

User Guide: Standard Goods and Services Agreement

1. Overview

The *Standard Goods and Service Agreement* Template is suitable for use for all low to medium risk, non-complex (i.e. standard) goods and services government procurements, including procurements of consultancy services and for panel contracts. It is not suitable for use in the following circumstances:

- Multi agency arrangement – when a contract is established that allows access by more than one agency
- Information and Communications Technology contracts under across government contract arrangements
- Software licences, hosting agreements, and contracts for software development or customisation
- Minor construction works including goods and services acquired in conjunction with the works
- Principal contractor controlled contracts – where a supplier is contracted to manage several procurements of goods and services on behalf of the Principal
- Contracting with universities or the CSIRO for the provision of educational services, technical and academic research
- Joint ventures/partnerships – where the joint venturers/partners share the costs, risks and benefits
- Public Private Partnerships – usually used in the development of public sector infrastructure assets.

This User Guide provides instructions for using the template and a clause by clause description of the legal impact of each contract term of the *Standard Goods and Services Agreement* Template.

This User Guide is not a substitute for legal advice. Public authorities need to refer specific legal issues to the Crown Solicitor's Office.

2. Contract Structure

The Standard Goods and Services Agreement Template has the following parts:

- Execution Page
- Attachment 1 - Agreement Details
- Attachment 2 - Standard Terms & Conditions
- Attachment 3 - Glossary of Defined Terms
- Attachment 4 - Special Conditions
- Attachment 5 - Specifications
- Attachment 6 - Pricing & Payment

Supplementing these documents are two clause banks:

- Special Conditions Clause Bank
- Execution Block Bank

3. Completing a Contract

Execution Page

This part of the *Standard Goods and Services Agreement* Template specifies the parties to the contract and where the parties execute the contract to make it legally binding.

Execution blocks for the Government Party and the Supplier are listed in the **Execution Block Bank**. The appropriate execution blocks for the Government Party and the Supplier need to be inserted in the space provided on the Execution Page.

Government Party	Supplier
<p>There are two forms of execution specified in the Execution Block Bank:</p> <ul style="list-style-type: none"> • execution by affixation of the common seal by the Minister (if the Government Party is a department) or the statutory authority • execution by signature of an authorised officer on behalf of the Minister or statutory authority <p>If a different form of execution is required this can be inserted.</p>	<p>There are a number of different execution blocks in the Execution Block Bank depending on the type of legal entity:</p> <ul style="list-style-type: none"> • a company • a sole director company • an individual or a sole trader • an incorporated association • a partnership • a trustee <p>If a different form of execution is required this can be inserted.</p>

Attachment 1 - Agreement Details

The variable content of the contract is to be inserted into this Attachment. Insert “not applicable” against items if they are not required for the specific procurement.

Item No.	Item Title	Guidance Notes
1.	Government Party	Insert the name, ABN and contact details of the government party. For departments and statutory authorities that are not established as body corporates, insert the responsible Minister. For statutory authorities that are established as body corporates, insert the statutory authority.
2.	Supplier	Insert the name, ACN and contact details of the contracting party. If the contracting party is a trustee, also specify the name of the trust.
3.	Commencement Date	Insert the date that the contract takes effect. This can be the date of last party execution or a specified date.
4.	Expiry Date	Insert the date that the contract will come to an end. This can be a specified period or can be linked to the occurrence of a particular event e.g. the end of the warranty period.
5.	Extension Period	If an extension period has been approved the contract can be extended at the election of the government party. If not insert “not applicable”.
6.	Supplier’s ABN	An ABN is required otherwise the government party is required to withhold tax at the rate prescribed in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
7.	Contract Managers	Each party must nominate a Contract Manager. Insert a telephone number and email address.



