General Terms and Conditions

1 DEFINITIONS

The following terms have the following meaning unless the context requires otherwise:

AAO means the Commonwealth of Australia represented through the Department of Industry and the Australian Astronomical Observatory.

Commencement Date means the date of execution on the Purchase Order.

Confidential Information means any written or oral information of a technical, commercial or financial nature or which is taken by any provision of this Contract to be Confidential Information, or which the AAO makes the Supplier aware is considered by the AAO to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act 1988 (Cth), but does not include information which the Supplier can establish:

(a) was in the public domain when it was given to the Supplier;
(b) becomes, after being given to the Supplier, part of the public domain, except through disclosure contrary to this Contract;
(c) was in the Supplier’s possession when it was given to the Supplier and had not been acquired in some other way (directly or indirectly) from the AAO; or
(d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

Contract means this agreement which is constituted by:

(a) a Purchase Order;
(b) these Terms;
(c) any attachments to the Terms; and
(d) the Commonwealth Contract Terms available at http://www.finance.gov.au/procurement/commonwealth-contracting-suite/ in the form they appeared at 9:00 am (local Canberra time) on the date of this Contract.

In the event of any ambiguity, discrepancy or inconsistency between anything contained in the documents comprising the Contract, the order above applies as an order of precedence to resolve the ambiguity, discrepancy or inconsistency.

Delivery Date means the date for delivery of the Goods and/or Services as specified in the Purchase Order.

Delivery Point means the place where Goods are to be delivered or Service is to occur as set out in the Purchase Order.

Goods means the goods purchased by the AAO from the Supplier as set out in a Purchase Order, or an RFQ or an attachment to these Terms.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Government Agency means a government or government department or other body, a governmental, semi-governmental or judicial person or a person who is charged with the administration of any law.

Intellectual Property Rights means all present and future rights throughout the world conferred by statute, common law or equity in or in relation to inventions, discoveries, innovations, know how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

Major Failure has the meaning given to that term under the Competition and Consumer Act 2010 (Cth).

Purchase Order means a written document provided by the AAO to the Supplier and titled ‘Purchase Order’.

RFQ means as defined in clause 7.

Services means the services purchased by the AAO from the Supplier as set out in a Purchase Order, or an RFQ, or as an attachment to these Terms.

Supplier means any company or individual authorised to supply Goods and/or Services to the AAO and named in a Purchase Order.

Supplier’s Offer has the meaning set out in clause 7.

Terms means these general terms and conditions and any written variations to these general terms and conditions.

2 PROVISION OF GOODS AND/OR SERVICES

2.1 The AAO agrees to buy and the Supplier agrees to sell the Goods and/or the Services in accordance with the Contract.

2.2 These Terms apply to all Goods and/or Services sold by the Supplier to the AAO unless otherwise agreed in writing by the AAO’s purchasing manager.

2.3 These Terms are deemed to be incorporated into the Contract for the purchase of Goods and/or Services by the AAO from the Supplier and will prevail over any inconsistent terms in any document of the Supplier unless otherwise agreed by the AAO in writing.

2.4 If the AAO places an order with the Supplier for Goods and/or Services or enters into a contract with the Supplier and the Goods and/or Services are delivered or provided to the AAO, or the AAO makes any payment, the Supplier is taken to have accepted these Terms.

2.5 The AAO does not require a written communication from the Supplier of acceptance of these Terms.

2.6 If the Supplier (or any person on the Supplier’s behalf) purports to impose upon the AAO or incorporate into this Contract any additional or varied terms by any means whatsoever, including in the Supplier’s delivery documentation or in any other notification purported to be provided or delivered by or on behalf of the Supplier, then such terms will be null and void and of no force or effect.

2.7 The AAO is under no obligation, whether under or in connection with this Contract or otherwise, to purchase any, or any minimum quantity of, Goods and/or Services.

2.8 The Contract is non-exclusive. The AAO may at any time purchase any goods and services, including goods and services identical or similar to the Goods and Services, from any third party.

2.9 The Contract commences on the Commencement Date.

2.10 If the Purchase Order is not dated or does not specify a commencement date then the commencement date of a Purchase Order will be the date of acceptance or deemed acceptance of the Purchase Order.
3 PRICE

3.1 The price is the amount specified in the Purchase Order and will not be affected by variations to the Contract unless otherwise agreed in writing by the AAO.

3.2 In the absence of any specified amount, then any order for Goods and/or provision of Services will be charged at a price no higher than a price previously quoted to the AAO or charged by the Supplier to the AAO.

3.3 Any reduction in the Supplier’s costs resulting from refunds, reductions or drawback of freight rates, customs duties, import taxes, excise taxes and/or sales taxes are to be paid to the AAO through a price reduction. The Supplier will inform the AAO and provide them any required document that is necessary and which establishes the AAO’s entitlement to clawback from the Supplier.

