



NEW ZEALAND
GOVERNMENT PROCUREMENT

Guide to using Government Model Contracts templates

3rd Edition



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Publishing date (February 2020)

ISBN 978-1-99-000497-1 (Online)

New Zealand Government

New Zealand Government Procurement

PO Box 1473

Wellington 6140

New Zealand

www.procurement.govt.nz
procurement@mbie.govt.nz

CROWN COPYRIGHT © 20XX

Insert copyright information here as required.

Contents

Contents	3
Introduction.....	4
Who should use this guide.....	4
This guide is not legal advice.....	4
Why do we need GMC templates?	4
When to use the GMC templates	4
The main differences between the 3 rd edition and the 2 nd edition	5
Including broader outcomes	6
Structure of the standard GMC templates	6
Choose the correct form	7
Goods or services	7
What templates are available?	7
Changing Schedule 2 of the standard templates	8
Features of the standard GMCs templates.....	8
Health, Safety and Security.....	8
Insurance.....	9
Limitation of liability	9
Indemnity	9
Resolving disputes.....	10
Payment of invoices	10
Ending the Contract	10
Intellectual Property Rights	11
Appendix 1: Alternative and additional clauses	12

Introduction

Who should use this guide

The guide gives an overview of the 3rd edition Government Model Contract templates (GMC). It is designed for government agencies, suppliers or providers.

We developed the GMC templates to simplify high-volume, low-cost transactional contracting. Recently we issued refreshed versions of the templates. This guide provides an overview and explanation about the new versions.

This guide is not legal advice

The guide is about the structure, content and use of the GMC templates. You may still need to seek independent legal advice.

Why do we need GMC templates?

The 3rd edition GMC templates:

- are simple, easy to use contracts
- aim to fairly balance risk between the Buyer and Supplier
- reduce the need for negotiations and legal advice in routine purchases
- promote consistent practice across government
- make it easier for suppliers to do business with government.

When to use the GMC templates

Use the standard GMC templates for the purchase of low-value, low-risk routine goods and services. It is for each agency to determine, depending on the scale of their procurement activities, what low value, low-risk means.

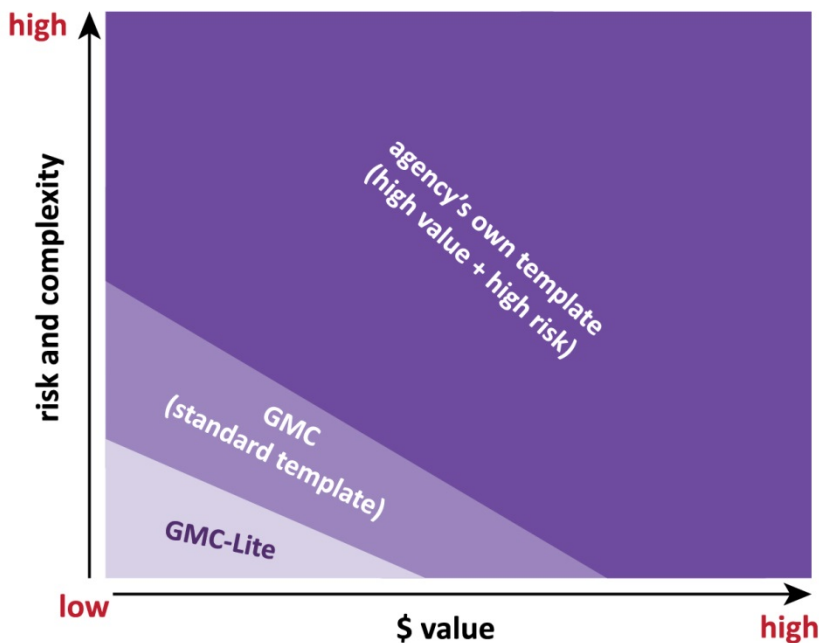
The *Government Model Contract - Lite* is for extremely low risk, low value goods and services. It is intended to cover items that would normally be contracted for using a purchase order or by agreement over the phone or by email. It could cover such things as a one-off purchase of office equipment, catering or short term contractor support services.

