



Online Terms

Water Corporation
e-Procurement
Registration Terms and
Conditions of Use

30 June 2008

Water Corporation

Conditions for Use of e-Procurement

1 Important

1.1 Welcome

Welcome to e-Procurement, the Water Corporation's online procurement system. e-Procurement is owned and operated by the Water Corporation.

As a registered user of e-Procurement, you will be able to view certain bid invitations published by the Water Corporation, submit bids, and communicate with the Water Corporation in relation to procurement contracts that the Water Corporation enters into with you.

These Conditions of Use describe the terms that apply to your use of e-Procurement. They apply to those who complete the registration process, and apply as soon as you have signed the Water Corporation's registration form for e-Procurement/clicked on the "I Agree" button at the bottom of the Supplier Registration Form.

These Conditions of Use apply in addition to the General Terms of Use of the Water Corporation's Web Site and the Electronic Business Conditions of Use. You acknowledge that you have read and understood the General Terms of Use of the Web Site and the Electronic Business Conditions of Use, and agree to be bound by them.

Your attention is drawn to important disclaimer and limitation of liability provisions contained in clause 16 of these Conditions of Use.

PLEASE READ THESE CONDITIONS OF USE CAREFULLY!

1.2 Who can use e-Procurement?

e-Procurement is available only to individuals, companies or other legal entities who:

- (a) are suppliers or potential suppliers to Water Corporation; and
- (b) have been authorised by the Water Corporation by means of a unique username and confidential password identifier to access and use e-Procurement.

1.3 What does e-Procurement do?

- (a) e-Procurement is an online system, through which the Water Corporation can issue invitations to bid, receive bid submissions from potential suppliers, enter into procurement contracts and communicate with authorised contractors in relation to procurement contracts.
- (b) The Water Corporation prefers to conduct contract negotiations and certain contract communications through e-Procurement, where possible. However, the Water Corporation may provide and receive hard copies of documents as it does currently, if a supplier requests.



1.4 To print these conditions

To print the Conditions of Use:

- (a) press the "Ctrl" and "p" buttons when using a Windows operating system;
- (b) press the "Apple" and "p" keys when using a Macintosh operating system; or
- (c) press the "Alt" and "p" keys when using an UNIX operating system.

You can also download these Conditions of Use to your computer or PDA.

You agree that you have been given an opportunity to retain these Conditions of Use for subsequent reference. Unless you make a specific request for a non-electronic copy, you will not otherwise be provided with a copy of the information.

2 Accessing e-Procurement

2.1 Technical requirements

In order to use e-Procurement, you will need:

- (a) *[insert brief description of any hardware and software required]*;
- (b) access to the Internet through an internet access service provider;
- (c) a working email address; and
- (d) your unique username and confidential password assigned by the Water Corporation, which you will need to enter when prompted.

2.2 Technical requirements are your responsibility

- (a) Supply and maintenance of any equipment necessary to enable you to use e-Procurement (including any hardware and software) and maintenance of an account with an internet access service provider to enable you to use e-Procurement, is solely your responsibility.
- (b) You must take reasonable steps to maintain the security of your hardware and software and log off e-Procurement before leaving unattended a computer or other hardware used to access e-Procurement.

2.3 Updating information

- (a) You must notify the Water Corporation in writing within 2 Business Days of any change to the information you provided to the Water Corporation when registering to use e-Procurement, including but not limited to any change in your email address.
- (b) For the purposes of these Conditions of Use, your correct email address will be deemed to be the email address given by you to the Water Corporation at the time you registered to use e-Procurement, or such other email address as you have notified in writing to the Water Corporation prior to the Water Corporation sending the relevant electronic Communication.

2.4 Varying e-Procurement

- (a) The Water Corporation may from time to time at its sole discretion upgrade, alter or modify e-Procurement or any part of it.



- (b) The Water Corporation will post a notice on the Web Site of any change in e-Procurement, or in any hardware, software or other facilities required to access or use e-Procurement. This will constitute sufficient notice to you of the change.
- (c) You are solely responsible for making the necessary upgrades, alterations or modifications to your systems, hardware, software or other facilities to ensure your continued access and use of e-Procurement.

