General Order Form

For Prequalified Suppliers on the ITS2573 Scheme

# Guidance

***Note: The Guidance is for internal purposes only.***

The General Order Form must be completed for every high risk or exceeding $150,000 (incl GST) transaction under the ITS2573 Scheme to engage suppliers on the ITS2573 Prequalified Supplier List. Set out below are instructions as to how to complete each item in the General Order Form.

Where you are buying from a supplier who has entered into an ITS2573 Master Supply Agreement (MSA) with the NSW Department of Customer Service, it is important that you complete this General Order Form to bring the purchase within the scope of the MSA. Otherwise, the purchase will not be made under a "Supply Contract" entered into under the MSA, and there is a risk that you will be purchasing under the supplier's standard terms, which may be much less favourable to the customer agency. Note, however, that you can agree to a shortened general order form with the supplier for use in purchasing goods or services from the Supplier – please refer to clause 3.14 of the MSA for more guidance on this.

The General Order Form does NOT give you or the supplier the opportunity to agree on variations to or deviations from the terms of the MSA (most of which are incorporated into the Supply Contract). Further, no Supplier document (eg. delivery docket, shipment terms etc) which the Supplier may provide varies or forms part of the Supply Contract. The only 'variable' from a legal perspective is the liability cap which, in exceptional circumstances (where the Supply Contract is over $20M, or the Supply Contract deliverables are for certain high risk "Prescribed Uses") is increased by agreement with the Supplier and set out in the Purchase Order.

