



Guide to using 2nd Edition Government GMCs

Standard terms and conditions for
routine goods and services

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Crown
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Who uses GMCs?

- Public Service departments, New Zealand Police and New Zealand Defence Force are required to use GMCs.
- State Services agencies are expected to use them.
- Other State sector and Public sector agencies are encouraged to use them.

Introduction

This guide is for both government agencies and suppliers. It provides an overview of the 2nd Edition Government GMCs (GMCs).

As part of the Government Procurement Reform Programme, a suite of Government GMCs (GMCs) has been developed to simplify high volume, low cost transactional contracting.

The GMC templates have been designed for the purchase of low-value, low-risk routine goods and services. They reflect the Government's default terms and conditions of contract.

Why do we need GMCs?

The 2nd Edition GMCs support the Government's Procurement Reform Programme by:

- providing simple, plain English contracts that are easy to use
- providing a fairer balance of risk between buyer and supplier
- standardising the treatment of legal risk in low-value, low-risk contracts
- reducing the need for negotiations and legal advice in routine purchases
- promoting consistent practice across government
- promoting process efficiencies in high-volume, low-value transactional contracting
- simplifying doing business with government
- supporting improved procurement practice and aligning with international best practice.

Does this Guide provide legal advice?

No, this Guide does not provide legal advice. It explains the objectives in developing a standard set of government terms and conditions and informs how the GMCs are intended to be used. It aims to support a better understanding of the structure, content and use of GMCs. It is not an alternative to obtaining independent legal advice.

Are there different versions of the templates?

Yes. The templates come in two forms:

Form 1: to be used by any department or agency that contracts in the name of the Crown: e.g. *Her Majesty the Queen, in right of New Zealand, acting by and through the Ministry of Economic Development.*

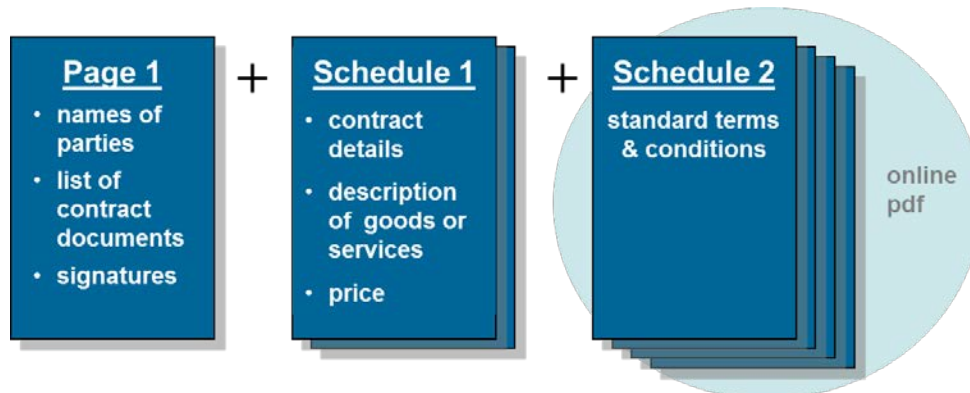
Form 2: to be used by any other buyer (who does not contract in the name of the Crown).

Are there different templates for goods and services?

Yes. There are currently two sets of templates: one for the purchase of goods and one for the purchase of services. These are not designed for a blended contract where the purchase combines goods and services.

How are the GMCs structured?

Each GMC comprises a first page and two Schedules.



Page 1 and Schedule 1 are one document. These form the operational aspects of the contract. Schedule 2 contains the standard terms and conditions of contract. It is referred to in Page 1 and incorporated into the contract by reference.

Schedule 2 is in pdf format and is permanently available at www.procurement.govt.nz. When preparing a contract for signature it is not necessary to attach a hard copy of Schedule 2. Suppliers can simply be directed to the government procurement website. However, agencies may choose to do so.

What templates are available?

The following templates are available at www.procurement.govt.nz:

Form	Category	Template name	Comment
Form 1 (the Crown)	Services	GMC Form 1 SERVICES (2 nd Edition) GMC Form 1 SERVICES Schedule 2 (2 nd Edition)	Microsoft Word pdf
	Goods	GMC Form 1 GOODS (2 nd Edition) GMC Form 1 GOODS Schedule 2 (2 nd Edition)	Microsoft Word pdf
Form 2	Services	GMC Form 2 SERVICES (2 nd Edition) GMC Form 2 SERVICES Schedule 2 (2 nd Edition)	Microsoft Word pdf
	Goods	GMC Form 2 GOODS (2 nd Edition) GMC Form 2 GOODS Schedule 2 (2 nd Edition)	Microsoft Word pdf
Minor purchase	Services	GMC Minor Purchase SERVICES	Templates can be used by both Form 1 and Form 2 buyers.
	Goods	GMC Minor Purchase GOODS	
Variation	Services	GMC Contract Variation SERVICES	Templates can be used by both Form 1 and Form 2 buyers.
	Goods	GMC Contract Variation GOODS	

What support is available?