The templates are not suitable for construction related contracts or ICT goods and services. They are also unlikely to be suitable for the purchase of community based services for the public and instead you may use the social services outcome agreement templates.

The table and diagram below illustrates how to determine what contract format to use:

Scaled approach:

Value, risk and complexity	Appropriate template
Extremely low-risk + very low-value	Government Model Contract- Lite
Low/medium risk + low/medium value	GMC standard templates
High risk + high value	Agency's own medium or long form template (or, if no template, seek legal advice)
High risk + high value + high complexity	One-off custom built contract developed by legal team



The main differences between the 3rd edition and the 2nd edition

This table highlights the key changes:

Change	Explanation	Reference
Updated Health and Safety at work clauses to reflect the Health and Safety at Work Act 2015.	The new clause makes it clear that the Buyer and Supplier have overlapping obligations to manage.	Standard GMC Services, Schedule 2, clause 2.6 Standard GMC Goods, Schedule 2, clause 2.11
New references to and obligations about security and protective security.	This clause is consistent with security and Protective Security Requirements	Standard GMC Services, Schedule 2, clause 2.6

	for government.	Standard GMC Goods, Schedule 2, clause 2.11
New clause to include the Supplier Code of Conduct.	This clause implements the Supplier Code of Conduct. For the non-Crown version of the templates inclusion of this clause is optional. We encourage its inclusion.	Standard GMC Services, Schedule 2, clause 2.3d. Standard GMC Goods, Schedule 2, clause 2.6d.
A new clause on Employment Standards to support the government's policy objectives to achieve good employment standards.	This clause requires adherence to employment legislation and requires reporting of breaches and investigations.	Standard GMC Services, Schedule 2, clause 2.7 Standard GMC Goods, Schedule 2, clause 2.12
Multiple minor changes to improve the drafting. Format changes to enhance accessibility and ease of use of the templates.	Multiple clauses.	All templates

Including broader outcomes

[Rule 16](#) of the Government Procurement Rules states that agencies must consider, and incorporate where appropriate, broader outcomes when purchasing goods, services or works. This requirement applies if the Rules apply. There is also the option to incorporate broader outcomes even when it is not required.

Procurement can and should be used to support wider social, economic, cultural and environmental outcomes that go beyond the immediate purchase of goods and services. These are known as broader outcomes.

Make sure that any agreement about broader outcomes is captured in the terms of the contract using the GMC templates. Because we expect the agreements to vary from contract to contract, we have not included a specific area for broader outcomes in the template. Instead include the agreed terms as part of the description of goods or services or as additional clauses.

Structure of the standard GMC templates

The standard GMC templates consist of two separate documents for each of the categories 'Goods' and 'Services'. Each template includes 'Contract Details', 'Schedule 1' and 'Schedule 2'.

'Contract Details' and 'Schedule 1' are combined in one document available in MS Word format. These make up the operational aspects of the contract. 'Schedule 2' is in a separate pdf document and contains the standard legal terms and conditions of the contract.

Schedule 2 is permanently available at procurement.govt.nz. When preparing a contract for signature it is not necessary to attach a hard copy of Schedule 2, as it is referred to in the 'Contract Details' section and suppliers can simply be directed to procurement.govt.nz. However, agencies may choose to attach a copy of Schedule 2.

Together the Contract Details, Schedule 1, Schedule 2 plus any attachments and referenced documents form the entire contract between the agency and supplier.

Choose the correct form

The standard templates come in two forms (see table below). Organisations which are part of the Public Service should use Form 1. If you are unsure, check with your legal team or this list from the State Services Commission: <https://ssc.govt.nz/our-work/state-sector-organisations/>.

Form	Application	Explanation
Form 1	The Crown	To be used by any department or agency that contract in the name of The Crown. e.g. The Sovereign in Right of New Zealand acting by and through the Ministry of Business, Innovation and Employment
Form 2	All other Buyers	To be used by any other Buyer. That means any Buyer who does not contract in the name of The Crown.