2.5 Termination or suspension of access

The Water Corporation may suspend or terminate your access to e-Procurement if:

- (a) the Water Corporation reasonably believes that it was induced by fraud or misrepresentation by you (or any other person) to grant use of e-Procurement or issue an Identifier;
- (b) the Water Corporation reasonably believes that there has been fraud or misrepresentation with respect to the use of e-Procurement;
- (c) the Water Corporation reasonably believes that the continued use of e-Procurement may cause a loss to the Water Corporation or will cause the Water Corporation to breach any applicable law; or
- (d) at any other time in the Water Corporation's sole discretion.

If your access is suspended or terminated, you must not attempt to access or use e-Procurement during the suspension or following termination.

If the Water Corporation terminates your access to e-Procurement, these Conditions of Use will be terminated. However, all disclaimers and exclusions of and limitations on liability of the Water Corporation will survive termination.

3 No representation

By registering you as a user of e-Procurement, the Water Corporation does not represent that:

- (a) you will be advised that the Water Corporation intends to issue, or has issued, a bid invitation;
- (b) bid invitations or other documents relating to bids will be published on e-Procurement or otherwise made available to you;
- (c) you will be invited to, or be eligible to, submit a bid to become a Water Corporation supplier, or otherwise participate in an online procurement process; or
- (d) you will be given preferential treatment in the Water Corporation's consideration of bid submissions.

4 Consent to electronic transactions

4.1 Consent to electronic communication

You agree that:

- (a) the Water Corporation may communicate with you via e-Procurement and via electronic mail, as the Water Corporation considers appropriate;
- (b) a document in electronic form (in e-Procurement or otherwise) has the same effect as a written document, and is considered to be "in writing";



- (c) information given via electronic communication (via e-Procurement or otherwise) has the same effect as if that information was in written form, and is considered to be “in writing”;
- (d) you will not dispute that a document or any other information is authentic or binding on the ground that the document or other information was transmitted or generated electronically; and
- (e) the Messages Log is evidence of all Messages between you and the Water Corporation transmitted through e-Procurement or generated by e-Procurement.

4.2 Consent to entering agreements electronically

You agree that:

- (a) using e-Procurement with your Identifier is a reliable method for entering into an agreement;
- (b) agreements are validly formed by Messages transmitted through or generated by e-Procurement; and
- (c) if a signature is required or desirable, it is sufficient for your consent to be given in electronic form via e-Procurement using your Identifier.

4.3 Authentication

You acknowledge that:

- (a) the Water Corporation cannot verify whether the user of your Identifier is in fact you;
- (b) your Identifier allows anybody correctly using it to send and generate Messages and to conduct operations on e-Procurement;
- (c) you are solely responsible for all operations conducted on e-Procurement (including any Messages that are sent or generated) using your Identifier; and
- (d) the Water Corporation is entitled to presume that you have sent any Message that originates from, or is sent or generated using, your Identifier, and those Messages are valid and binding on you.

5 Formation of contract

- (a) No contract is entered into through e-Procurement unless the Water Corporation expressly accepts your offer by notifying you directly in the manner specified in clause 7.
- (b) A contract is not entered into through e-Procurement by your acceptance, or by any document being received by the Water Corporation (via e-Procurement or otherwise).
- (c) Silence by the Water Corporation does not constitute acceptance of any offer.

6 Invitations to bid

- (a) The Water Corporation may at any time invite potential suppliers to submit an offer for the supply of goods and services through e-Procurement or via some other medium. (**Bid Invitation**)
- (b) A Bid Invitation is not an offer or acceptance by the Water Corporation, but is only an invitation to treat from the Water Corporation to potential suppliers.
- (c) The Water Corporation may at any time issue addenda to the Bid Invitation through e-Procurement, which may vary the Bid Invitation.