The following guidance is available at www.procurement.govt.nz:

GMC guides, tools and templates		
To support deployment	Guide to deploying Government GMCs	pdf
	Presentation to support internal communications	Microsoft PowerPoint
To support good practice	Guide to e-commerce	pdf
	Contract register – template	Microsoft Excel
	Agency quick guide to prompt payment	pdf
	Supplier’s quick guide to invoicing and payment	pdf
	Supplier’s check list – preparing an invoice	Microsoft Word
	Invoice templates	Microsoft Excel

Contract Page 1

Page 1 identifies the Parties to the Contract, establishes what documents make up the Contract and is where the Parties sign the Contract. Agencies may include their brand or logo on this page but should not reformat the text or style. The idea is to have one 'look and feel' across all Government GMCs.

Parties to the Contract

The Buyer

The Buyer is the agency purchasing the goods or services.

GMC Form 1

This form is to be used for agencies who contract in the name of the Crown. In completing the contract all Public Service departments, New Zealand Police and New Zealand Defence Force should insert their agency name. You must not include the words '*Her Majesty the Queen in right of New Zealand acting by and through...*', as this is covered in the definition of 'Buyer' at the end of Schedule 2.

GMC Form 2

Other buyer agencies, who do not contract in the name of the Crown, should insert their full legal name.

The Supplier

The Supplier is the business providing the goods or services. The Supplier's name and address need to be stated.

Make sure the Supplier is a legal entity. Check that you have the proper legal name. You can conduct a company search to check the legal name and registered office for New Zealand companies.

The Contract

Page 1 lists the documents that together form the Contract. Schedule 2 is incorporated into the contract by reference. When preparing a contract you will need to complete Page 1 and Schedule 1 then arrange for signature by the Parties. You can attach a hard copy of Schedule 2 (pdf document) or ask the Supplier to access Schedule 2 online from: www.procurement.govt.nz.

Whatever Edition of Schedule 2 is current at the time of signing, this is the version that applies to the Contract for the length of the Contract. There are two Editions:

1st Edition: valid for all contracts let before the use of the 2nd Edition

2nd Edition: valid for all new contracts let after 2nd Edition used by an agency

For contracts that were let before the 2nd Edition comes into force, the 1st Edition Schedule 2 continues to apply until the end of the term of the contract, or its termination.

Acceptance

This is where the Parties agree to be bound by the Contract. Each party signs and dates Page 1. You are entitled to rely on the person signing the Contract, on behalf of the other Party, as having the authority to do so. You can, however, ask for confirmation that the person signing does have the appropriate authority. In making this request ask for proof that the person signing has:

- the appropriate level of financial delegation that at least covers the value of the Contract, and
- a valid delegation that has been properly granted and is current.

If you have any doubt or concern, then you could make some enquiries of your own, for example if the Supplier is a registered legal entity, search the relevant register (companies, charities, incorporated societies etc). Their constitution or the relevant Act may assist.

Execution

If each Party signs on a different date, then the later of the two dates of signing is the date when the Contract is legally executed.

As a commercial transaction you do not need to have the signatures witnessed. However, if this is a requirement for your organisation then replace the signing clause with the following:

Example: signature clause with provision for witnesses:

For and on behalf of the Buyer	For and on behalf of the Supplier
_____	_____
Signature	Signature
Name:	Name:
Position:	Position:
Date:	Date:
_____	_____
Signature of witness	Signature of witness
Name:	Name:
Occupation:	Occupation:
Address:	Address:

Schedule 1

Contract details and description of Goods or Services

Start Date and End Date



Schedule 2: Services: clause 1 Goods: clause 1

You need to agree at the outset the length of time the Contract will remain in force. The Start Date is the date the Contract comes into effect. This can be different from the date of execution (see page 8). Goods or Services should not be delivered before the Start Date.

The End Date should also be an actual date. This is either the end of the period of the Contract if it is for a set term, or the date by which you require the Contract to be completed.

The GMCs do not provide for a right of extension. This is an optional clause that can be added if circumstances require.

Contract Managers



Schedule 2: Services: clause 4 Goods: clause 6

It is expected that each Party will have a Contract Manager. Each Party should ensure that its Contract Manager is fully informed about the Contract and has sufficient information and appropriate authority to manage the Contract. The name and contact details of each Contract Manager are to be stated in Schedule 1.

Other types of 'managers'

- Some contracts have a technical manager or an account manager in addition to the Contract Manager.
- If this is the case include the name of the technical or account manager in the Approved Personnel section of Schedule 1.

If a Party changes their Contract Manager they must tell the other Party, but there is no right of approval.

If you want to retain the right to approve the replacement of the Contract Manager then:

- **Services contracts:** list the Contract Manager in the Approved Personnel section of Schedule 1. That means the Party who wants to change their Contract Manager must obtain the other Party's prior written approval.
- **Goods contracts:** add the Approved Personnel table from the Services template to Schedule 1, and list the Contract Manager in the Approved Personnel table.

Address for Notices



Schedule 2: Services: clause 14 Goods: clause 14

You need to insert the details of the Buyer's and Supplier's personnel who will be authorised to receive Notices on behalf of each Party. It is good practice to make this should be a senior manager. It can be someone independent of the Contract Manager.

Delivery time and address (Goods only)



Schedule 2: Goods: clause 2.7

Insert the required delivery timeframe and address. If there is more than one site to which Goods are to be delivered, list them all. In this case you need to be clear when ordering goods which site specific goods are to be delivered to.