The *Government Model Contract - Lite* template and the variation templates are for all Buyers (Crown and Non-Crown).

Goods or services

The standard templates and the variation are in two sets: one for the purchase of goods and one for the purchase of services. The *Government Model Contract - Lite* can be used for either goods or services (not both).

The contract templates are not designed for a blended contract where the purchase combines goods and services. Blended goods and services templates are planned for future work.

What templates are available?

The following templates are available at procurement.govt.nz

Form	Category	Template name	Comment
Form 1 (The Crown)	Services	GMC Form 1 Crown SERVICES (3rd Edition) GMC Form 1 Crown SERVICES Schedule 2 (3rd Edition)	Microsoft Word pdf
	Goods	GMC Form 1 Crown GOODS (3rd Edition) GMC Form 1 Crown GOODS Schedule 2 (3rd Edition)	Microsoft Word pdf
Form 2 (all other buyers)	Services	GMC Form 2 non-Crown SERVICES (3rd Edition)	Microsoft Word pdf

		GMC Form 2 non-Crown SERVICES Schedule 2 (3rd Edition)	
	Goods	GMC Form 2 GOODS (3rd Edition) GMC Form 2 GOODS Schedule 2 (3rd Edition)	Microsoft Word pdf
Government Model Contract- Lite	Services or Goods	GMC Lite (3rd Edition)	Microsoft Word Templates can be used by both Form 1 and Form 2 Buyers.
Variation	Goods	GMC Contract Variation GOODS (3rd Edition)	
Variation	Services	GMC Contract Variation SERVICES (3rd Edition)	

Changing Schedule 2 of the standard templates

The standard GMC templates allow for minor changes to clauses in ‘Schedule 2 Standard Terms and Conditions’. Any changes should be minor and only where they are needed. This is to protect the benefits of consistent templates across government. Sometimes you may need to amend or replace a clause to meet the particular facts and circumstances of the Contract or to reflect the specific business needs. Ensure legal advice is obtained first if changes are being made to ‘Schedule 2’.

If a change has been agreed it must be recorded in the ‘Changes to Schedule 2 Standard Terms & Conditions’ section of ‘Schedule 1’.

This section can also be used to stipulate an additional clause, for example, any broader outcomes which are not captured in the deliverables. There are some examples of additional clauses in [Appendix 1: Alternative and additional clauses](#).

Features of the standard GMCs templates

In this section we highlight some of the provisions of the templates.

Health, Safety and Security

The clause called ‘Health, Safety and Security’ in Schedule 2 of the standard GMC templates captures obligations under the Health and Safety at Work Act 2015 and reflects the overlapping obligations of Buyer and Supplier. Additional clauses to reflect the Health and Safety risks should be included in Schedule 1 where required. Also take into account the [Good Practice Procurement Guide for Improving Health and Safety](#).

This clause also includes specific reference to protective security. This was added to ensure that government agencies consider the Government’s Protective Security Requirements and their application to these contracts, including any reporting requirements. See <https://www.protectivesecurity.govt.nz/>.

Supplier's Approved Personnel and Sub-contractors (optional) (Services only)

There are optional placeholders in Schedule 1 of the standard GMC services templates for approved personnel and sub-contractors. They are used where the Buyer specifically wants a named individual to be engaged in

delivering the Services or where a sub-contractor is engaged. The intent of the clause is to ensure the Buyer is aware if a sub-contractor is engaged or to specify the services of a particular person.

Insurance

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

If the facts and circumstances of an individual contract require that specific insurance be identified, the following options are provided:

Services

- public liability insurance
- professional indemnity insurance
- other insurance specific to the Services, for example statutory liability or motor vehicle.

Goods

- public liability insurance
- professional indemnity insurance
- other insurance specific to the Goods, for example statutory liability, marine cargo or material damage/business interruption

These options include an ability to state the amount of insurance cover required for single events and in the aggregate (as appropriate for the relevant insurance cover).

In every case, the level of cover the Supplier has should reflect the risks of the work being done by the Supplier under the contract.