- (d) You may, in response to the Bid Invitation, submit an offer to the Water Corporation (**Bid**) through e-Procurement or manually in accordance with, and within the time specified in, the Bid Invitation.
- (e) A Bid is your offer to the Water Corporation.
- (f) All Bids are subject to and must comply with the Water Corporation's normal Bid Criteria and are governed by the normal terms and conditions applying to the bid process. If a Bid Invitation does not specify the terms and conditions that are to apply to the contract, the Bid invitation shall be deemed to incorporate the Water Corporation's Purchase Order Terms and Conditions and your Bid will be deemed to be subject to those terms and conditions.
- (g) The Water Corporation may at any time, in its sole discretion, withdraw a Bid Invitation by notice on e-Procurement, or by providing notice in the manner specified in clause 22.

7 Acceptance of Bids

- (a) If the Water Corporation decides to accept your Bid, it will convey its acceptance by issuing a formal notice of acceptance to you either in the form of a Purchase Order or a Message through e-Procurement, or manually.
- (b) If the Water Corporation decides to accept your Bid, it may announce (on the Web Site or otherwise) that you are the successful bidder in respect of the Bid Invitation.
- (c) The Water Corporation may disregard any bid that is submitted after the time specified in the Bid Invitation regardless of whether the delay in submitting the bid was caused in whole or in part by any unavailability of e-Procurement, interruption in the access or use of e-Procurement or any other factor attributable to e-Procurement.

8 Ordering of goods and services from catalogues

- (a) This clause 8 applies if a Contract is a Standing Offer.
- (b) The Water Corporation may instruct you to deliver goods or services under a Standing Offer by issuing a purchase order via a Message sent through e-Procurement or manually.
- (c) The issue of a purchase order is the Water Corporation's acceptance of your Standing Offer for the goods or services detailed in the purchase order.

9 Electronic invoices, claims and progress certificates

- (a) You may use e-Procurement to submit claims for payment to the Water Corporation for goods and services provided to the Water Corporation.
- (b) The Water Corporation may use e-Procurement to issue progress certificates, recipient created tax invoices and credit memos.

10 Other communication

The Water Corporation and you may use e-Procurement to send Messages relating to the Contract, including but not limited to:

- (a) approval and performance of subcontractors;
- (b) appointment and removal of representatives;
- (c) work plan schedules;
- (d) your performance under the Contract;
- (e) end of period reporting;
- (f) claims for extra time or extra payments;
- (g) requested variations to the Contract;
- (h) defects under the Contract;
- (i) disputes that arise in relation to the Contract; and
- (j) any other matters which the Contract provides may be sent or communicated via e-Procurement.

11 Other terms apply

11.1 Other terms

These Conditions of Use apply in addition to:

- (a) the Electronic Business Conditions;
- (b) the general terms of use of the Web Site, including any disclaimers set out on the Web Site;
- (c) the Water Corporation's privacy policy set out on the Web Site
- (d) the conditions of bidding contained in, or referred to in, any Bid Invitation; and
- (e) the provisions of any Contract.

11.2 Your acknowledgement

You acknowledge that you have read and understood:

- (a) the Electronic Business Conditions;
- (b) the general terms of use of the Web Site (including any disclaimers); and
- (c) the Water Corporation's privacy policy set out on the Web Site, and agree that they are all binding on you.

11.3 Priority of terms

These Conditions of Use will prevail over:

- (a) the Electronic Business Conditions to the extent of any inconsistency, notwithstanding anything to the contrary in the Electronic Business Conditions.



- (b) the conditions of bidding contained in, or referred to in, any Bid Invitation, unless the Bid Invitation is specifically expressed to prevail over these Conditions of Use; and
- (c) the provisions of a Contract concluded or performed in whole or in part using e-Procurement to the extent of any inconsistency, unless the Contract is specifically expressed to prevail over these Conditions of Use.

12 Availability of e-Procurement

- (a) As electronic services are subject to interruption or breakdown, access to e-Procurement is offered on an “as is” and “as available” basis only.
- (b) The Water Corporation does not guarantee that the e-Procurement or the Web Site will be free from viruses, or that access to the Web Site or e-Procurement will function as intended or be uninterrupted.
- (c) The Water Corporation may limit or restrict the use you may make of e-Procurement.
- (d) For security, technical, maintenance, legal or regulatory reasons, or due to any breach of these Conditions of Use by you, the Water Corporation may withdraw e-Procurement at any time and without notice or liability to you.

