

REQUEST FOR QUOTATION – KEY TERMS

1. Definitions and interpretation

- 1.1. The following definitions apply to this document (unless the context otherwise requires):
- 1.1.1. **'Contract'** means any contract entered by the parties into arising out of the RFQ and Quotation, and which the parties agree will be subject to the Key Terms.
- 1.1.2. **'Date for Delivery'** means the date or dates by which the Deliverables are to be delivered as specified in the RFQ, subject to any extension or adjustment of the Date for Delivery in accordance with the Key Terms. If no Date for Delivery is specified in the RFQ, Date for Delivery shall be a date or dates notified by HLE (acting reasonably) and in the absence of such notification shall be a reasonable time.
- 1.1.3. **'Deliverables'** means the Goods and Services which the Supplier is to supply under the Contract as contemplated by the RFQ.
- 1.1.4. **'Delivery Point'** means the place where Deliverables are to be delivered or provided as specified in the RFQ and, if no such place is specified, the place as directed by HLE.
- 1.1.5. **'FIS'** means, in relation to delivery of the Goods, 'free into store' and includes the responsibility (and associated costs) for packing, loading, transportation and insurance to the Delivery Point.
- 1.1.6. **'Goods'** means all goods, equipment, materials, articles, drawings or any other property or parts to be provided to HLE by the Supplier under the Contract, as contemplated by the RFQ (plus those things which, though not expressly stated, are necessary to comply with the RFQ).
- 1.1.7. **'HLE'** means Hender Lee Electrical Contractors Pty Ltd (ACN 102 530 469).
- 1.1.8. **'HLE's Safety Requirements'** means HLE's requirements relating to safety as notified to the Supplier from time to time, and which may include safety requirements of the Principal.
- 1.1.9. **'Intellectual Property Rights'** means any and all intellectual property rights and rights relating to all systems and information, trade secrets, know-how, goodwill and business reputation, including rights in or to or arising under copyright, patents, inventions, trade marks, design, circuit layouts.
- 1.1.10. **'Key Terms'** means the terms and conditions of the RFQ including this document (and any Special Conditions), being terms that are of particular commercial importance to HLE.
- 1.1.11. **'Payment Claim'** means any claim for payment made by the Supplier under the Contract, including in respect of variations;
- 1.1.12. **'Principal'** means the person or persons for whose benefit HLE is procuring the Deliverables from the Supplier;
- 1.1.13. **'Quotation'** means the quotation provided by the Supplier to HLE in response to the RFQ, and which states the Quoted Price;
- 1.1.14. **'Quoted Price'** means, in the context of the Quotation, subject to adjustment for variations, the total fixed price payable for the Deliverables as stated in the Quotation (or, where the Quotation indicates that Deliverables are for a fixed rate on a "per item" basis, the total price calculated by multiplying the fixed rate applicable to each item by the total quantity of each such items). In the context of the Contract, it means the Quoted Price subject to any adjustments agreed by the parties in entering the Contract.
- 1.1.15. **'RFQ'** means the HLE Request for Quotation (RFQ) comprised of the RFQ cover page, these terms and conditions, and any other documents listed in or expressly incorporated into the RFQ.
- 1.1.16. **'Services'** means the services and works to be performed or provided by the Supplier under the Contract as contemplated by the RFQ (including those services or works which, though not expressly stated, are necessary to comply with the RFQ).
- 1.1.17. **'Special Conditions'** means the Special Conditions identified by the RFQ as being applicable (if any).
- 1.1.18. **'Supplier'** means the person providing the Quotation, as identified in the RFQ.
- 1.1.19. **'Warranty Period'** means the period commencing on the date on which the last of the Deliverables was delivered to HLE and lasting for a minimum period of 12 months, unless otherwise stated in the RFQ.
- 1.2. Where possible, the documents comprising the RFQ should be read together, provided that the Special Conditions shall apply to the extent of any inconsistency with any other document forming part of the RFQ.