Limitation of liability

The GMC templates do not include a limitation of liability clause. It is considered unnecessary for most low-value, low-risk contracts.

If a limitation is required (e.g. because the Supplier cannot adequately manage the risk associated with the consequences of breaching the contract) a clause can be included as an additional clause. You should carefully consider whether a limitation is warranted, and if so, what type of limitation. It is recommended that agencies seek legal advice on this point.

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

If seeking to limit liability, wording for possible clauses is included in [Appendix 1: Alternative and additional clauses](#).

Indemnity

The default position in the templates is that there is no indemnity (a promise to pay if a set of specified circumstances arise) from either party. Where an indemnity is required, this must be stated as an additional

clause. It is recommended an indemnity clause is only inserted where there is a specific and real need to cover a genuinely perceived risk. We recommend agencies seek legal advice on this point. In particular, agencies should seek legal advice before including any indemnity for the benefit of the Supplier as there are legal restrictions for most agencies as to what indemnities an agency is permitted to give (see for example the Public Finance Act 1989 and the Crown Entities Act 2004, as well as any agency specific governing legislation).

Resolving disputes

The GMC templates provide for escalation of disputes from the Contract Managers to senior managers, and then to mediation. Parties can agree a different type of dispute resolution if they prefer something else rather than mediation.

Arbitration is not provided for because 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 and records management practice to ensure a record is kept of all communications, discussions, and agreements reached during the dispute resolution process.

Payment of invoices

The standard GMC templates provide for payment of invoices by the 20th day of the calendar month if they are received by the 5th Business Day of the month.

[Rule 51](#) of the Government Procurement Rules requires payment by the date specified in the contract or earlier if possible. The clause in the contract templates is a minimum standard which agencies must aim to exceed.

In December 2019 the Minister for Small Business announced a target for government departments to pay 95 per cent of domestic invoices in 10 business days by June 2020.

Ending the Contract

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

- termination by the Supplier
- termination by the Buyer
- termination by either Party for a breach of contract, if the breach is not remedied.

The template gives the Buyer a right of termination for convenience on 20 Business Days' Notice. The notice period can be changed (e.g. if the circumstances will take the Supplier longer to disengage from the Contract).

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 any new Supplier at a reasonable fee. The Parties must agree to this fee separately. The intention is that if the Buyer requires more support than a simple handover, the Parties agree to a fee for the Supplier based on the fee structure in the Contract.

Intellectual Property Rights




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 deliverables under the Contract will vest in the Buyer. If the Buyer is a Public Service Agency, those Intellectual Property Rights will be owned by the Crown and considered Crown copyright. Such Intellectual Property Rights can be used by all Public Service Agencies.



Where parties are seeking an alternative treatment of Intellectual Property Rights, that can be achieved by including changes. We recommend parties seek legal advice if a different approach is wanted



Appendix 1: Alternative and additional clauses

Amend Schedule 2 only for specific business reasons. Seek legal advice before making any changes. This Appendix contains suggestions for alternative wording for certain clauses. These suggestions are a guide only.

Topic	Comment	Suggested alternate 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 Add the following clause: [6.2A for Services, 8.2A for Goods] The Supplier is authorised to act as the Buyer's agent in respect of [insert scope of agency (Agency)]. Except to the extent of the Agency, no Party has authority to bind or represent the other Party in any way.		
<i>Goods contract – making orders</i>	If there are specific processes for ordering goods that are different to the provisions of the Contract 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]		
<i>Goods contract – delivery and removal of packaging</i>	This clause puts additional obligations on the Supplier in relation to the supply of equipment and tools, and the removal of packaging following supply of the Goods.	Add new clauses 2.6(e) and (f): (e) provide, at its own cost, all equipment, tools, materials, implements, packaging and other resources necessary to supply the Goods, and (f) on delivery of the Goods, remove all packaging not required by the Buyer, at the Supplier's cost, and leave the working		