13 Data Security

13.1 Confidentiality of Messages

The Water Corporation will take all reasonable precautions to protect Messages and other information on e-Procurement from misuse and loss and from unauthorised access, modification or disclosure, during transmission to the Water Corporation or while stored on e-Procurement. But you acknowledge that:

- (a) the security of the information that you submit to the Water Corporation through e-Procurement cannot be guaranteed; and
- (b) the Water Corporation will not be liable if a Message or other information stored in e-Procurement is disclosed to somebody other than you.

13.2 Data backups

- (a) The Water Corporation may back up data stored in e-Procurement for its own purposes, but does not provide backup and recovery of data not required for its own purposes.
- (b) You should make your own backup copies of all Messages sent or generated using your Identifier, and all Messages the Water Corporation sends to you.
- (c) The Water Corporation is not obliged to provide you with a copy of any Message or other information that you store on e-Procurement.
- (d) The Water Corporation will not be liable if any Message or other data is lost.

14 Accuracy of content

While reasonable steps have been undertaken to ensure that information is free from error, the Water Corporation makes no warranty that:

- (a) e-Procurement will meet your requirements;



- (b) the content on e-Procurement will be error-free, accurate, adequate or complete; or
- (c) the quality of any information available through e-Procurement will meet your expectations.

You should check the accuracy and completeness of all Messages and other information on e-Procurement yourself.

15 Viruses

- (a) The Water Corporation cannot guarantee that e-Procurement and any other information or material contained in, downloaded from or accessible to you via e-Procurement, will be free from computer viruses or any other defect or error which may affect your software or systems. To protect your software and systems we suggest you install and implement your own system protection software.
- (b) Your transmission to the Water Corporation will be examined for known viruses using the Water Corporation's standard operating environment scanning and detection tools. If a virus is detected in your transmission, the transmission may be rejected and will be deemed not to have occurred.
- (c) You are advised, where a transmission failure has occurred, to clean and resubmit the transmitted data. The Water Corporation will accept no liability if your transaction fails due to viral problems.

16 Water Corporation's liability limited

16.1 Important Disclaimer

You acknowledge and agree that subject to clause 16.2:

- (a) **the Water Corporation;**
- (b) **any other person whose website is linked to a website of the Water Corporation; and**
- (c) **any officer, employee, agent or related company of any of the persons referred to in subclause (a) and (b),**
(each a "Protected Party")

are not liable for any Claim (including, but not limited to, by negligence of any Protected Party), suffered or incurred by you arising from or in connection with your use of e-Procurement or the Web Site.

You must indemnify a Protected Party against any Loss suffered or incurred by that Protected Party arising from or in connection with any Claim made against a Protected Party by you.

16.2 Exclusion of warranties

Except for:

- (a) **the express terms and warranties set out in these Conditions of Use; and**
- (b) **those implied terms or warranties that are imposed by statute that are mandatory and cannot be excluded,**

the Water Corporation gives no warranties and all other terms, conditions, warranties, stipulations or other statements whatsoever, whether express or



implied, by statute or common law, or otherwise howsoever, are expressly excluded.

16.3 Liability limited to maximum extent

- (a) Notwithstanding anything else in these Conditions of Use, where any statute implies any terms or warranty into these Conditions of Use, and that statute avoids or prohibits provisions in a contract excluding or modifying that term or warranty (except in certain cases), that term or warranty will be deemed to be included in these Conditions of Use, but the liability of the Water Corporation and its affiliates respectively for breach of that term will be limited to, so far as permitted by that statute, in one or more ways (at the Water Corporation's option) permitted by section 68A(1) of the *Trade Practices Act 1974* (Cth), section 35(1) of the *Fair Trading Act 1987* (WA) or any other similar provision contained within any other like statute.
- (b) In any event, you acknowledge and agree that, to the extent permitted by law the total liability of the Water Corporation, its directors, employees, agents, sub-contractors and contractors to you for all Claims, is limited in the aggregate to the amount of fees received by the Water Corporation from you (if any) in connection with your use of e-Procurement over the period of 12 months prior to the date on which the breach giving rise to a Claim first arises.