Item No.	Item Title	Guidance Notes
8.	Named Persons	This is most relevant to a consultancy where the government party is contracting the services of particular person(s) for their expertise.
9.	Details of Goods	If Goods are being purchased under the contract, a brief functional description can be included here. If there is a detailed specification, this should be attached in Attachment 5.
10.	Delivery Date and Delivery Point - Goods	If Goods are being purchased under the contract then specify the date and location for delivery.
11.	Installation Date	If Goods are being purchased under the contract and the goods require installation, include a date for installation. If installation is not required then insert "not applicable".
12.	Warranty Period	This is only relevant if Goods are being purchased under the contract. During a Warranty Period the contracting party is required to rectify any defects in the goods.
13.	Details of Services	If Services are being purchased under the contract a brief functional description can be included here. If there is a detailed specification this should be attached in Attachment 5.
14.	Delivery Date and Delivery Point - Services	If Services are being purchased under the contract then specify the date and location for delivery.
15.	Reports and Manuals	Please specify reports that the Supplier must provide as part of the Services or any user manuals that the Supplier must provide with the goods.
16.	Milestone Dates	These are critical dates during the period of the contract by which Goods and Services must be supplied.
17.	Price and Payment	If the pricing and payment information is simple, this detail can be included in this item. If the pricing and payment information is more detailed then it can be inserted into Attachment 6. If you do not need to use Attachment 6 please insert "not used" in that attachment.
18.	Insurances	The only mandated insurance is public liability insurance. All suppliers must have a minimum of \$1 million public liability insurance coverage. If Goods are being supplied then the level of product liability insurance actually held by the Supplier is to be included where indicated. For example if a Supplier has \$5,000,000 product liability insurance then that is the amount that should be included in this item (see guidance notes for Insurance clause below for further details).
19.	Liability Limit	On 25 July 2016 the South Australian Cabinet approved a policy that for low to medium risk low complexity (standard) government procurement contracts, a supplier's liability will be capped at a multiple of between 1 and 5 of the total contract value with the multiple to be based on a risk assessment conducted by the government party. The global cap applies to all heads of liability and all types of damage or loss (see guidance notes for Liability Limit clause below for further details).
20.	Other Termination Rights	The Standard Terms & Conditions provide a comprehensive list of rights for the government party to end the contract. If it is necessary due to the nature of the particular procurement to have other rights to end the contract, they can be included in this item.



Item No.	Item Title	Guidance Notes
21.	Approved Subcontractors	If the Supplier has indicated as part of their offer to provide goods and services that it will be using subcontractors then the names and contact details of those subcontractors can be included in this item.
22.	Additional Personnel Checks	The Standard Terms & Conditions include a right for the government party to require police checks of supplier personnel. If due to the nature of the procurement (e.g. delivery of services or goods at schools) it is necessary for further suitability checks of supplier's personnel, these can be included in this item.
23	Notice Period for Termination for Convenience	The Standard Terms & Conditions includes a right for the government party to terminate for convenience. The period should not be less than 30 days unless the contract itself is for a very short period.

Attachment 2 - Standard Terms & Conditions

These terms and conditions are fair and are not modifiable without Crown Solicitor's Office approval. If additional clauses are required these are to be included in **Attachment 4 - Special Conditions**.

Clause No.	Clause Title	Guidance Notes
1.	Contract Length	This is the period during which the contract will generally have legal force and effect. If as part of the acquisition approval process, an extension of the contract has been approved, then clause 1.2 will give effect to the extension.
2.	Contract Managers	These are the persons who are responsible for the day to day management of the relationship between the parties.
3.	Supply of Goods (If Applicable)	This clause is only relevant if Goods are being purchased. The clause sets out all of the obligations of the Supplier in relation to the supply and delivery of the Goods.
4.	Inspection and Acceptance of Goods (If Applicable)	<p>This clause is only relevant if Goods are being purchased. Inspection of Goods is not mandated but recommended to determine whether or not there are any obvious defects or lack of conformity with the stated requirements. More complex goods may need to be more rigorously tested. The government party is required to notify the Supplier that it either accepts or rejects the goods. Notification does not need to be in writing. If no notice is received then the goods are deemed to have been accepted 5 business days after delivery, with the exception of consumables which may be rejected when first used.</p> <p>The Standard Terms & Conditions provides for the passing of risk in the goods to the government party on delivery of the goods and for the passing of ownership in the goods to the government party on acceptance of the goods.</p>
5.	Warranty Period (If Applicable)	If the Supplier has offered a goods warranty period as part of its offer, then this period will commence upon acceptance of the goods by the government party. During the Warranty Period if the goods are defective or are in any other way not compliant with the warranties in clause 9.
6.	Supply of Services (If Applicable)	This clause is only relevant if Services are being purchased. Any service levels and milestone dates need to be specified in