4 INVOICE

4.1 The Supplier must submit a correctly rendered invoice to the AAO. An invoice is correctly rendered if:

(a) it is correctly addressed and calculated in accordance with the Purchase Order;
(b) it relates only to Goods and/or Services that have been accepted by the AAO as set out in Purchase Order;
(c) it is for an amount which, together with all previously correctly rendered invoices, does not exceed the price;
(d) it includes the Purchase Order number, and the name and phone number of the AAO representative named in the Purchase Order; and
(e) it is a valid tax invoice in accordance with the GST Act.

4.2 Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Supplier, an admission of liability or evidence the obligations under the Purchase Order have been completed satisfactorily, but is payment on account only.

4.3 The Supplier must promptly provide to the AAO such supporting documentation and other evidence reasonably required by the AAO to substantiate performance of the Contract by the Supplier.

5 PAYMENT

5.1 The AAO must pay the invoiced amount to the Supplier within 30 days after receiving a correctly rendered invoice or if this 30 day period ends on a day that is not a business day, payment is due on the next business day. The last day of this period is referred to as the “due date”.

6 PURCHASE ORDERS

6.1 The AAO may place an order for Goods and/or Services by providing the Supplier with a completed Purchase Order.

6.2 The Supplier in accepting the Purchase Order accepts the Contract.

6.3 If the AAO does not receive a written notification from the Supplier, that they are unable to supply the Goods and/or Services according to the Purchaser Order, within 48 hours of receipt of the Purchaser Order, the Supplier will be deemed to have accepted the Purchaser Order.

7 RFQ

7.1 If the AAO provides the Supplier with a request for quotation (RFQ), this does not constitute an offer. The AAO may withdraw or alter the RFQ without notice.

7.2 All responses to an RFQ provided by the Supplier and received by the AAO will constitute a valid quotation and offer for the provision of the Goods and/or supply of the Services (Supplier’s Offer). For the avoidance of doubt the Suppliers Offer does not constitute an acceptance by the AAO of the Suppliers Offer.

7.3 The Supplier’s Offer may be accepted by the AAO providing a Purchase Order to the Supplier.

7.4 A contract will be formed between the AAO and the Supplier upon the Supplier being provided with the Purchase Order from the AAO and be governed by the Contract.

8 CANCELLATION AND MODIFICATION

8.1 A Purchase Order can be modified or cancelled by the AAO, anytime prior to the delivery date, provided always that the AAO will be liable for the Supplier’s reasonable costs associated with any work in progress.

8.2 The AAO is also entitled to cancel any Purchase Order, if the Supplier has failed to deliver those goods in whole or in part in accordance with the timeframes specified by the AAO without any liability to the AAO.

9 PACKING, MARKING AND SHIPPING

9.1 The Supplier covenants with the AAO that:

(a) all Goods will be properly packed to prevent damage or deterioration and in such manner as will obtain the lowest transportation rates;
(b) the Supplier is responsible for all charges by way of preparation, crating, packaging and other costs unless separately stated in the Contract;
(c) all consignments will be clearly marked with the AAO’s order reference and name;
(d) each consignment will be issued with a packing slip which must clearly state the AAO’s order number, the type of goods, quantities and product name;
(e) the shipment of Goods and/or the provision of Services to the AAO is deemed to be acceptance of the Contract.

10 DELIVERY

10.1 Time is of the essence in the performance of this Contract.

10.2 The costs of delivery of the Goods and/or Services to the Delivery Point will be at the Supplier’s sole expense unless otherwise stated in the Contract.

10.3 If the Supplier does not supply the Services and/or deliver any or all of the Goods to the Delivery Point on the Delivery Date, the AAO may, in addition to any other remedy:

(a) obtain those Goods and/or Services from another source;
(b) refuse to accept the late delivery, and will not be liable for any payment of those Goods and/or Services;
(c) at its election accept or reject partial deliveries;
(d) approve revised delivery terms;
(e) require the Supplier to ship the Goods via air or other expeditious route to minimise delay in delivery with the Supplier to bear all costs occasioned thereby; or
(f) treat such default as a repudiation by the Supplier and accept such repudiation and terminate the Contract by notice in writing whereupon the AAO’s obligations to the Supplier must terminate absolutely.

11 INSPECTION AND ACCEPTANCE

11.1 All Goods and/or Services are subject to inspection and test by the AAO.

11.2 The Supplier must follow all relevant coding and testing standards and must pass quality assurance standards in respect of any Goods and/or Services as relevant.