16.4 Exclusion of liability for content

- (a) You acknowledge that content may be placed on e-Procurement by persons other than the Water Corporation. The Water Corporation is not liable for any type of information placed on e-Procurement by any person.
- (b) The Water Corporation does not guarantee or warrant the security of any data that is transmitted or generated using e-Procurement.

16.5 No third party beneficiaries

These Conditions of Use do not provide any person or entity that is not a party to these Conditions of Use with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

16.6 Your indemnity

You indemnify the Water Corporation and its affiliates in respect of any Claim suffered or incurred by the Water Corporation or its affiliates arising from or in connection with a breach of these Conditions of Use by you, or your use of e-Procurement or the Web Site.

17 Restrictions on use of e-Procurement

17.1 Preserve integrity and security of e-Procurement

You must do all things necessary to preserve and maintain the integrity and security of e-Procurement, and this obligation includes the following:

- (a) you must ensure that only users within your organisation who have been specifically authorised by the Water Corporation to use e-Procurement attempt to access or use e-Procurement;
- (b) you must ensure that there is no unauthorised access or use of e-Procurement or your Identifier;



- (c) you must ensure that your Identifier is treated with extreme care; and
- (d) you must use e-Procurement only to conduct transactions, communications or queries for your own organisational use.

17.2 No aggregating, copying or disassembling

You must not, either through yourself or any third party:

- (a) use any robot, spider, screen scraper, data aggregation tools or other automatic device or manual process to process, monitor, copy or extract any web pages on e-Procurement, or any of the information, content or data contained within, or accessible through e-Procurement, without the Water Corporation's prior written permission;
- (b) use any data aggregation tools or processes, aggregate or combine information, content or data contained within or accessible through e-Procurement with information, content or data accessible via or sourced from any third party;
- (c) use any device, software, process or routine to interfere or attempt to interfere with the proper working of e-Procurement or any transaction or process being conducted on or through it;
- (d) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of or bandwidth connecting to e-Procurement or the Web Site;
- (e) reverse engineer, reverse assemble, decompile, or otherwise attempt to discover source code or other arithmetical formula or processes in respect of the software underlying the infrastructure and processes associated with e-Procurement; or
- (f) copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from e-Procurement without the Water Corporation's prior written permission.

17.3 No unlawful use

You must not use, or allow any person to use, e-Procurement:

- (a) fraudulently or illegally, or for any obscene, offensive or illegal purpose; or
- (b) to defraud or deceive the Water Corporation.

18 Your warranties

18.1 Authority

You warrant that:

- (a) you are of legal age to, and authorised to, enter into these Conditions of Use and be bound by them;
- (b) you have full legal authority to bind the company or other legal entity on whose behalf you are entering into these Conditions of Use;
- (c) the legal entity on whose behalf you are entering into these Conditions of Use is validly existing, not insolvent and has the legal capacity and power to enter into, perform and comply with its obligations under these Conditions of Use; and
- (d) both you and the legal entity on whose behalf you are entering into these Conditions of Use will be bound by these Conditions of Use.

18.2 Messages

You warrant that all Messages and other information that you give to the Water Corporation, or that is given on your behalf, in relation to e-Procurement or these Conditions of Use is or will be:

- (a) complete, accurate and not misleading in any way; and
- (b) transmitted or sent by such persons as are duly authorised by you to transmit or send the Messages and information,

and you agree that the Water Corporation is under no obligation to check Messages or other communications sent by you or on your behalf to ascertain their completeness, truthfulness or accuracy.