Supplier's Approved Personnel (optional) (Services only)



Schedule 2: Services: clause 2.5

This is an optional section. It is used where the Buyer specifically wants a named individual to be engaged in delivering the Services. The Schedule 2 clause requires the Supplier to ensure that the named Approved Personnel (as opposed to generic Personnel) is engaged and are not replaced without the Buyer's prior approval. Approved Personnel can also be Personnel of a subcontractor to the Supplier.

Supplier's Approved Sub-contractor (optional) (Services only)



Schedule 2: Services: clause 7

This is an optional section. The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's written consent. If it is proposed, at the negotiation stage, that a Sub-contractor is used their details should be entered in Schedule 1.

Description of Goods or Services



Schedule 2: Services: clause 2.3 Goods: clause 2

A comprehensive, accurate description of the goods or services is critical to the Contract. The Buyer needs to ensure that there is sufficient detail to clearly identify what is to be done or delivered and by when. The deliverables should be achievable and measurable.

IMPORTANT TEST

- The test for successful delivery is 'to the Contract requirements' not 'to the Buyer's satisfaction'.
- It is therefore vital that the buyer clearly articulates and communicates its requirements in Schedule 1.

The GMCs provide prompts to support the development of the Description of goods or services. You can choose to use these prompts, write your own from scratch or cut and paste from another document. If the Description is lengthy you can choose to make it an Attachment to the Contract. If you take this option make sure you list your description as an 'Attachment' on the last page of Schedule 1.

Policies that the Supplier needs to know about

The Contract requires the Supplier to comply with the State Services Commission's *Standard of Integrity and Conduct*. Buyers should take steps to identify any other policies which apply to the Contract and either give a copy to the Supplier or supply the website address where they can be accessed. Such other policies or codes must be listed in Schedule 1.

Other policies may be the Buyer's internal policies, for example, if the Supplier is working from the Buyer's premises there will be policies relating to health and safety and security requirements. The Ministry of Foreign Affairs and Trade has specific clauses dealing with contractors working in New Zealand government premises overseas.



Additional policies that the Supplier should be made aware of must be identified in Schedule 1. See **Appendix 1** '*Policies the Supplier should be made aware of*' for suggested Schedule 1 wording.

Supplier's reporting requirements (optional) (Services only)



Schedule 2: **Services:** clause 5.6

You may want the supplier to provide certain reports in relation to the delivery of the Services. If this is the case, you must ensure that all required reports are listed Schedule 1. The type of report and due date must be included. Alternatively, reporting requirements can be included in a separate schedule and attached to the Contract, or in the body of the Description of Services section of Schedule 1.

Charges – Services



Schedule 2: **Services:** clause 3.1 & 3.2

Fees (Services only)

In the GMCs, the word '*Charges*' is used to indicate the total amount payable by the Buyer to the Supplier for the delivery of the Services. The Charges comprise the Fees, any agreed Expenses and any agreed Daily Allowances (or *per diems*). The Fees, Expenses and Daily Allowances must all be stipulated in Schedule 1. The GMC assumes that the Fees will be fixed for the duration of the Contract.

The GMC - Services provides various options for the calculation of Fees. These include:

- hourly rate
- daily rate
- individual Personnel rates (e.g. education specialist \$500 per day)
- Approved Personnel rates (e.g. Peter Man \$500 per day), or
- fixed fee.

Other methods of calculating the Fee can be inserted instead of any of these options.

Suppliers may incentivise early payment by providing the Buyer a discount for early payment. If this is agreed:

- the discount is only in respect of the Fees (it should not apply to out of pocket Expenses or Daily Allowances)
- the availability of the discount should be stated in Schedule 1 in the 'Changes to Schedule 2 Standard Terms and Conditions' section, and

- both the discounted amount and the full amount should be recorded on the Supplier's invoices.

Expenses (Services)

The Supplier general expenses in running its business are covered in the fee rate. However, additional out of pocket expenses relating specifically to the nature of the Contract can sometimes be reimbursed, e.g. air fare and taxi costs for travel to a meeting. Parties need to consider and agree such additional expenses when negotiating the Contract price. The GMC sets out three options for expenses:

- no expenses payable
- a general provision for actual and reasonable expenses, up to a capped maximum amount, is agreed, or
- specified actual and reasonable expenses, up to a capped maximum amount, are agreed.

The options for actual and reasonable expenses provide for a maximum amount. The maximum could be removed, but if it is the Buyer must give its prior written consent to the Supplier incurring each individual item of expense.

The GMC does not identify subcontractor costs separately. The Buyer is responsible only to pay the Supplier. The Supplier is responsible for paying any subcontractors.

If no Daily Allowance is required in a Contract delete the section where it appears in Schedule 1.

Daily Allowance (Services only)

A Daily Allowance is similar to a 'per diem'. It is designed to cover accommodation, food and incidentals where someone is travelling away from their normal place of business when delivering the Services.

It is a non-accountable expense. This means that the Supplier does not provide receipts for expenses covered by the Daily Allowance. Instead the Daily Allowance rate is fixed by the Buyer, usually in alignment with its internal policies for staff daily allowance rates. It is inclusive of GST. If no Daily Allowance is required in a Contract delete the section where it appears in Schedule 1.