2. Application of the Key Terms

- 2.1. Nothing in this document will be construed as an agreement to accept any Quotation, or impose any obligation on HLE to accept any Quotation or pay any sum of money to the Supplier. No obligation of HLE to the Supplier shall arise unless and until a Contract is entered into.
- 2.2. The parties agree that the Key Terms will apply to any Contract entered into by the parties with respect to this RFQ.
- 2.3. The Supplier acknowledges that the Key Terms are critical to HLE and, but for the application of the Key Terms, the Supplier would not be given an opportunity to provide a Quotation to HLE.
- 2.4. Before providing a Quotation, the Supplier shall advise HLE in writing if any of the Key Terms is not acceptable to the Supplier. The Supplier must await written confirmation of HLE's agreement to any departure from the Key Terms before providing a Quotation.
- 2.5. The Supplier in giving a Quotation will be deemed to have accepted, and made due allowance for compliance with, the application of the Key Terms (notwithstanding anything in any Supplier document to the contrary).
- 2.6. In providing a Quotation, the Supplier acknowledges that, if the parties enter into a Contract in respect of the Quotation, and notwithstanding anything in any Supplier document or prior agreement to the contrary:
- 2.6.1. the Key Terms will apply to the Contract to the extent of any inconsistency with:
- 2.6.1.1. any otherwise applicable prior agreement between the parties (including any credit agreement); and
- 2.6.1.2. any terms or conditions proposed or put forward by the Supplier before or after the date of the RFQ, whether contained in a Supplier's credit terms, estimate, the Quotation, invoice, order confirmation, or otherwise; and
- 2.6.2. if HLE requests, the Supplier agrees to signing a document which confirms the application of the Key Terms to the Contract.

3. Quotation validity

- 3.1. Unless otherwise agreed by the parties pursuant to clause 2.4 above, the Quotation must be provided subject to the terms of the RFQ and be in a form capable of being accepted by HLE.
- 3.2. Unless otherwise expressly specified in the RFQ, the Quotation shall be capable of being accepted by HLE for a period of at least 90 days from the date of its issue.

4. Price and payment terms

- 4.1. The parties may agree changes to the Quoted Price before entering the Contract.
- 4.2. Unless otherwise expressly specified in the RFQ, and subject to any law requiring to the contrary, the Quoted Price will not be claimable or payable under the Contract until delivery of all of the Deliverables to HLE.
- 4.3. Where the Supplier is entitled to progress payments by the RFQ (or progress claims are required by law) under the Contract:
- 4.3.1. the Supplier shall submit no more than one Payment Claim per calendar month, to be submitted on the last business day of the month, for Deliverables delivered up to that date;
- 4.3.2. HLE shall not be obliged to pay for any particular Deliverable before delivery to HLE of that particular Deliverable in accordance with the Key Terms; and
- 4.3.3. if HLE, agrees or is obliged to pay for any Deliverable in whole or part before delivery of that Deliverable, HLE can demand that the Supplier provide (before HLE makes payment for that Deliverable) security to HLE's satisfaction to the value of such Deliverable, such security to be retained until HLE is satisfied that it has the benefit of the Deliverable, free of any encumbrance or security interest of any kind.
- 4.4. Subject to any contrary law, the due date (under the Contract) for payment of any amount payable in respect of a Payment Claim shall be 30 days from the end of the month in which the Payment Claim was received, provided that (1) the due date for payment shall not exceed the maximum payment terms permitted under any applicable security of payment legislation and (2) the Supplier shall always first provide a valid tax invoice as a condition of payment.
- 4.5. The interest rate applicable to overdue payments shall not exceed 10% per annum.

5. Warranties, Performance and Quality

- 5.1. The Supplier warrants that any information it provides to HLE in relation to a Quotation or Contract is accurate.
- 5.2. The Supplier warrants that all Services will be carried out and completed by the Supplier under the Contract:
- 5.2.1. in a proper and workmanlike manner by persons qualified and licensed to perform the Services;