| **Item** | **Guidance**  |
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| **1** | Set out:- MSA Number (Request MSA Number from ITS2573@customerservice.nsw.gov.au) - Supply Contract Number (in accordance with usual internal guidelines or processes) - date on which Supply Contract is created. |
| **2** | Set out the required details of the Supplier. These should correspond to the Supplier's details under the MSA it has entered with NSW DCS. |
| **3** | Set out the required details of the Customer (i.e., your agency/government entity). |
| **4** | Set out contact details for the Authorised Representatives of the Customer and the Supplier. Note: Authorised Representatives for each party can be different for different Purchase Order entered into with the same Supplier. |
| **5** | The address for the service (Service Address) of a Notice in Writing (Clause 24.5 of Master Supply Agreement) If no such address is nominated, the notices will be sent to the Authorised Representative in Item 4 of this Purchase Order.  |
| **6** | Must tick one or more boxes according to the Categories (Equipment, Infrastructure, Services) included in the scope of work for this Supply Contract. For example, if, under this Supply Contract, the Supplier will only provide Equipment, tick only the “Equipment Terms” box. |
| **7** | This box should be ticked when the Supply Contract is for standard pricing items. Standard pricing items will often be commoditised and include items such as standard goods and services with a unit price including Service Rate Card from Schedule 7 of the Master Supply Agreement. If the Contract Pricing is for or includes non-itemised items, please tick the second box for Item 10 and attach the Pricing and Payment Plan. |
| **8** | This box should be ticked where the Supply Contract includes any Contract Specific Requirements. Additionally, tick boxes as appropriate to indicate which documents are being attached to the Purchase Order setting out the specific requirements for the contract. Note that this document will be incorporated into the Supply Contract formed by this Purchase Order. Not all documents on the list will be relevant or required for every Purchase Order. However, in most cases, you should include a Statement of Work, Customer Requirements or Specifications document.(If a support services agreement or description is included, state when Support Services will commence, on Acceptance, or not until expiry of Warranty Period.) |
| **9** | For Contracts that include Services, please include a date for the end of the Services or the fixed period from the Services Commencement Date. Otherwise, state "Not applicable". |
| **10** | Tick the first box if this Purchase Order is for Goods and/or Services with unit price as listed in Item 7. Tick the second box if there are non-itemised pricing elements and attach the Pricing and Payment Plan (or equivalent document) to the Purchase Order.  |
| **11** | Payments terms may differ for every Purchase Order (with the same Supplier). If payment is to be on Acceptance or on Delivery, tick the appropriate box. Otherwise, tick the third box and attach the Pricing and Payment Plan (or equivalent document) to the Purchase Order. |
| **12** | Under clause 26 of the MSA, a customer has the right to terminate a Supply Contract for convenience (i.e., without cause). However, in such instances, the Supplier is likely to require termination charges to be paid by the customer. If this has been discussed and agreed with the Supplier, set out the amounts payable upon exercise of the termination for convenience right in this box. These amounts may vary depending on when the right to terminate for convenience is exercised. If no termination charges are payable upon the Supply Contract being terminated for convenience, state "Not applicable." |
| **13** | This Item only relates to Purchase Orders under which Services will be performed by the Supplier. If no specific personnel are required, tick the "None" box. If specified personnel must be used to provide the Services, tick the "Yes, as follows" box, and set out details of the names or roles of the relevant Supplier personnel. |
| **14** | The MSA states that the Supplier must obtain the Customer's approval to use subcontractors. However, this can be done prior to execution of the Purchase Order. If you have approved the use of any subcontractors by the Supplier in advance, set out details of the subcontractor in this box. Otherwise, state “Not applicable”. |
| **15** | Specify details of Project Governance, e.g., monthly meetings, etc.Otherwise, state “Not applicable”. |
| **16** | Specify details of the reports to be provided by the Supplier, their content and frequency / timing, e.g., service level reports, progress reports, etc. Otherwise, state “Not applicable”. |
| **17** | The default position under the MSA is the IP in New Material produced by the Supplier under the Supply Contract will be owned by the Supplier and licensed to the Customer. However, in certain, rare circumstances, the Customer may need to own this IP, as provided for in clause 14.10 of the MSA. If this is the case, and this has been agreed with the Supplier, tick the "Yes" box. Otherwise, which should be in most cases, tick the "No" box.  |
| **18** | Liquidated Damages (LDs) constitute an optional remedy for failure of the Supplier to meet the Delivery Date for Goods under the Contract, unless such late delivery is caused by the Customer’s failure to perform its obligations under the Contract or by an Event. If you have agreed with the Supplier that LDs will apply under the Supply Contract, tick the "Yes" box, and set out details of the relevant obligations (late completion of which triggers the LDs payment), the amount of LDs and the period during which they are payable. Otherwise, tick the "No" box. The value of LD must be a genuine pre-estimate of the loss, damage, or expense that the Customer will suffer during the period in which liquidated damages are payable. Please refer to the Prequalified MSA and your legal team for further guidance. |
| **19** | A performance guarantee is an optional risk management strategy under the MSA through which the Supplier's parent company guarantees the performance obligations of the Supplier under the Supply Contract. If you have agreed with the Supplier that a performance guarantee will be given, tick the "Yes" box and get the Supplier to arrange for a guarantor approved in writing by you to enter a guarantee which is substantially in the form of Schedule 9 to the MSA. You may need assistance from NSW Telco in completing the guarantee agreement. Otherwise, tick the "No" box. |
| **20** | A financial security (also called a 'bank guarantee') is an optional risk management strategy under the MSA. If you have agreed with the Supplier that a financial security will be provided, tick the "Yes" box, state the amount of the Financial Security, and get the Supplier to provide the Financial Security substantially in the form of Schedule 10 to the MSA or in the standard form that is usually provided by the issuing entity You may need assistance from NSW Telco in completing the Financial Security. Otherwise, tick the "No" box. |
| **21** | An 'Approved Agent' is an entity that is authorised in writing by the Supplier to act as the Supplier’s legal agent for the purpose of supplying Equipment, Infrastructure or Services to the Customer under a Supply Contract, e.g., a reseller. If items are to be supplied under the Purchase Order through an Approved Agent of the Supplier, set out details here. Otherwise, state "Not applicable". |
| **22** | Under the MSA, the default Warranty Period for Deliverables is 12 months (either from Acceptance if the Deliverables has been acceptance tested, or otherwise from delivery). If this is appropriate (in terms of the Supplier's policies and the relevant Deliverables), tick the "As per MSA" box. Otherwise, tick the "As set out below" box and provide details of the different Warranty Period (note that there may be different Warranty Periods for different deliverables). |
| **23** | Under the MSA, a "Management Committee" can be established. If you have agreed with the Supplier that there will be a Management Committee for this project, tick the "Yes, details below" box and set out details of the Management Committee's members, frequency of meetings, and any additional functions. Otherwise, tick the "No" box.  |
| **24** | Under the MSA, "Test Items" are Equipment, Infrastructure or Services which will be subject to Acceptance Tests in accordance with the MSA. If you have agreed with the Supplier that the relevant items will be subject to Acceptance Tests-tick the first "Yes" box, and then tick the appropriate box depending on whether an Acceptance Test Plan is able to be attached to the Purchase Order or will be produced by the supplier later. If the items being purchased are not Test Items, tick the "No" box.  |
| **25** | This Item is only relevant where Construction Services (as described in Schedule 5 of the MSA) are being provided by the Supplier. If the Supplier is providing Construction Services, and you have agreed with the Supplier that it is being engaged as the 'principal contractor' for work health and safety purposes, which will mean it has primary WHS responsibility for the construction site or location at which these services are being provided (Construction Site), tick the "Yes" box and attach a site plan detailing the Construction Site in respect of which the Supplier is the WHS Principal Contractor. If the Supplier is not being engaged as the WHS Principal Contractor, tick the "No" box. |