Charges – Goods



Schedule 2: Goods: clause 5.1 & 5.2

Cost (Goods only)

In the GMCs, the word 'Charges' is used to indicate the total amount payable by the Buyer to the Supplier for the delivery and supply of the Goods. The Charges comprise the Cost of the goods plus any Expenses. The Costs and any Expenses are all to be set out in Schedule 1. The GMC provides for:

- fixed cost
- variable cost.

You have the option of inserting the specific Costs in this section of Schedule 1, or attaching a schedule of Costs to the Contract. If you take the second option make sure you list the schedule of Costs as an 'Attachment' on the last page of Schedule 1.

Expenses (Goods)

The Buyer needs to consider whether reimbursable Expenses are appropriate to the Contract e.g. freight, packaging, insurance or import costs. They should only be listed in the Contract if they are in addition to the price set out in the Cost section of Schedule 1.

The tables assume that Expenses will be at agreed or specified rates per item, and that these amounts will not fluctuate during the term of the Contract. If the amounts of the expenses may fluctuate, then it would be prudent to either include an acceptable range of fluctuation, or a requirement for the Supplier to notify the Buyer if the particular expense item increases by more than a certain percentage.

Invoices – Goods & Services

Invoicing Tips:

- If you require invoices to be issued at times different to the GMC options then delete all options and insert your specific requirements instead.
- If the invoice is to be sent to someone other than the Buyer's Contract Manager, then this must be stated in the **'Address for invoices'** section of Schedule 1.

For more information:

- Quick Guide to Prompt Payment
 - Supplier's Quick Guide to Invoicing & Payment
 - Supplier's Check List – Preparing an Invoice
 - Invoice templates
- www.procurement.govt.nz

Invoices

The GMC provides the following options for the Supplier to invoice:

Services

- on completion of the Services
- at the end of the month for Services delivered during that month, or
- on a particular date or dates subject to completion of specific deliverables (milestones).
- If the last option is chosen Parties must identify the milestones and agree how much is to be paid on the completion of each. Payment could be a fixed amount or a percentage of the Charges.

Goods

- on supply of the Goods
- at the end of the month for Goods delivered during that month.

Payment

The GMC states that if the Supplier provides a valid tax invoice before the end of the 3rd Business Day of the month, the invoice is to be paid by the 20th calendar day of that month.

An invoice received after the 3rd Business Day of the month is to be paid in the month following the month of receipt.

Foreign currency contracts

Where the contract requires payment in a currency other than NZD this must be clearly stated in Schedule 1. Parties have the option to either fix the rate of exchange at the time of contract, or let the rate of exchange at the time of payment apply. Where the rate is to be fixed complete the section 'Exchange Rate', otherwise delete this section.

Goods and Services – general

Treatment of GST

The GMCs are based on suppliers being based or registered in New Zealand for the purposes of GST. If a Supplier works overseas the days worked offshore are usually zero rated for GST.

If the Supplier is domiciled overseas for tax purposes you should consider modifying the clause dealing with GST. See Appendix 1 'Tax – overseas Supplier' for suggested wording.

Insurance

The GMC default position is that it is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. The Buyer does not require any specific insurance under a GMC.

However, if the facts and circumstances of an individual contract deem it appropriate to have insurance the following options are provided:

Services

- public liability insurance
- professional indemnity insurance

Goods

- product liability insurance

These options include an ability to state the amount of insurance cover required. This can either be a fixed sum or based on a formula, for example three times the value of the total Fees or Cost.

Limitation of liability

The Contract does not include a limitation of liability clause. It is considered unnecessary for many low value, low risk contracts. In the absence of a limitation each Party is liable, under common law, for direct loss incurred by the other Party due to a breach of the Contract.

If a limitation is required - for example because the Supplier cannot manage the risk associated with the consequences of breaching the contract, a clause could be included. You should carefully consider whether a limitation is warranted, and if so, what type of limitation.

Suppliers will often seek to limit their liability to the value of any insurance they hold. There is no legal requirement that this approach be taken.

Indemnity

The GMC default position is that there is no indemnity. Where an indemnity is required this must be stated as an additional clause.

Changes to Schedule 2

This section enables you to make minor changes to clauses in Schedule 2 Standard Terms and Conditions. You should not make any changes to Schedule 2 without legal advice.

For example, you may need to amend or replace a clause to meet the circumstances of the Contract or your specific business needs. You will need to have a robust reason to justify deleting a standard Schedule 2 clause. Keep a note of the changes you make, including the reasons, as you may be asked to report these to the Ministry of Economic Development.

If a change has been agreed it must be recorded in the 'Changes to Schedule 2 Standard Terms & Conditions' section of Schedule 1. You may also use this section to stipulate an additional clause.

Examples of additional clauses include:

- additional policies and procedures to be complied with e.g. OSH
- dealing with personal information e.g. requiring an additional Confidentiality Agreement, or
- inclusion of limitation of liability.

Attachments

The Contract is made up of Page 1, Schedule 1 and Schedule 2. If there are any other documents that are material to the Contract you can choose to make them Attachments to the Contract. You need to describe any Attachments to this Contract in this section of Schedule 1. Examples include:

- detailed pricing schedule
- detailed description of goods or services, or
- detailed reporting schedule.

Schedule 2

Standard Terms and Conditions of Contract

The following section deals with Schedule 2 clauses which have not already been explained in Schedule 1.