11.3 Acceptance or rejection of the Goods and/or Services will be made as promptly as practical after delivery, but failure to inspect and accept or reject the Goods and/or Services
or failure to detect defects by inspection, does not relieve the Supplier from responsibility for all requirements relating to such Goods and/or Services nor impose liabilities on the AAO for its failure to identify such defects.

11.4 The Goods and/or Services must comply with any specifications, standards or requirements relating to or specified under this Contract.

11.5 If any of the Goods and/or Services are found at any time to be defective, or otherwise not in conformity with the requirements of this Contract, including any applicable specifications, the AAO, in addition to such other rights, remedies and choices as it may have by agreement and/or by law, at its option and sole discretion, and at the Supplier’s expense may:

(a) reject and return such deliverables;

(b) require the Supplier to re-perform/replace the non-conforming Goods and/or Services with Goods and/or Services that conform to the requirements of the Contract; and/or

(c) take such actions as may be required to cure all defects and/or bring the Goods and/or Services into conformity with all requirements.

11.6 Acceptance of all or any part of the Goods and/or Services will not be deemed to be a waiver of the AAO’s rights pursuant to clause 11.1.

12 DEFECTS PERIOD

12.1 For a period of 12 months after the date on which the Supplier supplies or provides (as applicable) the Goods and/or Services, the Supplier must rectify or otherwise remedy any part of the Works which were not supplied or provided (as applicable) strictly in accordance with a Purchase Order or as directed by the AAO, and within any time period that the AAO may direct.

12.2 If the Supplier fails to rectify or otherwise remedy the Works as directed by the AAO within any time period directed by the AAO, or in the absence of such a directed time period, a reasonable time, the AAO may rectify or otherwise remedy the Works and the costs associated with doing so will be a debt due and payable by the Supplier to the AAO.

13 PAYMENT

13.1 Except in the event of breach by the Supplier or delivery of defective or inadequate Goods and/or Services, payment will be made by the AAO to the Supplier no later than thirty days from the Delivery Date unless specified otherwise by the AAO.

13.2 In the event that the Supplier breaches the Contract, payment (if any) may be made upon resolution of the breach or deficiency as the case may be or, where the Supplier has already received payment (in whole or in part), the Supplier is to refund such payment in full to the AAO within thirty (30) days of the date of the notification of the breach or deficiency. If the breach has not been rectified within the stated time.

14 GST

14.1 Unless otherwise stated, the price is GST exclusive. In addition to the price for the Goods and/or Services, the AAO must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under the Contract.

14.2 Subject to clause 14.1, the AAO must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the AAO pays the price (or the corresponding first part of it if the Supplier agrees to the AAO paying the price by instalments).

15 RISK AND TITLE

Title in Goods passes to the AAO at the time of delivery to the Delivery Point. Risk of damage or loss of the Goods will pass to the AAO at such time as the Goods are delivered to the Delivery Point and the AAO has completed its inspection of the Goods and has accepted the Goods in accordance with the Contract. Until that time, the Goods remain at the risk of the Supplier.

16 SUPPLIER OBLIGATIONS

16.1 The Supplier will be required to provide traceability of manufactured parts based upon the degree of product liability risk involved, as set out in any specifications provided with the Purchase Order or an RFQ.

16.2 It is the responsibility of the Supplier to ensure that all drawings and data as provided by the AAO in the Purchase Order or an RFQ are followed and that the Goods are manufactured in accordance with those specifications. If the Supplier is unsure or has any doubt as to the meaning of any portion of any of the information provided or has not been provided with complete information by the AAO required to quote or provide the Goods and/or Services, the Supplier must contact the AAO for clarification prior to proceeding.

16.3 The Supplier must maintain all Goods in good condition and must not knowingly sell any damaged Goods or any Goods not of acceptable quality.

16.4 The Supplier acknowledges that the reputation and goodwill of the AAO may be injured and that the AAO will suffer loss and damage if the Supplier provides damaged Goods or Goods and/or Services not of an acceptable quality.

16.5 The Supplier certifies that the Goods delivered under this Contract conform to the requirements set forth and that the specifications for the Goods and supporting documentation are on file and will be made available to the AAO upon request.

17 WARRANTIES AND INDEMNITY

17.1 The Supplier warrants to the AAO that they have the capability, qualifications, expertise and experience as well as the technical capability to supply the Goods or Services.

17.2 The Supplier acknowledges that under applicable State, Territory and Commonwealth law(s) (including without limitation the Competition and Consumer Act 2010 (Cth) (Competition and Consumer Act) certain statutory implied guarantees and warranties (including with limitation the statutory guarantees under the Competition and Consumer Act) may be implied into these Terms (Non-Excluded Guarantees).

