. Subject to clause 26.2.1, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.
  - 26.1.2. In giving written consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 26.2. **Exceptions:**
  - 26.2.1. The obligations on the Parties under clause 26.1 will not be taken to have been breached to the extent that Confidential Information:
    - (a) is disclosed by a Party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
    - (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
    - (c) is disclosed by ANSTO to the responsible Minister;

- (d) is disclosed by ANSTO, in response to a request by the Commonwealth of Australia;
- (e) is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain

### **26.3. Obligations on Disclosure**

26.3.1. Where a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 26.2.1 (a), (b) or (e), the disclosing Party must:
  - i notify the receiving person that the information is Confidential Information; and
  - ii not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 26.2.1 (c) and (d), the disclosing party must notify the receiving party that the information is Confidential

### **26.4. Additional Confidential Information**

26.4.1. The Parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

26.4.2. Where the Parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both Parties have signed this documentation.

### **26.5. Period of Confidentiality**

26.5.1. The obligations under this clause continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to any information which the Parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the Parties in writing in respect of that information

### **26.6. No Reduction in Privacy Obligations**

26.6.1. Nothing in this clause derogates from any obligation which either Party may have either under the Privacy Act 1988 as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

## **27. DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (DEEWR)**

27.1 The Contractor must comply with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines), revised September 2005, reissued June 2006. Copies of the Code and Guidelines are available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building).

27.2 Compliance with the Code and Guidelines shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code and Guidelines.

27.3 Where a change in the Contract is proposed and that change would affect compliance with the Code and Guidelines, the Contractor shall submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code and Guidelines will be affected.

27.4 The Contractor shall maintain adequate records of the compliance with the Code and Guidelines by:

- (a) the Contractor;
- (b) its Subcontractors;
- (c) material suppliers;
- (d) consultants; and
- (e) its Related Entities<sup>1</sup>.

27.5 If the Contractor does not comply with the requirements of the Code or the Guidelines in the performance of this Contract such that a sanction is applied by the Code Monitoring Group, the Commonwealth, without prejudice to any rights that would otherwise accrue, shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

27.6 The Contractor agrees to require that the contractor and its material suppliers, consultants, subcontractors and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including

<sup>1</sup> **Related Entity** and **Material Supplier** has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)

a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Project and Works the subject of
- (c) this Contract; and
- (d) interview any person.

as is necessary to allow validation of its compliance with the Code and Guidelines.

Additionally, the Tenderer agrees that the Tenderer and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

27.7 For the avoidance of doubt, Clause 6 applies in relation to the Contractor's new privately funded construction sites.

27.8 The Contractor shall not appoint a subcontractor, consultant or material supplier in relation to the Project where the appointment would breach a sanction imposed by the Code Monitoring Group<sup>2</sup>.

27.9 The Contractor shall ensure that all subcontracts impose obligations on the subcontractor's equivalent to the obligations under this Clause.

## **28. DISPUTE RESOLUTION**

28.1. The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
  - i there is no resolution or agreement; or
  - ii there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days;

then, either party may commence legal proceedings.

28.2. Despite the existence of a dispute, the Contractor must (unless requested in writing not to do so) continue to supply the Supplies.

28.3. This clause does not apply to:

- (a) action by either party under or purportedly under clause [16. \(DEFAULT\)](#); or
- (b) action by ANSTO under or purportedly under clause [4. \(PAYMENT\)](#) or clause [17. TERMINATION AND REDUCTION FOR CONVENIENCE](#).

nor does it preclude either party from commencing legal proceedings for urgent interlocutory relief.

## **29. COMPLIANCE WITH LAW AND POLICY**

29.1. The Contractor agrees, in carrying out this Contract, to comply with:

- (a) all relevant legislation or regulations of the Commonwealth (including but not limited to the Crimes Act 1914, Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992), or of any State, Territory or local authority; and
- (b) any obligations it has under the Equal Opportunity for Women in the Workplace Act 1999.
- (c) The Contractor agrees, in carrying out this contract, to comply with any obligations it, or its subcontractors, have under the Charter of the United Nations (Anti-terrorism Measures) Regulations 2001.