Schedule 2 contains the Government's standard conditions of contract. It is available in pdf format at www.procurement.govt.nz. Parties are discouraged from amending Schedule 2 other than for specific justifiable business reasons. Legal advice should be sought before making an amendment.

Amendments to Schedule 2 must be recorded in Schedule 1, as described above.

Goods and Services - common clauses

Information management



Schedule 2: Services: clause 5 Goods: clause 7

This clause sets out the Supplier's recordkeeping obligations. The Buyer is entitled to request a report or information contained in the Records relating to the Contract from the Supplier at any time. The clause is consistent with the Public Records Act.

The Supplier must keep the Records for a period of 7 years after the End Date or termination of the Contract. This reflects the Supplier's requirements under the Goods and Services Tax Act.

The Supplier's obligation is to keep records for 7 years after the End Date. Check what your agency's policy is under the Public Records Act. If your agency requires the Supplier to keep Records for longer than 7 years this must be stated in Schedule 1. See Appendix 1 'Records' for suggested wording.

The contractual relationship



Schedule 2: Services: clause 6 Goods: clause 8

This clause clarifies the nature of the relationship between the Buyer and the Supplier. The Supplier is not permitted to act as the agent of the Buyer, unless this is specifically stated in Schedule 1.

If the Buyer wants the Supplier to act as an agent this must be stated in Schedule 1. See Appendix 1 'Agent' for suggested wording.

Conflicts of Interest



Schedule 2: Services: clause 9 Goods: clause 10

There are provisions in the GMCs designed to protect the Buyer against the consequences of the Supplier having a Conflict of Interest. If the Supplier has disclosed a conflict both Parties need to agree how it should be managed.

For further information about Conflicts of Interest refer to the Auditor General's guidance *Managing conflicts of interest: Guidance for public entities* at www.oag.govt.nz/2007/conflicts-public-entities and MED's *Quick Guide to Conflict of Interest* at www.procurement.govt.nz

Resolving Disputes



Schedule 2: **Services:** clause 10 **Goods:** clause 11

The Contract provides for escalation of disputes from the Contract Managers to senior managers and then to mediation. Mediation is to be conducted in accordance with the LEADR New Zealand Inc process. LEADR stands for Lawyers Engaged in Alternative Dispute Resolution. Each Party pays their own costs of mediation. Parties can agree a different form of alternative dispute resolution if they prefer something else rather than mediation.

Arbitration is not provided for as it often becomes as lengthy and expensive as court action. The purpose of alternative dispute resolution is to attempt to have disputes resolved quickly, cheaply and less formally.

If a dispute is notified it is good contract management practice to ensure a record is kept of any agreements reached at each stage of the process of resolving the dispute.

Ending this Contract



Schedule 2: **Services:** clause 11 **Goods:** clause 12

The provisions relating to ending the contract are set out in the following order:

- termination by the Supplier
- termination by the Buyer
- termination by a Party if the other is in breach of contract, and the breach has not been remedied.

The GMC gives the Buyer a right of termination for convenience on 20 Business Days' Notice. The notice period can be changed, for example, if, in the circumstances of the Contract it will take the Supplier a lot longer to disengage from the Contract.

The Buyer should only exercise the right after obtaining legal advice. The right is arguably subject to a qualification that it can only be exercised in 'good faith'. The scope of that qualification and its effect on the clause is open to question.

In addition to a general requirement for the Supplier to assist to hand back the Services to the Buyer at the end of the Contract, the Contract for Services provides for the Supplier to give additional assistance to support a new Supplier. The Parties must agree this second option separately. The intention is that if the Buyer wishes more support than a handover the Parties agree to pay the Supplier a fee based on the fee structure in the Contract.

Confidential information



Schedule 2: **Services:** clause 13 **Goods:** clause 13

The GMCs contain a mutual confidentiality clause designed to protect the Confidential Information of both Parties from unauthorised use or disclosure. Marking information 'confidential' is one way to signal that the information must be protected by this clause. The Supplier needs to be aware that the Buyer is subject to requirements that mean that even confidential information cannot always be protected, for example a request under the Official Information Act.

Notices



Schedule 2: **Services:** clause 14 **Goods:** clause 14

Contract Managers are expected to issue Notices under the Contract. If the Contract Manager does not have the delegated authority to issue the notice they should ensure that a person with appropriate authority has authorised the Notice to be issued.

Extraordinary Events



Schedule 2: **Services:** clause 15 **Goods:** clause 15

Where performance of the Contract is affected by matters beyond a Party's control, that Party will not be liable for the failure to perform. However, where the problem continues, termination might become appropriate. The GMC allow either Party to terminate if performance is affected for a period of more than 20 Business Days.

General clauses



Schedule 2: **Services:** clause 16 **Goods:** clause 16

You should not amend or delete any of the clauses in the 'General' section as each provision has a specific purpose. For example:

- The Contract constitutes the entire agreement between the Parties. In other words, the Supplier is not bound by any statements made in its tender or during Contract negotiations. Rather, the Contract contains the entire understanding agreed between the Parties. You should ensure that anything you wish to make binding is captured in the Contract.
- The clause dealing with New Zealand Law is silent about whether the jurisdiction of NZ Courts is exclusive or non-exclusive. Even if the Parties agree to exclusive jurisdiction that does not fetter a Court's discretion to order that a matter is best dealt with in a particular jurisdiction.

