



**RFX TERMS AND CONDITIONS
(BIDDER AGREEMENT)**

[WS# - YYYY - RFP TITLE]



RFX TERMS AND CONDITIONS

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1. SECTION 1 - INTRODUCTION

1.1. Purpose

CBH has invited the Participant to an RFX Event that is subject to the RFX Terms and Conditions set out in this document. Failure to comply with the RFX Terms and Conditions may disqualify a Participant from consideration.

1.2. Typical sourcing process at CBH



1.3. Background to the CBH Group

Refer to the corporate website for background information: <https://www.cbh.com.au/about-cbh>

1.4. Structure of this RFX Document and Process

This RFX Document comprises of the following sections:

Section	Description of Section
Section 1 - Introduction	Outlines the purpose and structure of this RFX Event.
Section 2 – RFX Terms and Conditions	Sets out the RFX Terms and Conditions that govern all parties participating in a RFX Event.
Section 3 – Requirement	Sets out details of the Requirement.
Section 4 – Information to be Provided by the Participant	Sets out the information required from the Participant in their RFX Response and the format in which the information must be provided.
Any other section(s) the CBH Event Owner may Publish with an RFX Event.	

2. SECTION 2 – RFX TERMS AND CONDITIONS

2.1. Definitions

The following definitions apply:

Addendum means any subsequent document issued forming part of the RFX Document, setting out changes to or additions to the Requirement or RFX Event process.

Agreement means any contractual agreement that may result from this RFX Event.

CBH means Co-operative Bulk Handling Limited.

CBH Event Owner means the Company employee nominated to manage this RFX Event. A reference to 'Owner' as it appears on the SAP Ariba Network under 'Review Event Details' shall have the same meaning.

CBH Group means CBH and its subsidiaries and related bodies corporate.

Company means Co-operative Bulk Handling Limited. A reference to CBH has the same meaning.

Contractor means the Preferred Participant that forms an Agreement with the Company for provision of the Requirement.

Due Date means the date and time in which this RFX Event will be closed.

Information means any material issued to the Participant by the Company that is related to this RFX Event or the Requirement.

Key Dates means the dates as identified in section 2.8.3 of the RFX Event.

Notices means any written notices or correspondence issued by the Company to inform the Participant of any additional information, clarifications, corrections and amendments to the RFX Event. Notices shall be deemed to form part of the RFX Event and RFX Document.

Participant means a supplier entity who submits or is invited to submit a RFX Response.

Party or Parties means a party to a RFX Event process.

Personal Information has the meaning given in section 6 of the Privacy Act 1988 (Cth).

Preferred Participant means the Participant whose RFX Response is nominated by the Company to be the most preferable.

Privacy Law means any Law relating to the privacy, confidentiality or use of any information about individuals, including the Privacy Act 1988 (Cth).

Publish Time means the date and time in which this RFX Event is opened.

Requirement means the subject matter of this RFX Event comprising the scope of work for the goods and / or services, specifications and, where applicable, quantity requested.

RFX means the collective term for an RFX Event.

RFX Event means a competitive RFX event published by the Company, including a Request for Proposal (RFP), Request for Tender (RFT), Request for Quote (RFQ), or Request for Information (RFI).

RFX Document means the documents issued as part of the RFX Event. A reference to Bid Document has the same meaning.

RFX Response means the set of documents submitted by the Participant in response to the RFX Event. A reference to Bid Response has the same meaning.

RFX Terms and Conditions means the terms and conditions that govern the RFX Event as set out in this document. A reference to Bidder Agreement has the same meaning.

SAP Ariba Network means the SAP Ariba e-procurement platform, a web-based cloud application in which RFX Events are issued and RFX Responses are submitted. A reference to Ariba Commerce Cloud has the same meaning.

2.2. Contractual Authority

A reference to CBH or the Company in this RFX Event is a reference to one or more CBH Group companies and the RFX Terms and Conditions are entered with each CBH Group company entity.

2.3. RFX Event Disclaimer

The issuing of this RFX Event does not commit or otherwise oblige the Company to proceed with any Agreement, arrangement or understanding with any Participant.