17.3 The Supplier acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.

17.4 In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that the Goods will:

(a) comply with all requirements of the law and of any Government Agency for the packaging, promotion, distribution, storage, sale, leasing or hire of the Goods in the Commonwealth of Australia;

(b) conform to the specification drawing samples or other descriptions furnished or specified by the AAO; and

(c) not infringe the Intellectual Property Rights of any third party.

17.5 In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that the Services will be provided:

(a) in compliance with any applicable law;

(b) to the same standard to which a prudent and experienced provider would normally provide the Services;

(c) diligently, competently, with care and skill and in a proper and professional manner; and
(d) in compliance with the AAO’s reasonable directions, standards, policies, procedures and methodologies notified to the Supplier by the AAO from time to time.

18 SUPPLIER LIABILITY

18.1 In addition to any other rights and entitlements under Contract and to the extent permitted by law, the liability of the Supplier and its employees or agents for a breach of any warranty or liability implied by these Terms, is at the AAO’s option, the following remedies (or any combination there of):

(a) in the case of Goods, in the event of a Major Failure:
   i. the AAO is entitled to a replacement or refund of the cost of the Goods and compensation for any other reasonably foreseeable damage;
   ii. to have the Goods repaired or replaced if the Goods are defective or fail to be of acceptable quality and the failure does not amount to a major failure;
   iii. the replacement of the Goods or the supply of equivalent Goods;
   iv. the repair of the Goods;
   v. the payment of the costs of replacing the Goods or of acquiring equivalent goods; or
   vi. the payment of the cost of having the Goods repaired,

(b) in the case of Services, in the event of Major Failure:
   i. the supplying of the Services again; and
   ii. the payment of the cost of having the Services supplied again, whether or not by the Supplier or another supplier; or
   iii. refund of the cost of the Services and compensation for any reasonably foreseeable damage or loss suffered by the AAO.

18.2 In addition to any other rights or obligations in the Contract, the Supplier is liable for:

(a) all liabilities and losses incurred by the AAO; and

(b) all legal costs and other expenses incurred by the AAO, respectively in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with:
   i. a breach by the Supplier of any representation or warranty or guarantee in the Contract, or implied by law;
   ii. a breach or non-performance of any obligation of the Supplier under the Contract, whether express or implied; or
   iii. a claim that the Goods sold by the Supplier to the AAO infringe any Intellectual Property Rights of a third party.

(c) Other than as expressly provided for in these Terms, the AAO will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profit and loss of revenue) of any kind whatsoever, even if due to the negligence of the AAO, its contractors and/or agents.

18.3 This warranty against defects is given in addition to other rights and remedies of the AAO under law.

19 INTELLECTUAL PROPERTY

19.1 The AAO grants to the Supplier a non-exclusive licence to use its Intellectual Property Rights for the sole purpose of fulfilling orders in accordance with the Contract.

19.2 The Supplier acknowledges that there is no transfer of title, interest or ownership to the Supplier of any Intellectual Property Rights in the Intellectual Property Rights of the AAO.

20 VARIATION

20.1 The AAO may, at any time before the supply or provision of the Goods and/or Services, vary in writing any Purchase Order (whether in respect to quantity, type, extent, acceleration of time or otherwise) in its absolute discretion, and any such variation:

(a) will not invalidate the Purchase Order, and the reasonable value of the variation will be added or deducted from the Purchase Order Amount; and

(b) will form part of and be subject to the Contract.

20.2 It is the responsibility of the Supplier to confirm that the AAO does not require any variation to a Purchase Order prior to the Supplier ordering materials for or commencing to manufacture goods to be supplied as part of the Goods and/or Services.

21 GENERAL CONDITIONS

21.1 The Contract constitutes the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other previous agreements, contracts, statements and understandings, whether verbal or in writing.

21.2 The Supplier will at all times comply with all laws and regulations that are applicable to performance by the Supplier of its obligations under this Contract.

21.3 The parties acknowledge and agree that their relationship under this Contract is that of independent contractors and nothing in this Contract should be construed as creating a relationship of employer/employee, principal/agent, partnership or joint venture.

21.4 This Contract is to be governed by and construed in accordance with all applicable laws in force in the state of New South Wales in the Commonwealth of Australia from time to time and the parties submit to the non-exclusive jurisdiction of the courts of that state.

21.5 The Supplier must not assign its benefits or obligations under the Contract without the prior written consent of the AAO in writing. The AAO may assign its rights and obligations under the Contract to another person without the consent of the Supplier.

21.6 A right of the AAO may only be waived in writing. No other conduct of the AAO (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right. A waiver of a right by the AAO on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by the AAO does not prevent any further exercise of that right or of any other right.

21.7 Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract.

21.8Clauses 17, 18, and 19 continue despite the termination of the Contract.