Definitions



Schedule 2: **Services:** clause 17 **Goods:** clause 17

This clause sets out the defined terms used in the Contract. In tailoring the GMC you should use defined expressions consistently throughout the document.

Services – specific

Insurance



Schedule 2: Services: clause 8

The GMC - Services does not include specific insurance requirements, but leaves it up to the Supplier to ensure its risks of doing business are adequately covered. It contains provision that apply if Parties agree that insurance is appropriate. The GMC - Goods does not include insurance provisions.

If the nature of the Goods or Services, or the risk associated with them, warrant it you can specify particular insurance requirements in Schedule 1.

You need to consider what would be appropriate for the particular procurement, both in terms of the types of insurance and the amounts of insurance.

GMC - Services

Typical amounts for Services include:

- Public Liability of \$10 million per claim, although this amount could be substantially reduced depending upon the contractual risks, and
- Professional Indemnity of \$50 million per claim, although this amount could also be substantially reduced depending upon the contractual risks.

The GMC - Services requires insurance cover to be maintained for three years after the end of the Contract on the assumption that any issues are likely to arise sooner rather than later. A higher requirement, for example that the Supplier maintains insurance for six years (the statutory limitation period) could be seen to be commercially unreasonable.

If there is good reason to extend the period that insurance cover is to be held after the End Date or expiry of the Contract this must be stated in Schedule 1. See Appendix 1 'Insurance run-off cover' for suggested wording.

Subcontractors



Schedule 2: Services: clause 7

Subcontracting is prohibited except with the prior written approval of the Buyer.



If the Buyer wants the right to terminate a subcontractor this must be stated in Schedule 1. See **Appendix 1** 'Subcontractor' for suggested wording.

Intellectual Property Rights



Schedule 2: Services: clause 12

Ownership of Intellectual Property that exists prior to the Contract (i.e. 'Pre-existing Intellectual Property Rights') is not affected by the Contract.

The Intellectual Property Rights in material developed under the Contract will vest in the Buyer. This reflects the 'commissioning rule' under the Copyright Act 1994. If the Buyer is a Public Service Agency, those Intellectual Property Rights will be considered Crown copyright, and therefore are owned and can be used by all Public Service Agencies.

The Supplier licenses its Intellectual Property Rights in the Deliverables to the Buyer. If the Buyer is Public Service Agency, the licence extends to all other Public Service Agencies. This is necessary to enable other Public Service Agencies to use the Deliverables as a whole.

The GMC - Services does not require the Supplier to keep a formal register of the Intellectual Property. However, good management practice requires that the Buyer keep a record of its Intellectual Property rights.

Other approaches to Intellectual Property Rights and licensing of the work produced by the Supplier are outlined in:

- the State Services Commission's guidance *Guidelines for Treatment of Intellectual Property Rights in ICT Contracts* (January 2008)
- *creative commons* licences - <http://www.creativecommons.org.nz/>

Goods – specific

Supply of Goods



Schedule 2: Goods: clause 2

The goods GMC contains provisions relating to the supply of the goods:

- the obligations of each Party
- process for ordering goods
- criteria the Goods must satisfy
- Supplier's warranties
- provision of spare parts, if required.

The Supplier's obligations and warranties, and the criteria the goods must satisfy, reflect the requirements of the Sale of Goods Act and Consumer Guarantees Act.

The GMC provides for orders to be made in writing and in any form that is agreed between the Buyer and the Supplier. If there is anything about the order procedure in clauses 2.2 to 2.4 that will not apply to your contract, then the amendments should be included in the 'Changes to Standard Terms and Conditions' section of Schedule 1.

Spare parts are only required if it is stated in Schedule 1. So if you do require spare parts, make sure that this is stated, in the 'Description of the Goods' section of Schedule 1.

Acceptance and rejection of Goods



Schedule 2: Goods: clause 3

The GMC does not include a standard acceptance procedure. Rather, it leaves it open for the Buyer, once it becomes aware of a problem to require repair or replacement of the Goods or reject the Goods.

A specific acceptance procedure could be included in the GMC if this is relevant to the nature of the Goods being supplied. Any procedure will need to provide the Buyer with adequate time to inspect the Goods following delivery, bearing in mind the volume and likely time of use of the Goods.

The GMC should not be amended to include a deemed acceptance of Goods by the Buyer.

Ownership and risk







Schedule 2: Goods: clause 4






The GMC - Goods provides for ownership of the Goods to pass to the Buyer on the earlier of payment or delivery, and for risk to pass on delivery. If you want another arrangement to apply, then this should be stated in the 'Changes to Standard Terms and Conditions' section of Schedule 1.



Because the GMC is designed for low value low risk purchases they are expected to be straight forward, the GMC does not provide for any Party to register a security interest over goods under the Personal Property Securities Act.



Appendix 1: Alternative wording



Parties are discouraged from amending Schedule 2 other than for specific justifiable business reasons. Legal advice should be sought before making an amendment. This Appendix contains suggestions for alternative wording for certain clauses. These suggestions are a guide only and not a substitute for obtaining legal advice.