29.2. The Contractor agrees to comply with any policies of the Commonwealth of Australia and/or ANSTO, notified by ANSTO from time to time.

<sup>2</sup> 'Code Monitoring Group' has the same meaning as is given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)



### **30. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL**

- 30.1. Intellectual Property in all Contract Material vests or will vest in ANSTO.
- 30.2. The Contractor must inform and provide details of any pre existing Intellectual Property in any Contract Material prior to commencing any work under the contract.
- 30.3. Clause 30.1 does not affect the ownership of Intellectual Property in any existing Supplies which are specified in accordance with Clause 30.2, but the Contractor grants to ANSTO a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit any such existing Supplies in conjunction with the other Contract Material.
- 30.4. If requested by ANSTO, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 30.
- 30.5. The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 30.

### **31. INTELLECTUAL PROPERTY RIGHTS**

- 31.1. All royalties, fees and licences in respect of any Intellectual Property in the Supplies, shall be included in the Contract Price and must be paid by the Contractor to the person, persons/or body to whom they may be due or payable.
- 31.2. The Contractor must indemnify and at all times keep indemnified ANSTO against any action, claim, suit or demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property right in respect of any items, goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used or fixed or supplied by the Contractor.
- 31.3. ANSTO will notify the Contractor in the event of any claim being made or brought against ANSTO in respect of clause 30.2, and the Contractor must, with the assistance of ANSTO if desired, but at the sole expense of the Contractor, conduct all negotiations for the settlement of the same of any litigation that may arise there from, and in the event of its failure so to do ANSTO shall have power to suspend payment of any money due to the Contractor in respect of the Contract until such claim has been liquidated or withdrawn. Should the money due, or which may thereafter become due, to the Contractor, or any Security deposited by the Contractor, be not sufficient for the purpose of settling any such claim and such claim has not been liquidated or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to ANSTO and may be recovered from the Contractor in any Court of competent jurisdiction.

### **32. CHECK/REVIEW/APPROVE/CONFIRM/AGREE**

- 32.1. Where ANSTO is required under the provisions of the Contract documents to check, review, approve, confirm, agree and the like, a Contractor's; Designs, Specifications, Drawings, Materials, etc., at no time will ANSTO take responsibility for the overall performance of the supplies.
- 32.2. As part of the material conditions of the contract the responsibility for performance of supply rests at all times with the Contractor.

### **33. PACKAGING**

- 33.1. All Supplies are to be packed in such a manner as to ensure safe transport to ANSTO.
- 33.2. It is the Suppliers responsibility to pack the consignment to suit the method of shipment, i.e by **Road/Air/Sea**.

**Note for Overseas Suppliers:** All **Wood** contained in Packaging etc., must be treated to ISPM15 Standard + Marked.

### **34. DELIVERY**

#### **34.1. Local (within Australia) Delivery Instructions:**

- 34.1.1. Unless otherwise specified in the PO, all Supplies are to be delivered, addressed as follows:

**ANSTO Store  
ANSTO/(insert ANSTO Order No.)/SYDNEY  
New Illawarra Road  
Lucas Heights NSW 2234**

#### **34.2. International (outside Australia) Delivery Instructions:**

- 34.2.1. Unless otherwise stated, all Supplies being shipped to ANSTO direct from an overseas supplier must be addressed and/or marked as follows:

**ANSTO/(insert ANSTO Order No.)/SYDNEY  
New Illawarra Road,  
Lucas Heights  
New South Wales  
Sydney  
Australia**

and must include any other additional information required and/or specified in the Contract.

**Note:** ANSTO's Customs Agent is "UTI Australia" ([www.go2uti.com](http://www.go2uti.com))

**35. PUBLICITY**

The Contractor shall not disclose any information concerning the project for distribution through any communications media without the Principal's prior written approval (which shall not be unreasonably withheld). The Contractor shall refer to the Principal inquiries from any media concerning the project.