**General Order Form - ITS2573 Prequalified Suppliers**

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| **Item** | **General Details** |
| **1** | **Master Supply Agreement**  | MSA Number: |  |
| Supply Contract Number: |  |
| Date Created: |  |
| This is a Purchase Order made under the Master Supply Agreement with the Supplier and the NSW Department of Customer Service (**MSA**). Once signed by both parties, this Purchase Order forms a 'Supply Contract' for the purposes of the MSA. |
| **2** | **Supplier** | Name: |  |
| ACN/ABN: |  |
| Address:  |  |
| **3** | **Customer** | Name: |  |
| ACN/ABN: |  |
| Address: |  |
| **4** | **Authorised Representatives** | Supplier: | Name |  |
| Position |  |
| Address |  |
| Phone |  |
| email |  |
| Customer: | Name |  |
| Position |  |
| Address |  |
| Phone |  |
| email |  |
| **5** | **Service Address** | Supplier: | Address for receiving a Notice in Writing |
|  | Name |  |
|  | Position |  |
|  | Address |  |
| Customer: | Address for receiving a Notice in Writing |
|  | Name |  |
|  | Position |  |
|  | Address |  |
| **6** | **Additional Terms** | Must tick one or more as applicable:[ ]  Equipment Terms[ ]  Infrastructure Terms[ ]  Services Terms |
| **Item** | **Details of Equipment, Infrastructure and/or Services to be Provided** |
| **7** | **Standard Pricing**  | [ ]  The Supply Contract is for Equipment, Infrastructure and/or Services where the pricing is as per below:  |
| **Item** | **Item Reference (if available)** | **Quantity**  | **Unit Price** **(excl GST)** | **Total Price (excl GST)** |
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| **Delivery Address** |  |
|  |  | **Delivery Date** |  |
|  |  | **Set out any special instructions such as delivery details:** |
| **8** | **Contract Specific Requirements**  | [ ]  There are Contract Specific Requirements as set out in the following Supply Contract documentation: *Attach as appropriate:*[ ]  *Specifications*[ ]  *Statement of Work*[ ]  *Service Level Agreement*[ ]  *Support Services agreement/description* [ ]   *Customer Requirements*[ ]  Drawings[ ]  *Project Plan or milestones with milestone dates including any retentions*[ ]   *Customer Supplied Items*[ ]   *Other ...... specify:* |
| **9** | **Services Term** |   |
| **Item** | **Details of Pricing and Payment** |
| **10** | **Pricing** | [ ]  As per Item 7 of this Purchase Order[ ]  As per attached Pricing and Payment Plan |
| **11** | **Payment** | [ ]  On Acceptance of goods and/or services [ ]  On Delivery[ ]  As per the attached Pricing and Payment Plan |
| **12** | **Termination for Convenience Payments** |  |
| **Item** | **Performance Details** |
| **13** | **Specified Personnel** | [ ]  None [ ]  Yes, as follows: |
| **14** | **Approved Subcontractors as at date of Purchase Order** |  |
| **15** | **Contract Management and Reviews** |  |
| **16** | **Reporting** |  |
| **17** | **IPR** | [ ]  Yes, the Intellectual Property in New Material produced by Supplier under the  Supply Contract will vest in or transferred or assigned by the Customer.[ ]  No |
| **18** | **Liquidated Damages** | [ ]  Yes, Liquidated Damages will be payable for the late completion of an LD Obligation in the amount of $ ***[insert value]*** [ ]  No |
| **19** | **Performance Guarantee** | [ ]  Yes, a Performance Guarantee will be executed by ***[insert Guarantor Name]***[ ]  No |
| **20** | **Financial Security** | [ ]  Yes, for the amount of [***insert***][ ]  No |
| **21** | **Approved Agents** |  |
| **22** | **Warranty Period** | [ ]  As per MSA (12 months)[ ]  As set out below:  |
| **23** | **Management Committee**  | Is a Management Committee to be established?[ ]  Yes, details below [ ]  No |
| **24** | **Test Items** | Are Contracted Items Test Items?[ ]  Yes [ ]  NoIf Yes, is an Acceptance Test Plan attached? [ ]  Yes [ ]  No, Plan to be produced by Supplier. |
| **25** | **WHS Principal Contractor** | Is the Supplier to be engaged as the 'principal contractor' for work health and safety purposes?[ ]  Yes – clauses 15.15 and 15.16 of the Services Terms apply and the site plan detailing the Construction Site is as attached to, and forming part of, the Order Documents.[ ]  No – clauses 15.15 and 15.16 of the Services Terms do not apply. |

**EXECUTED** as an agreement.

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| **Signed for and on behalf of [insert name of Customer]** by [insert name of Customer's Authorised Representative] but not so as to incur personal liability |  |  |  |
|  |  |  |  |
| Print Name |  | Signature of Customer Representative |  |
|  |  |  |  |
| Date |  |  |  |

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| **Signed for and on behalf of [insert Supplier's name and ACN/ABN]** by [insert name of Supplier’s Authorised Representative] but not so as to incur personal liability |  |  |  |
|  |  |  |  |
| Print Name |  | Signature of Authorised Signatory |  |
|  |  |  |  |
| Date |  |  |  |