19 Intellectual Property

- (a) All intellectual property rights in e-Procurement and the content of e-Procurement is vested in the Water Corporation or its affiliates, except as otherwise provided in this clause.
- (b) You receive only a licence to use e-Procurement in accordance with these Conditions of Use until the Water Corporation terminates your access to e-Procurement.
- (c) Content that is generated by you or other potential suppliers, and submitted to the Water Corporation via e-Procurement during a bid process will be owned by the author of that content.
- (d) You must not reproduce or reuse any part of e-Procurement or the content of e-Procurement (other than material referred to in paragraph (c)) except as is necessary for and incidental to your use of e-Procurement in accordance with these Conditions of Use, without the prior written permission of the Water Corporation.

20 Confidentiality

20.1 Keep information confidential

- (a) You must keep confidential, and not use or disclose any Confidential Information, except as permitted by these Conditions of Use.
- (b) The obligation of confidence in paragraph (a) extends to Confidential Information provided to or obtained by you before entering into these Conditions of Use.

20.2 Exclusions

The obligation of confidence in clause 20.1(a) does not apply to Confidential Information that is:

- (a) required to be disclosed by applicable law or court order or the rules of any stock exchange on which your securities are listed, as long as you disclose the minimum amount of Confidential Information required to satisfy the law, order or rules, and give reasonable notice to the Water Corporation before disclosing any information;
- (b) in the public domain otherwise than as a result of a breach of these Conditions of Use or another obligation of confidence;
- (c) independently developed by you; or



- (d) already known by you independently of its interaction with the Water Corporation and free of any obligation of confidence.

20.3 Preventing disclosures

You must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information.

20.4 Remedies for breach

- (a) You acknowledge that the value of the Confidential Information is such that an award of damages or an account of profits may not adequately compensate the Water Corporation if this clause 20 is breached.
- (b) You acknowledge that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 20, the Water Corporation may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain you or your advisers from any breach or threatened breach of this clause 20.

20.5 Survival of obligations

The obligations of confidentiality in this clause 20 survive the expiry or termination of these Conditions of Use.

21 Fees and charges

- (a) There are currently no transaction fees or service charges for using e-Procurement, unless specifically indicated by the Water Corporation.
- (b) The Water Corporation may at any time impose or vary fees and charges for the use of or arising out of the use of e-Procurement, and you must pay the Water Corporation any such fees.
- (c) You are responsible for all telephone charges incurred in connecting to e-Procurement. You are also responsible for any fees and charges imposed by any internet access service provider.
- (d) The Water Corporation reserves the right to charge you for any State, Territory or Federal Government charges, stamp duties or taxes (including any Goods and Services Tax) payable as a result of the use of e-Procurement.

22 Notices

22.1 Notices must be in writing

All notices and other communication (**Notices**) which concern e-Procurement or a Contract must be in English and in writing.

22.2 How the Water Corporation will deliver Notices to you

The Water Corporation may give you a Notice by:

- (a) sending you a Message via e-Procurement;
- (b) broadcasting a message on e-Procurement or on the Web Site;



- (c) delivering it to you by hand or sending it to you by pre-paid post or fax at the address or the fax number that you have last notified to us; or
- (d) subject to clause 22.4, sending it to you by email to the email address you have last notified us of.

22.3 How you may deliver notices to the Water Corporation

You may give the Water Corporation a Notice by:

- (a) sending us a Message via e-Procurement; or
- (b) if the Notice concerns a Contract:
 - (1) delivering it to us by hand or sending it to us by pre-paid post or fax; or
 - (2) subject to clause 22.4, sending it by email, to the contact details specified for the Water Corporation in the Contract or to such other details as we may advise from time to time;
- (c) if the Notice concerns e-Procurement:
 - (1) delivering it to us by hand or sending it to us by pre-paid post or fax; or
 - (2) subject to clause 22.4, sending it by email, to the following address or such other address as we may advise from time to time:

Manager Procurement
 Water Corporation
 629 Newcastle Street
 Leederville WA 6007
 08 9420 3185
procurement.operations@watercorporation.com.au

22.4 Excluded Notices

A party must not send an Excluded Notice by email.

