



ClauseBank – Supplier Code of Conduct Clause [Draft]

1. Guidance

Paragraph [x] of the Commonwealth Procurement Rules (CPRs) requires [all non-corporate Commonwealth entities and prescribed Commonwealth entities] to [[link to text in the CPRs requiring Commonwealth entities to adhere to the Code]. This clause addresses the requirements of the CPRs. Commonwealth entities are able to amend this clause or include other provisions, provided the requirements of the CPRs are met.

This clause requires the Supplier to comply with the Commonwealth Supplier Code of Conduct (the Code) when performing its obligations under the Contract, and to ensure its personnel and subcontractors, comply with the Code. The clause also requires the Supplier to proactively monitor and assess compliance with the Code, and to notify the Customer immediately of any breach of the Code.

This clause allows the Customer to request information about the Supplier's compliance with the Code and policies, frameworks and systems for ensuring compliance with the Code, and to notify the Supplier where it considers there has been a breach of the Code.

If the Supplier fails to comply with this clause, it will be a breach of the contract. Users will need to ensure that the clause appropriately links with the default, remediation and termination clauses that are in the contract.

When incorporating the clause into a contract, its interaction with related clauses will need to be considered. Related clauses include:

- conflict of interest;
- removal of subcontractors;
- qualifications, registrations, licences and approvals;
- specified personnel;
- notification of significant events;
- confidential information;
- compliance with the APS Code of Conduct;
- record keeping and audit;
- risk management;
- environmental sustainability;
- work health and safety, industrial relations and modern slavery;
- Indigenous participation;
- default and termination; and
- compliance with law and Commonwealth policy.

2. Notes

Standardisation of contractual text results in efficiencies for both parties to a contract. When including this clause in a contract, changes may be required to align the clause with related clauses as noted in the guidance above.

Capitalised terms in the clause above are (unless otherwise defined) based on the definitions in the CCS Glossary. Terms that are capitalised may need to be changed to align with the Contract terminology.

3. Clause for inclusion in the ClauseBank

Compliance with the Commonwealth Supplier Code of Conduct

- X.1 For the purposes of this clause, 'Supplier Code of Conduct' or 'Code' means [insert details, e.g. 'the Commonwealth Supplier Code of Conduct, as published on [_____]'], as updated from time to time.
- X.2 The Supplier must comply with, and ensure that its officers, employees, agents and Subcontractors comply with, the Supplier Code of Conduct in connection with the performance of this Contract.
- X.3 The Supplier must:
- a) regularly monitor and assess its, and its officers', employees', agents' and Subcontractors', compliance with the Code; and
 - b) on request from the Customer, promptly provide information regarding:
 - i. the policies, frameworks or systems it has established to monitor and assess compliance with the Code, and
 - ii. the Supplier's compliance with clause X.2.
- X.4 The Supplier must immediately issue the Customer a Notice on becoming aware of any breach of clause X.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- X.5 Where the Customer identifies a possible breach of clause X.2, it may issue the Supplier a Notice, and the Supplier must, within three (3) Business Days of receiving the Notice, either:
- a) where the Supplier determines a breach has not occurred: advise the Customer that there has not been a breach and provide information supporting that determination; or
 - b) where the Supplier determines that a breach has occurred: issue a Notice under clause X.4 and otherwise comply with its obligations under this clause X.
- X.6 A failure by the Supplier to comply with its obligations under any part of this clause will be a material breach of the Contract.
- X.7 Nothing in this clause or the Supplier Code of Conduct limits, reduces or derogates from the Supplier's other obligations under the Contract. The Customer's rights under this clause are in addition to and do not otherwise limit any other rights the Customer may have under the Contract. The performance by the Supplier of its obligations under this clause will be at no additional cost to the Customer.
- X.8 The Supplier agrees that the Customer or any other Commonwealth agency may take into account the Supplier's compliance with the Code in any future approach to market or procurement process.