Clause No.	Clause Title	Guidance Notes
		Attachment 5. Please note that if the government party is procuring “professional services” (i.e. consultancy) that there are a number of special conditions in the Special Conditions Clause Bank that should be included in Attachment 4. These special conditions include amongst other things the requirement to comply with specific government policies.
7.	Reports and Manuals (If Applicable)	This clause applies if the Supplier is required to provide user manuals (usually required in relation to the supply of goods) or reports or other materials (usually required in relation to the supply of services)
8.	Service Variation (If Applicable)	This clause enables a government party to request a variation to the Services. The government party issues a written request to which the Supplier is required to respond by providing a quote and other information about the impact of the variation on the services. The parties must negotiate in good faith to agree on the price and other terms.
9.	Supplier’s Warranties	This clause contains all of the contractual warranties that apply to both the provision of Goods and Services. There may be other warranties that apply as a matter of law.
10.	Supplier’s Personnel	This clause sets out the requirements for police and other checks of Supplier Personnel. If the Supplier is delivering Goods and Services where children or other vulnerable people are present then insert the Suitability of Persons clause from the Special Conditions Clause Bank or agency specific variant into Attachment 4. The government party has an absolute right to require the withdrawal of Supplier Personnel from providing Goods or Services. This clause also deals with security requirements in relation to the government party’s computer systems and premises.
11.	Price and Payment	This clause provides that the Supplier is entitled to invoice the government party when the Goods and Services have been supplied. The Price is GST inclusive unless stated otherwise.
12.	GST	The default position is that a Supplier has both an Australian Business Number (ABN) and is registered for GST. If the Supplier is not registered for GST
13.	Intellectual Property Rights	Ownership of intellectual property in existence before the contract is entered into is unchanged. The default position for intellectual property created during the contract is that the Supplier will own the intellectual property and grant a broad licence to enable the government party to use any reports or manuals required to be supplied under the contract (note that the default position for intellectual property created by a consultant is different (see Special Conditions Guidance Notes).
14.	Insurance	The default position under the Standard Terms & Conditions is that the Supplier is in the best position to assess its liability and to manage its risks under the contract whether by insurance or otherwise. The only mandated insurance is public liability insurance which has been set at the lowest amount available from insurers.



Clause No.	Clause Title	Guidance Notes
		<p>If Goods are being supplied then the product liability insurance that is held by the Supplier is the level of coverage that will apply under the contract.</p> <p>If professional services (e.g. consultancy) are being supplied then the level of professional indemnity insurance held by the consultant will apply (see Special Conditions Guidance Notes).</p>
15.	Liability Limit	The 25 July 2016 South Australian Cabinet decision replaces the previous Cabinet Approved Default Liability Limit for low risk contracts up to a value of \$1 million (GST inclusive) and takes precedence over any across government or agency specific liability frameworks that established a liability position for the procurement of low to medium risk low complexity (i.e. standard) procurements of goods and services.
16.	Confidential Information	Each party has obligations in relation to the use and disclosure of Confidential Information.
17.	Set- Off	This clause enables the government party to subtract money owed to it by the Supplier from the amount due and owing to the Supplier.
18.	Dispute Resolution	This clause requires the parties to at least attempt to resolve any disputes between them before either party has recourse to the courts. This is subject to a carve-out where it is necessary for a party to seek interlocutory relief in the case of genuine urgency.
19.	Ending this Contract	<p>This clause sets out the contractual grounds under which each party may terminate the Agreement. The Standard Terms & Conditions do not exclude any common law or statutory rights to terminate.</p> <p>There is a right for the government party to terminate for convenience. This right should only be exercised where there is a genuine need to terminate the contract due to a change in Government policy.</p> <p>There is the option for the government party to include further termination rights in Attachment 1.</p>
20.	Effect of Ending this Contract	<p>This clause operates to preserve each party's rights even though the contract has been brought to an end.</p> <p>This clause also specifies those clauses that survive termination of the contract. For example the obligation to not disclose Confidential Information.</p>
21.	Subcontracting	This clause limits the right of the Supplier to subcontract its obligations under the contract.
22.	Conflict of Interest	The Supplier is required to declare any potential or actual conflicts. Failure to disclose is a terminable act.
23.	Compliance with Laws	The Supplier must comply with all laws that apply to the performance of the Supplier's obligations under the contract.
24.	Governing Law and Jurisdiction	The law of the contract is South Australian law and the courts of South Australia including the Federal Court have the exclusive right to adjudicate on any issue arising under the contract.
25.	Entire Agreement	This clause excludes all prior agreements between the parties from having contractual force and effect and affirms that the terms and conditions of the contract are the only terms that govern the bargain between the parties.
26.	No Assignment	The Supplier must obtain the government party's written approval