Topic	Comment	Suggested alternative wording	Changes to Schedule 2	Additional clause
agency	The Contract provides that the Supplier is not permitted to act as the agent of the Buyer. If it is intended that the Supplier acts as the Buyer's agent then an additional clause needs to be added.	'Agency' Delete clause [6.3 for Services] [8.3 for Goods] and replace it with the following: The Supplier is authorised to act as the Buyer's agent in respect of [insert scope of agency (Agency)]. Clauses [6.2 for Services] [8.2 for Goods] applies except to the extent of the Agency.'		
approval of change of Contract Manager	The GMC allows Parties to change their Contract Manager. They need only tell each other if this happens. If you want to retain a right to approve the appointment of a replacement Contract Manager you can either: <ul style="list-style-type: none"> add the Contract Manager to the Approved Personnel table in Schedule 1, or add a new clause with more specific requirements, as stated opposite. 	'Change in Contract Manager' Delete clause [4.1 for Services] [6.1 for Goods] and replace it with the following: If a Party decides to change their Contract Manager they must give the other Party Notice at least 10 Business Days in advance of the proposed change. The Notice must include the reason for the change and the name and CV for the new Contract Manager. The other Party must consent in writing to the new Contract Manager within the period of Notice.'		
e-commerce	If you do not want to use e-mail to send or receive Contract Variations or Contract Notices you must state this in Schedule 1.	'E-mail communications' Add the following clause: 'Both Parties agree that Contract Variations and Contract Notices cannot be delivered or legally effected by e-mail communication.'		
extension	The GMCs are designed for low-value, low-risk common goods and services and do not provide for a right of renewal or right of extension. If there are specific circumstances which justify a right of renewal or extension of the contract term, then new clauses need to be included in Schedule 1.	'Extension of Contract' Delete clause 1.2 and replace it with the following clauses: 1.2 This Contract ends on the End Date, unless extended or terminated earlier. 1.3 The Buyer will give the Supplier Notice at least 20 Business Days before the End Date, if it wishes to extend the End Date. The Notice must include the proposed new End Date, and any other changes to the Contract for the additional period. 1.4 If the Supplier does not accept the extension of the Contract as set out in the Buyer's Notice, the Supplier must give the Buyer Notice within 10 Business Days of receiving the Buyer's Notice.		

Topic	Comment	Suggested alternative wording	Changes to Schedule 2	Additional clause
		1.5 The Parties must record any agreement to extend the Contract in writing.'		
goods – making orders	If there are specific processes for ordering goods that are different to the provisions of the GMC these need to be stated in Schedule 1.	'Orders Add the following clause: 2.3A In addition to the matters listed in clause 2.3, each order for Goods must: a. [specify additional requirements] b. [specify additional requirements]'		
goods - ownership & risk	The GMC sets out simple rules for title and risk in relation to goods. These rules may not be appropriate in all circumstances. If you require different rules state your requirements in Schedule 1. For example, to provide for title to pass on payment:	'Ownership Delete clause 4.1 and replace it with the following: Ownership of the Goods passes to the Buyer on the date the Buyer has paid the Charges for those Goods.'		
insurance run off cover	The GMC requires the Supplier to maintain any insurance for 3 years after completion of the Contract. If there is a reason to change this period, the new period must be stated in Schedule 1.	'Insurance Amend clause 8.2(a) by deleting the words 'three years after the End Date' and replacing them with the words '[insert length of time] after the End Date'		
intellectual property rights - Services	If the standard intellectual property provisions in the GMC do not fit the type or nature of the Services you can develop a different option. You should clearly state the requirements in Schedule 1. For example, if the Supplier is to have the right to commercialise the deliverables, the clauses opposite can be used.	'Ownership of Intellectual Property Rights Delete clauses 12.1 to 12.3 and replace them with the following: 12.1 Pre-existing Intellectual Property Rights remain vested in their current owner. 12.2 Intellectual Property Rights in the Deliverables will vest in the Buyer when they are created. To the extent that ownership does not vest in the Buyer, the Supplier assigns the Intellectual Property Rights to the Buyer. 12.3 The Supplier grants to the Buyer [and all other Public Service agencies] a perpetual, non-exclusive and irrevocable licence to use for any purpose all Intellectual Property Rights in the Deliverables that are not owned by the Buyer or otherwise licensed to the Buyer under this Contract. This licence includes the right to use, copy, modify and distribute the Deliverables. 12.3A The Buyer grants to the Supplier the sole licence to exercise for commercial purposes all Intellectual Property Rights in the Deliverables that are owned by the Buyer. This licence is perpetual, non-transferable and irrevocable, and is not subject to any licence fees, royalties or other charges.'		
limitation of liability	Any limitation of liability clause should be inserted in the Schedule 1. Here is an example:	'LIMITATION OF LIABILITY: [Option 1: limitation of liability to direct losses only with no limit]		