- 5.2.2. in compliance all applicable legal requirements, permits, licences and Australian Standards; and
- 5.2.3. in accordance with any other requirements as set out in the RFQ.
- 5.3. The Supplier warrants that Goods supplied under the Contract will upon delivery:
- 5.3.1. be free from liens, charges, encumbrances, mortgages or other defects in title;
- 5.3.2. be free from defects in design, materials and workmanship;
- 5.3.3. be free from asbestos or similar contaminants;
- 5.3.4. conform to the requirements of the RFQ and any warranty given by the Supplier;
- 5.3.5. comply with all applicable legal requirements, permits, licences and Australian Standards;
- 5.3.6. be provided with such instructions, information (including as to design, mode and manner of manufacture) and operation manuals as HLE may reasonably require; and
- 5.3.7. be new and fit for purpose.
- 5.4. The Supplier will provide to HLE the benefit of all collateral warranties in respect of the Goods actually or customarily offered or given to the Supplier by the manufacturer and supplier of the Goods.
- 5.5. HLE will be given a reasonable opportunity from the date of delivery to inspect (insofar as it is reasonably practicable for HLE to do so) for any obvious defects in any Goods.
- 5.6. Where reasonably practicable, HLE will promptly notify the Supplier of any known or discovered defects in the Goods. However, HLE's rights in respect of defects in the Goods will not be compromised by any inspection by HLE (or failure to inspect or discover any defect).
- 5.7. At any time before the expiration of the Warranty Period, and without limitation of HLE's rights, HLE may give written notice to the Supplier of any omission or defect in the Deliverables and further in such notice direct the Supplier to make good:
- 5.7.1. the omission or failure in the Deliverables; and
- 5.7.2. any damage to other property caused by the defect or omission in the Deliverables, or the making good of the defect or omission in the Deliverables.
- 5.8. If the Supplier fails to comply with a notice given under clause 5.7 within the time specified in the notice (which time shall not be unreasonable), or if the Supplier's attempt at rectification fails or is otherwise unsatisfactory to HLE, HLE can rectify itself or have the rectification undertaken by a third party and the costs so incurred shall be a debt due and payable by the Supplier to HLE.

6. Variations

- 6.1. HLE may direct the Supplier (by notice in writing pursuant to this clause) to vary the Contract to:
- 6.1.1. increase, decrease or omit any part of the supply of the Deliverables;
- 6.1.2. change the character or quality of any Deliverable;
- 6.1.3. execute additional supply of Deliverables;
- 6.1.4. bring forward the Date for Delivery of some or all of the Deliverables; or
- 6.1.5. vary the sequence by which the supply of Deliverables is to be carried out.
- 6.2. The Quoted Price (or any agreed adjustment thereof included in the Contract) shall be adjusted by a reasonable sum to accommodate a variation directed pursuant to clause 6.1.
- 6.3. The Supplier shall not vary the Contract except pursuant to an express written direction to vary from HLE pursuant to clause 6.1.

7. Delivery and Date for Delivery

- 7.1. Unless otherwise specified in the RFQ, Goods shall be delivered FIS, adequately packaged and protected to ensure safe delivery, to the Delivery Point and on (and not before) the Date for Delivery. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of HLE at the point of delivery.
- 7.2. Early delivery of Goods shall not be permitted without HLE's prior written consent being obtained.
- 7.3. Goods must be delivered during HLE's normal site hours. The Supplier shall liaise with HLE in advance of delivery to co-ordinate a suitable time for delivery of physical Goods.
- 7.4. Goods shall become the property of HLE upon the earlier of payment for those Goods or delivery of those Goods to HLE.

8. Delays and Extension of Date for Delivery

- 8.1. The Supplier will be entitled to an extension of time to the Date for Delivery if the following conditions are satisfied:
- 8.1.1. there is or will be a delay in the date of delivery of the Deliverables;
- 8.1.2. the delay was caused by circumstances beyond the reasonable control of the Supplier;
- 8.1.3. the delay was not caused or contributed to by any default or breach by the Supplier;
- 8.1.4. the Supplier keeps HLE reasonably informed of the delay and its impact on HLE;
- 8.1.5. within 7 days after the Supplier became aware that the relevant delay was likely, the Supplier gives written notice to HLE of:
- 8.1.5.1. the cause of delay and the date on which the cause of the delay arose;
- 8.1.5.2. how delivery of the Deliverables is likely to be delayed;
- 8.1.5.3. the Supplier's claim for an extension of time specifying the number of days claimed.
- 8.2. HLE must grant the Supplier a reasonable extension of time for the Date for Delivery if the conditions in clause 8.1 are satisfied.
- 8.3. Even if the Supplier is not entitled to an extension of time to the Date for Delivery, HLE may in its absolute discretion (and acting in its own interests) grant the Supplier an extension of time in writing and the Date for Delivery shall be revised accordingly. For the avoidance of doubt, HLE may extend the Date for Delivery for its convenience by written notice to the Supplier.
- 8.4. Any failure on HLE's part to assess an extension of time claim shall not set the Date for Delivery at large.
- 8.5. The Supplier is not entitled to claim any payment for any prolongation, delay or disruption, experienced by the Supplier in performing its Contract obligations, except where either:
- 8.5.1. HLE grants an extension of time in accordance with clause 8.2 for a delay that was caused by a breach of the RFQ by HLE (in which event the Supplier is entitled as its sole remedy to its actual direct costs incurred by reason of the delay); or
- 8.5.2. HLE extends the Date for Delivery for HLE's convenience, and such extension unavoidably requires the Supplier to incur storage costs in respect of Goods to be supplied, in which event HLE agrees to compensate the Supplier for its actual costs reasonably incurred in storing the affected Goods for the period of the extension.