Clause No.	Clause Title	Guidance Notes
		if it wishes to assign any rights or obligations under the contract. The clause also provides that if there is a Machinery of Government Change the entity that replaces the government party will be bound as if it was the government party.
27.	Modification	For a variation to the contract to be effective the variation must be made in writing and signed by both parties.
28.	Severance	If a court determines that a part of the contract is void for any reason, then the parties agree that invalidity of that part does not affect the validity of the rest of the contract.
29.	Counterparts	This clause gives the parties the option of executing the contract by each party signing a copy of the contract and then providing that signed copy to the other party.
30.	Work Health & Safety	Under this clause if the Supplier is required to work at the government party's premises the Supplier is required to comply with the government party's work health and safety policies and to report any hazards to the government party.
31.	Acting Ethically	There is a general requirement that a Supplier does not offer inducements or other benefits to public sector employees that may contravene the Code of Ethics for the South Australian Public Sector.
32.	Interpretation	This clause sets out the basic rules for interpreting the terms and conditions of the contract.
33.	Special Conditions	The effect of this clause is to bring within the scope of the contract any special conditions that are inserted into Attachment 4. Care must be taken in inserting special conditions as they will take precedence over the other terms and conditions of the contract.

Attachment 3 - Glossary of Defined Terms

All of the defined terms used in the *Standard Terms & Conditions* (Attachment 2) and in the *Special Conditions Clause Bank* are included here. If additional definitions are required, these need to be included as Special Conditions.

Attachment 4 - Special Conditions

Additional terms to those included in the *Standard Terms & Conditions*, can be included in Attachment 4 (Special Conditions). Some of the more commonly required additional terms are included in the *Special Conditions Clause Bank*. The *Special Condition Clause Bank* is not exhaustive. If there are agency specific terms or other terms required for inclusion then they must be inserted into Attachment 4. The Crown Solicitor's Office can assist with drafting additional terms. If additional terms are not required insert "not used" in Attachment 4.

Clause No.	Special Condition Title	Guidance Notes
1.	Purchase Order	This Special Condition is to be inserted into Attachment 4 if the procurement of Goods and/or Services is by way of a standing offer, either as a sole supplier arrangement or as part of a panel. Under a standing offer, the parties agree that the government party may, but is not obliged to, purchase goods and/or services by issuing a Purchase Order. The Standard Goods and Services Agreement terms