22.5 When Notices are taken to have been given and received

- (a) A Message sent via e-Procurement is regarded as given and received as set out in clause 23.
- (b) A Notice sent by post is regarded as given and received on the 2nd Business Day following the date of postage.
- (c) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (d) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.
- (e) A Notice sent by email is regarded as given and received on the date shown by a printed "delivery receipt" generated by the sender's computer.



23 Delivery and receipt of Messages

23.1 Messages the Water Corporation sends

- (a) You are deemed to have received a Message sent by the Water Corporation to you when the Message is displayed on e-Procurement.
- (b) The date and time of the display of the Water Corporation's Message on e-Procurement will be indicated in the Message or otherwise captured in the Messages Log. You agree that this will constitute evidence of the date and time of your receipt of the Water Corporation's Message.

23.2 Messages you send

- (a) The Water Corporation is deemed to have received a Message sent by you to the Water Corporation when e-Procurement generates an acknowledgement Message containing the date and time of delivery of your Message.
- (b) You agree that the acknowledgement Message constitutes evidence of the date and time of the Water Corporation's receipt of your Message.

23.3 All Messages in Western Australia

The place of dispatch and receipt of all Messages is deemed to be Western Australia.

24 Notice clauses to override Contract

Clauses 22 and 23 will prevail over any inconsistent provision in any Contract that is entered into or performed in whole or in part using e-Procurement, notwithstanding anything to the contrary set out in the Contract.

25 General

25.1 Governing law and jurisdiction

- (a) These Conditions of Use and all Contracts are governed by the law in force in Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these Conditions of Use or any Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

25.2 Invalidity and enforceability

- (a) If any provision of these Conditions of Use is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 25.2(a) does not apply where enforcement of the provision of these Conditions of Use in accordance with clause 25.2(a) would materially affect the nature or effect of the parties' obligations under these Conditions of Use.

25.3 Waiver

You may not rely on the words or conduct of the Water Corporation as a waiver of any right unless the waiver is in writing and signed by the Water Corporation.

In this clause 25.3:

Term	Meaning
conduct	includes delay in the exercise of a right
right	any right arising under or in connection with these Conditions of Use and includes the right to rely on this clause
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel

25.4 Acceptance and changes to Conditions of Use

- (a) You acknowledge and accept that your use of e-Procurement indicates your acceptance of these Conditions of Use.
- (b) These are the current Conditions of Use. They replace any other terms of use for the e-Procurement published on the Web Site to date
- (c) The Water Corporation may at any time vary these Conditions of Use for security, legal or regulatory reasons, or to reflect updates or changes to the services or functionality of e-Procurement, by publishing the varied Conditions of Use on the Web Site.
- (d) The Water Corporation will indicate on the Web Site that these Conditions of Use have changed, however, the Water Corporation is under no obligation to specifically contact or notify you of any variation to these Conditions of Use. You accept that by doing this, the Water Corporation has provided you with sufficient notice of the variation. By your use of e-Procurement after any variation, you are taken to have accepted the new Conditions of Use.

25.5 Assignment of rights

- (a) You must not assign any rights arising out of or under these Conditions of Use without the prior written consent of the Water Corporation.
- (b) If you breach clause 25.5(a), the Water Corporation may terminate your access to e-Procurement.
- (c) Clause 25.5(b) does not affect the construction of any other part of these Conditions of Use.

25.6 Further action to be taken at each party's own expense

You must, at your own expense, do all things and execute all documents necessary to give full effect to these Conditions of Use and the transactions and Contracts contemplated by it.



25.7 Relationship of the parties

- (a) Nothing in these Conditions of Use gives a party authority to bind any other party in any way.
- (b) Nothing in these Conditions of Use imposes any fiduciary duties on a party in relation to any other party.

25.8 Exercise of discretions

- (a) Unless expressly required by these Conditions of Use, the Water Corporation is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with these Conditions of Use.
- (b) The Water Corporation may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with these Conditions of Use. You must comply with any such conditions.