Topic	Comment	Suggested alternative wording	Changes to Schedule 2	Additional clause
		<p>8.2 Each Party's liability for breach of this Contract is limited to losses caused directly by the breach. This excludes loss of profits. The limitation of liability does not apply to:</p> <ul style="list-style-type: none"> a. a Party, if and to the extent there has been malicious wrongdoing, gross negligence or fraud by that Party b. the Supplier's Intellectual Property Rights indemnity in clause 12.6 c. loss or damage resulting from any breach of confidentiality by either Party.' <p>OR</p> <p>'LIMITATION OF LIABILITY: [Option 2: limitation of liability to direct losses only with agreed limitation]</p> <p>8.2 Each Party's liability for breach of this Contract is limited to losses caused directly by the breach. This excludes loss of profits. The limitations of liability does not apply to:</p> <ul style="list-style-type: none"> a. a Party, if and to the extent there has been malicious wrongdoing, gross negligence or fraud by that Party b. the Supplier's Intellectual Property Rights indemnity in clause 12.4 c. loss or damage resulting from any breach of confidentiality by either Party. <p>8.2 The maximum total liability of each Party to the other in connection with this Contract is [\$insert figure] OR [three/five/ten] times the total Fees paid and payable under this Contract.'</p>		
payment - systems requirements	The Buyer can withhold payment of part of an invoice if it is disputed. The Buyer should check whether its payment system or internal process allows for part payment of invoices. It may be that the Buyer will need a replacement invoice for the reduced amount. If so, this should be made a requirement in the Contract and stated in Schedule 1.	<p>'Payment systems requirements</p> <p>Add the following new clause after clause [3.4 for Services] [5.5 for Goods]:</p> <p>3.4A If the Buyer disputes an invoice, the Supplier must provide a replacement Tax Invoice for the undisputed amount if the Buyer requests one.'</p>		
payment of invoices	The GMC provides for payment of invoices on the 20 th of the month. If you want different arrangements state	<p>'Payment</p> <p>Clause [3.3 for Services] [5.4 for Goods] is amended by providing the following</p>		

Topic	Comment	Suggested alternative wording	Changes to Schedule 2	Additional clause
	them clearly in this section of Schedule 1.	time for payment: 3.3 The Buyer must pay each valid Tax Invoice by [<i>insert timeframe for payment</i>]		
policies the Supplier should be made aware of	If there are any specific Buyer policies to be complied with, specific requirements should be stated in Schedule 1. They can be attached to the Contract, or the Buyer may provide a url address.	'Policies Add the following new clause: 18 In [delivering the Services][supplying the Goods] the Supplier must comply with the following policies: a. [<i>list policy documents</i>]		
privacy	If the Supplier will be dealing with personal information and you are concerned about Privacy Act implications, insert the following:	'Privacy Add the following new clause: Protecting Personal Information 18 The Supplier agrees: a. to use or disclose Personal Information obtained only for the purposes of delivering Services and complying with this Contract, including the reporting requirements b. not to do anything that would breach an information privacy principle contained in the Privacy Act, which if done or engaged in by an agency under the Privacy Act, would be a breach of that information privacy principle c. to otherwise comply with the Privacy Act and any code established under the Privacy Act d. to immediately notify the Buyer if the Supplier becomes aware of any breach or possible breach of the Privacy Act whether by it or any of its subcontractors, and e. to ensure that any of the Supplier's Personnel who are required to deal with Personal Information for the purposes of this Contract are made aware of and comply with the obligations set out in this clause 1. Health Information 19 If the Supplier is also a health agency that deals with health information under the Health Information Privacy Code 1994, the Supplier must comply with that code. Survival of this clause 20 This clause [] survives the expiration or earlier termination of this Contract.		

Topic	Comment	Suggested alternative wording	Changes to Schedule 2	Additional clause
		21 Personal Information has the same meaning as defined in the Privacy Act 1993 and codes developed under the Privacy Act 1993.'		
records	<p>Under the GMCs both Parties are required to keep adequate Records of the Contract and the goods and services.</p> <p>The Supplier's obligation is to keep records for 7 years after the End Date. Agencies will have different requirements under the Public Records Act. Agencies should check their internal records policies if they require the Buyer to keep Records for longer than 7 years, and if so state this clearly in this section of Schedule 1.</p>	<p>'Keeping Records</p> <p>Delete clause [5.2 for Services] [7.2 for Goods] and replace it with the following:</p> <p>The Records must be accessible to the Buyer for the length of this Contract and for [insert period] years after the End Date.'</p>		
subcontractor	If the Buyer wants the right to require a subcontract to be terminated state this right in this section of Schedule 1 SERVICES	<p>'Subcontractor</p> <p>Clause 7.5 is inserted, as follows:</p> <p>7.5 If the Buyer reasonably thinks that the Subcontractor has failed to deliver the aspect of the Services being subcontracted as required under this Contract and the failure cannot be remedied, the Buyer may, by Notice to the Supplier, require the Supplier to terminate that subcontract immediately.'</p>		
tax - overseas Supplier – treatment of GST	The GMCs are based on suppliers being based or registered in New Zealand for the purposes of GST. If a Supplier works overseas the days worked offshore are usually GST exempt. However, if the Supplier is domiciled overseas you need to consider whether withholding tax might be payable, and whether GST will apply.	<p>'Delete clause 3.2 and substitute the following:</p> <p>Taxes</p> <p>3.2 The Supplier will be responsible for all taxes, duties and charges arising out of this Contract.</p> <p>GST</p> <p>3.2A If any supply from the Supplier to the Buyer is a taxable supply under the Goods and Services Act 1985 the Buyer will pay the GST amount chargeable on the supply to the Supplier, provided that the Supplier has issued to the Buyer a valid Tax Invoice.</p> <p>Withholding tax</p> <p>3.2B The Buyer may deduct any withholding tax required to be deducted from payments the Buyer is liable to make to the Supplier under this Contract and will forward that withholding tax to the New Zealand Inland Revenue as required by law.'</p>	