		areas clear of rubbish, debris or packaging material.		
Goods contract - ownership & risk	<p>The GMC template sets out simple rules for title and risk in relation to goods. These rules may not be appropriate in all circumstances.</p> <p>The basic rule is that title passes on the date of payment or delivery (whichever comes first) and risk passes on the date of delivery.</p>	<p>Ownership</p> <p>Delete clause 4.1 and replace it with the following:</p> <p>Ownership of the Goods passes to the Buyer [on the date the Goods are shipped to the Buyer] OR [on the date the date the Contract is executed by both Parties].</p> <p>Risk</p> <p>Delete clause 4.2 and replace it with the following:</p> <p>Risk in the Goods passes to the Buyer [on the date the Goods are shipped to the Buyer] OR [on the date the date the Contract is executed by both Parties].</p>		
Insurance run off cover	The GMC template 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.	<p>Insurance</p> <p>Amend clause 8.1(a) by deleting the words 'three years after the End Date' and replacing them with the words <i>[insert length of time]</i> after the End Date.</p>		
Limitation of Liability	Any limitation of liability clause should be inserted in the Schedule 1.	<p>Liability</p> <p>Add the following new clauses:</p> <p>[8.2 Services; 9.2 Goods] Limitation: Each Party's liability to the other Party (whether in contract, tort including negligence, or otherwise) under or in connection with this Contract:</p> <p>a. will not exceed:</p> <ul style="list-style-type: none"> • for the Buyer – [insert amount], and • for the Supplier – [insert amount] <p>b. is limited to losses caused directly by that Party, and</p> <p>c. does not include any loss of revenue or profits, loss of</p>		

		<p>anticipated savings, loss of opportunity, loss of production or loss of data, however caused.</p> <p>[8.3 Services; 9.3 Goods] Exceptions: Clause [8.2/9.2] does not limit a Party's liability:</p> <ul style="list-style-type: none"> a. for any breach of clause 13 (Confidential Information) b. for any breach of clause 12.2 (Supplier warranties) [Services only] c. for any deliberate breach of this Contract, malicious act or fraud, or d. to pay any amount duly payable under this Contract. 		
<p>Payment - systems requirements</p>	<p>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>	<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 valid tax invoice for the undisputed amount if the Buyer requests one.</p>		
<p>Records</p>	<p>Under the GMC templates both Parties are required to keep adequate Records of the Contract and the Goods and Services delivered.</p> <p>The Supplier's obligation is to keep records for 7 years after the End Date. Agencies may have different requirements under the Public Records Act. Agencies should check their internal records policies if they require the Buyer to keep</p>	<p>Keeping Records</p> <p>Delete clause [5.1(f) for Services] [7.1(f) for Goods] and replace it with the following:</p> <p>make its Records available to the Buyer during the term of this Contract and for <i>[insert period]</i> years after the End Date (unless already provided to the Buyer earlier), and</p>		

	Records for longer than 7 years and if so state this clearly in this section of Schedule 1.		
<i>Services contract</i> Subcontractor	If the Buyer wants the right to require a sub-contract to be terminated state this right in this section of Schedule 1.	<p>Subcontractor</p> <p>Clause 7.3 is inserted, as follows:</p> <p>7.3 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 immediately terminate that sub-contract.</p>	
<i>Services contract</i> tax - overseas Supplier – treatment of GST	The GMC templates assume suppliers are based, domiciled 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>Add the following clauses</p> <p>3.2A Taxes: The Supplier will be responsible for all taxes, duties and charges arising out of this Contract.</p> <p>3.2B GST: 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>3.2C Withholding tax: 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.</p>	
Exchange rate	The GMC templates assume that the price will be set and paid in one currency. If you need to set the price in one currency, but it will be paid in a different currency, and you want to fix the exchange rate at which the currencies will be calculated, please use this new clause.	<p>Add the following clause:</p> <p>The Parties have agreed that the Charges will be calculated in [insert currency] and paid in [insert currency]. The Parties agree that the following exchange rate shall apply when calculating the amount due.</p> <p>[insert one unit of currency for calculating Charges] = [insert amount of currency in which payment will be made]</p>	