26 Definitions and interpretation

26.1 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
Authorised User	a person who is authorised by the Water Corporation by means of a unique username and confidential password to access and use e-Procurement
Bid	a Message by which you submit an offer as referred to in clause 6(d)
Bid Criteria	the specification, scope of work and other matters pertaining to the provision of goods and the performance of services required by the Bid Invitation, including the terms and conditions of contract.
Bid Invitation	a Message inviting you to submit an offer as referred to in clause 6(a)
Business Day	a day on which banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city
Claim	means, in relation to a party, any action, suit, claim, proceeding, demand, Loss, damages, cost and expense of any nature whatever, and however arising, out of, relating to, or connected with these Conditions of Use, made or to be made, or that might be made, against the party.

Term	Meaning
Conditions of Use	these specific conditions for the registration and use of e-Procurement
Confidential Information	<p>Any information:</p> <ul style="list-style-type: none"> (a) regarding the business or affairs of the Water Corporation or its affiliates; (b) regarding the customers, employees or contractors of, or other persons doing business with, the Water Corporation or its affiliates; or (c) regarding the terms of these Conditions of Use, or the commercial arrangements between the parties, <p>which</p> <ul style="list-style-type: none"> (d) is by its nature confidential or which is designated as confidential by that party; or (e) the other party knows, or ought to know, is confidential, <p>and includes</p> <ul style="list-style-type: none"> (f) all Messages sent by or generated by the Water Corporation; and (g) all Messages generated by e-Procurement.
Contract	a contract between you and the Water Corporation for the supply of goods or services to the Water Corporation
Electronic Business Conditions	the Water Corporation's Electronic Business Conditions of Use, available on the Web Site
Excluded Notices	means any Notice to be given by a party relating to or in connection with a default, breach, dispute or termination of any Contract or e-Procurement.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world
Identifier	a unique username and confidential password for accessing e-Procurement assigned to you by the Water Corporation
Loss	<p>means any claim, action, damage, loss, liability, cost, charge, expense, diminution in value or deficiency of any kind or character that a party pays, suffers or incurs or is liable for, including:</p> <ul style="list-style-type: none"> (a) all interest and other amounts payable to third parties; (b) all legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of a claim or action; and (c) indirect, special, incidental or consequential loss or damages (including loss resulting from business disruptions, lost profits, trading or execution losses) or loss or damage to systems or data.

Term	Meaning
Material	any document, information or data obtained from e-Procurement
Message	data structured in accordance with e-Procurement and the Web Site and transmitted electronically through e-Procurement, or generated by e-Procurement
Messages Log	a complete historical record of all Messages transmitted through or generated by e-Procurement
Notice	is defined in clause 22.1
e-Procurement	the online procurement system known as "e-Procurement" available on this Web Site together with any applications used in connection with online procurement (such as but not limited to SAP SRM) and any private c folders created by you. For the purposes of the Electronic Business Conditions, e-Procurement is an "Application"
Standing Offer	means a binding arrangement between you and the Water Corporation under which you agree to provide goods or services that may be ordered by the Water Corporation from time to time, for agreed rates or prices on agreed terms and conditions.
Water Corporation we or us	the Water Corporation a statutory body corporate created by the <i>Water Corporation Act 1995</i> (WA), its officers, employees and contractors
Web Site	unless otherwise stated, the Water Corporation web site operating under the registered domain of www.watercorporation.com.au as well as participating service providers required to perform a Water Corporation business function
you or your	the person who accepts these Conditions of Use, either personally or on behalf of a company or other legal entity and includes, if acceptance is on behalf a company or other legal entity, the company or other legal entity's officers, employees, and agents

26.2 Interpretation

In these Conditions of Use:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Conditions of Use.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in these Conditions of Use have a corresponding meaning.



- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, these Conditions of Use and a reference to these Conditions of Use includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A promise on the part of 2 or more persons binds them jointly and severally.
- (k) A reference to an agreement other than these Conditions of Use includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (m) No provision of these Conditions of Use will be construed adversely to a party because that party was responsible for the preparation of these Conditions of Use or that provision.
- (n) A reference to a body, other than a party to these Conditions of Use (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

26.3 Interpretation of inclusive expressions

Specifying anything in these Conditions of Use after the words "include" or "for example" or similar expressions does not limit what else is included.

26.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.