Clause No.	Special Condition Title	Guidance Notes
		and conditions apply to purchase orders issued under a standing offer and take priority over any terms and conditions that are included with a purchase order (e.g. Basware terms and conditions).
2.	No Minimum Purchase	This Special Condition is to be inserted into Attachment 4 if the procurement of Goods and/or Services is by way of a standing offer, either as a sole supplier arrangement or as part of a panel. There is no requirement that the government party purchase any Goods and/or Services.
3.	Non-Exclusivity	The government party is able to purchase Goods and Services from another supplier.
4.	Consultancy	This Special Condition is to be inserted where the government party is procuring consultancy services (e.g. auditing, accounting, financial analysis). All references to "Supplier" and "Price" are deemed to be references to "Consultant" and "Fees" respectively. The Special Condition requires the Consultant to maintain professional indemnity insurance to the minimum level of cover required in the ordinary course of the Consultant's business. The Special Condition also grants ownership to the government part of any reports or other materials created by the Consultant as part of the consultancy.
5.	Liability	This Special Condition recognises that under the <i>Professional Standards Act 2004</i> (SA), occupational associations may seek to have a scheme limiting its members' civil liability approved under the Act. If the limitation of liability under that scheme is more favourable than the Cabinet approved global liability cap then the Consultant may request that this clause is inserted into Attachment 4.
6.	Contract Disclosure	This Special Condition is to be inserted into Attachment 4 if the procurement has a value greater than \$500,000 (inc. GST) is a consultancy agreement of any value. It enables the contract to be disclosed on the Tenders SA website or to a particular person as a result of a specific request.
7.	Privacy	If the procurement of Services involves the Supplier dealing with personal information then this Special Condition should be inserted into Attachment 4. The clause recognises that the Supplier is required to comply with South Australian Government Information Privacy Principles in relation to the collection, storage, disclosure or other use of personal information under the Agreement.
8.	Supplier as Trustee	There is an increased risk in dealing with a Supplier that is a trustee of a trust.
9.	Industry Participation Policy	If the procurement requires an Industry Participation Plan (Standard or Tailored IPP), the Supplier must report against that IPP during the period of the contract.
10.	Performance Guarantee	If the Supplier is a subsidiary and there is a concern about its ability to fully perform the contract, then a guarantee can be required to be given by the Supplier's parent company.
11.	Bank Guarantee	If there is a concern about the ability of the Supplier to fully perform the contract then an unconditional and irrevocable guarantee can be required to be given by the Supplier's bank.
12.	Child Safety	This clause applies to services provided to children. If uncertain as to whether or not to include the Child Safety clause in a contract please contact the Crown Solicitor's Office.



Clause No.	Special Condition Title	Guidance Notes
13.	Respectful Behaviours	This clause applies if the government party has a respectful behaviours policy.
14.	Information Sharing	This clause applies to procurements involving the delivery of services where the sharing of information may assist in preventing harm or threats to the safety and wellbeing of vulnerable people (including children) and where such sharing is permitted by PC012 Information Privacy Principles Instructions.
15.	Force Majeure	If a supplier requested that the contract includes a Force Majeure clause or there is a genuine possibility that the supply will be affected by a Force Majeure event such as COVID-19 insert the clause as a Special Condition in Attachment 4. As this clause has the effect of suspending performance of a party's obligations under a contract, a party must be genuinely unable to perform its obligations and must have done everything possible to mitigate the effects of the Force Majeure. If uncertain as to whether or not to include the Force Majeure clause in a contract please contact the Crown Solicitor's Office.

Attachment 5 - Specification

The detailed Specification for the Goods and Services is to be inserted into this Attachment. If there is no detailed Specification then insert "not used" in Attachment 5.

Attachment 6 - Pricing and Payment

If there is detailed pricing information for the procurement then this can be attached to or included in Attachment 6. If there is no detailed pricing information, insert "not used" in Attachment 6.

4. Contract Completion Checklist

Step 1 Complete Variable Content for Contract

- Insert the relevant details in Attachment 1
- Insert "not applicable" for those items that are not relevant to the procurement
- Delete all drafting prompts (identified by coloured highlighting)
- Insert any applicable Special Conditions in Attachment 4
- If required, attach Specification to Attachment 5
- If required, include detailed Pricing and Payment in Attachment 6

Step 2 Execution of Contract

- Ensure that the Supplier is a legal entity (e.g. a natural person(s) or body corporate)
- Insert execution blocks from the Execution Clause Bank on Execution Page
- To accept the contract either:
 - each party must have a fully executed copy of the contract, or
 - each party must ensure that the other party has a copy of the contract which contains the first party's execution (known as counter party execution)