9. Further Subcontracting and Assignment

- 9.1. The Supplier shall not, without prior written approval of HLE, subcontract the whole of the work the subject of the RFQ.
- 9.2. The Supplier shall be responsible for the acts or omissions of a subcontractor as if the subcontractor were the Supplier. No engagement of a subcontract shall limit the Supplier's liability.

10. Cancellation

- 10.1. The Supplier shall have no right to cancel or terminate the Contract for convenience. At a minimum, for any right of the Supplier to terminate the Contract to arise, HLE must have committed a substantial breach of Contract which remained unremedied without reasonable cause and despite reasonable written notice of such breach being given by the Supplier in advance of any termination.
- 10.2. HLE has the right to terminate the Contract for convenience at any time, provided that if it does so it will be liable to pay the Supplier (as the Supplier's sole remedy) for its reasonable costs actually and necessarily incurred in performing the Contract, to the extent that such costs could not have been avoided or reimbursed by mitigation, less the value of any payments made by HLE under the Contract. Under no circumstances shall HLE's liability under this clause exceed the Quoted Price.

11. Indemnities and Insurance

- 11.1. Where the Contract contains any indemnity in favour of the Supplier:
- 11.1.1. HLE shall not be liable under that indemnity in circumstances where HLE has not breached the Contract or been negligent; and
- 11.1.2. HLE's liability under the indemnity shall be reduced to the extent that the claim, action, damage, loss, liability, cost, charge, or expense the subject of the indemnity was caused by the Supplier's breach of Contract or the Supplier's negligence.
- 11.2. Risk in any Goods is with the Supplier until completion of FIS delivery to HLE.
- 11.3. In the Contract, the Supplier will indemnify HLE against any claim, action, damage, loss, liability, cost, charge, or expense, which HLE suffers, incurs, or is liable to in respect of:
- 11.3.1. damage to, or loss of, any Goods up to point of FIS delivery being completed;
- 11.3.2. personal injury or death caused by or arising out of the Supplier's performance of the Contract; and
- 11.3.3. damage to property caused by or arising out of the Supplier's performance of the Contract.

except to the extent that such claim, action, damage etc was caused by HLE's breach of the Contract or HLE's negligence.

- 11.4. At a minimum, by the time of the Contract the Supplier will have in place the following insurances with a reputable insurer:
- 11.4.1. insurance of the Goods (for full replacement value) against any loss or damage (including while in transit) up to and including the point of FIS delivery;
 - 11.4.2. general public liability and public liability insurance covering legal liability to pay for personal injury and property damage with a limit of liability of not less than \$20 million;
 - 11.4.3. motor vehicle insurances to cover personal injury and property damage arising from the use of any motor vehicles or other mobile equipment used in or about the execution of the Contract including but not limited to compliance with any statutory requirements with a limit of liability of not less than \$20 million;
 - 11.4.4. subject to statutory requirements, workers' compensation and common law insurance in respect of liability for loss or claim by any person employed or otherwise engaged by the Supplier in or about the execution of the Contract.
- 11.5. Where the performance of the Contract involves the performance of professional services, the Supplier shall also have in place professional indemnity insurance with a limit of not less than \$5 million for any one event and \$10 million in the aggregate. This shall be maintained for 6 years after the completion of the Warranty Period.
- 11.6. With the exception of statutory workers' compensation insurance, the insurances are to include a cross liabilities clause and provide for the waiver by the insurer of all rights of subrogation against HLE and any Principal.
- 11.7. Before commencing the supply of Deliverables (and whenever requested by HLE), the Supplier will provide to HLE relevant certificates of currency of insurance procured by the Supplier.

12. OHS

- 12.1. The Supplier must, insofar as are relevant to the Supplier's scope of work:
- 12.1.1. perform the Contract in such a manner as to ensure that no person is exposed to hazards;
 - 12.1.2. familiarise itself, comply with and ensure that all of its personnel comply with HLE's Safety Requirements;
 - 12.1.3. comply with any reasonable direction given by HLE relating to safety; and
 - 12.1.4. at all times be familiar with and comply with all laws, regulations, codes and standards with respect to safety.

13. Limitations of liability

- 13.1. In any Contract, there will be no limitations on, or exclusions of, the Supplier's liability to HLE other than to the extent set out in this clause. A limitation on liability includes (for the purposes of this clause) a time limit on HLE to bring any claim against the Supplier.
- 13.2. The parties agree that neither party will have any liability on any basis whatsoever to the other party for Consequential Loss arising out of or in any way in connection with the Contract.
- 13.3. In this clause 13, subject to clause 13.4, **Consequential Loss** means loss of production, loss of revenue, loss of profit or anticipated profit, loss of opportunities, aggravated damages or losses that were not reasonably foreseeable at the date of Contract.
- 13.4. Nothing in this clause 13 shall operate to exclude or limit the liability of:
- 13.4.1. the Supplier to HLE for damages payable by HLE to the Principal, where HLE's liability for such damages has arisen out of a breach of Contract by the Supplier;
 - 13.4.2. a party for personal injury or death, or for property damage; or
 - 13.4.3. a party for liability for damage caused by the fraud or wilful default of that party.

14. PPSA

- 14.1. For the purposes of this clause:
- 14.1.1. **'PPSA'** means the *Personal Property Securities Act 2009* (Cth);
 - 14.1.2. **'PPS Security Interest'** means a security interest that is subject to the PPSA
- 14.2. Each party acknowledges that the Contract may give rise to one or more PPS Security Interests. Each party agrees that the Contract is a 'security agreement' for the purposes of such PPS Security Interests, and consents to the registration of a PPS Security Interest arising under the Contract in favour of a party (the secured party) on the 'Register' for the purposes of the PPSA.
- 14.3. Each party must, promptly on request, give the other party all information required by the other party to ensure that any PPS Security Interest arising under the Contract is, and remains, fully effective or perfected (or both), and that each PPS Security Interest has the priority required by the other party.
- 14.4. If, in breach of the Contract, a party attempts to dispose of or otherwise deal with any personal property that is subject to a PPS Security Interest in favour of the other party, the party acknowledges that, despite the disposal or dealing:
- 14.4.1. the other party has not authorised the disposal or agreed that the dealing would extinguish the other party's PPS Security Interest; and
 - 14.4.2. the other party's PPS Security Interest continues in that property.
- 14.5. The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA. Each party agrees not to exercise its rights to make any request of the other party under section 275 of the PPSA, to authorize the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit disclosure under that section (but this does not limit a party's rights to request information other than under section 275 of the PPSA).
- 14.6. To the extent the law permits, the grantor waives its rights to receive any notice that is required by any provision of the PPSA (including notice of a verification statement), however nothing in this clause 14.6 prohibits the secured party from giving a notice under the PPSA or any other law.

15. Intellectual Property

- 15.1. The Supplier warrants that HLE (and any Principal) is entitled to use each Deliverable for its intended purpose with the consent of all persons holding Intellectual Property Rights in connection with that Deliverable and the Supplier shall procure all necessary licenses and consents to support this warranty.

16. Confidentiality

- 16.1. The Supplier agrees that the RFQ, the Quotation and the Contract are confidential to HLE and must not be disclosed without prior written consent of HLE except to the extent required by law or necessary to provide the Quotation or perform the Contract. Any details of pricing offered by the Supplier to HLE must not be disclosed to third parties.

17. Excluded forms of security

- 17.1. In any Contract, the parties agree that:
- 17.1.1. any clause purporting to give the Supplier any right to take a charge or other legal or equitable interest in any real property of HLE shall be of no effect; and
 - 17.1.2. any clause purporting to require (or give) a personal guarantee by any related company, director, officer or employee of HLE shall be of no effect.

18. Notices

- 18.1. The parties agree that any notice or claim that can be given under or in connection with the Contract may be given by email, provided that the Supplier must ensure that any such notice to HLE is sent to the email address(es) for notices as nominated by HLE from time to time (failing which, the notice will be invalid).
- 18.2. HLE may serve any notice or claim at the Supplier's email address(es) used in the provision of the Quotation (or at any subsequent email address used by the Supplier in communicating with HLE).

19. Disputes and applicable law

- 19.1. The law of Western Australia shall apply to the Contract.
- 19.2. Any disputes arising under or in connection with the Contract shall be resolved by a court sitting in Perth, Western Australia.