2.4. Contract Award

An Agreement may be awarded from the outcomes of this RFX Event on the following basis:

- (a) Single supplier for the Requirement in its entirety or part thereof;
- (b) Panel of suppliers for the Requirement in its entirety or part thereof;
- (c) Separate suppliers for separate parts or subcategories of the Requirement; or
- (d) No supplier for the Requirement.

2.5. Accuracy of Information

2.5.1. Participant to fully inform itself

- (a) The Company has made reasonable efforts to provide reliable information in the RFX, however it makes no representation and gives no warranty, guarantee or assurance as to the accuracy, completeness and sufficiency of any information given to the Participant whether verbally or in writing by the Company, its employees, agents, consultants, advisers or suppliers.
- (b) The RFX Response submitted by the Participant will be deemed for all purposes to have been based upon the Participant's own investigations and determinations, and the Company, and its employees, agents, consultants, advisers or suppliers, accept no responsibility for the Participant relying on the contents of the RFX or any other statements made, or information provided, by or on behalf of the Company.
- (c) The Participant is required to inform itself fully of all conditions, risks and other circumstances relating to the Requirement at its own cost and expense prior to submitting a RFX Response.

2.5.2. Inconsistencies and omissions

The Participant must promptly advise the Company in writing and prior to submitting any RFX Response of any inconsistencies and / or omissions it discovers in the RFX Document, Addendums or any other Notices.

2.6. Modification or withdrawal of RFX Event

- (a) The Company may for any reason and in its sole discretion withdraw, modify, correct, clarify or otherwise vary the RFX Event at any time prior to the RFX Due Date, by issuing a written Notice to the Participants.
- (b) Any Notice issued by the Company will be sent to all Participants using the Company's SAP Ariba Network prior to the RFX Due Date and will form part of the RFX Event.
- (c) The Company will not be responsible for any costs incurred by the Participant as a result of a modification or withdrawal of a RFX Event.

2.7. Company eProcurement platform

The Company uses the SAP Ariba Network for its RFX Events.

2.7.1. Access and use of the SAP Ariba Network

- (a) Access to and use of the SAP Ariba Network is subject to the SAP Ariba Terms of Use for Suppliers accessible on the SAP Ariba Network upon initial login. Participants must agree to comply with the SAP Ariba Terms of Use for Suppliers and any applicable instructions and procedures as advised on the SAP Ariba Network to access and participate in the RFX Event.
- (b) Participants acknowledge that although the Company has implemented security measures, the Company does not warrant that unauthorised access to information and data transmitted via the internet will not occur.
- (c) Participants acknowledge that:
 - (i) Lodgement of their RFX Response on time and in accordance with the RFX Terms and Conditions is entirely the responsibility of the Participant; and
 - (ii) the Company will not be liable for any loss, damage, costs or expenses incurred by the Participant or any other person if, for any reason, a RFX Event or any other Information, material or communication relevant to this RFX Event is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

2.7.2. Virus checking

In submitting a RFX Response electronically via the SAP Ariba Network, the Participant warrants that they have taken reasonable steps to ensure that their RFX Response is free of viruses, worms, harmful code or other disabling features which may affect the SAP Ariba Network and/or the Company's computing environment. Participants whose RFX Response is found to contain viruses, worms, harmful code or other disabling features may be removed from further consideration.

2.7.3. SAP Ariba Network disclaimer

- (a) The Company does not accept responsibility for any loss or damage caused including through negligence, which the Participant may directly or indirectly suffer in connection with the Participant's use of the SAP Ariba Network website or any linked website.
- (b) The Company does not accept liability for any loss or damage arising directly or indirectly from a failure to provide any of the services on the SAP Ariba Network website or failure or delay in giving effect to any of Participant your instructions, corruption to or loss of data, errors or interruptions, inaccurate or incomplete material and any suspension or discontinuance of the service.
- (c) The Company is not liable for any consequential loss or damage arising out of or in relation to the Participant's use of the SAP Ariba Network website, including in relation to any breach of a condition or warranty implied by law in contracts (which may not be excluded, restricted or modified at all or only to a limited extent), and the Participant release and indemnify the Company in respect of all actions, claims and demands in respect of such consequential loss or damage.

2.7.4. SAP Ariba training materials

The Participant may access training materials and online interactive videos on how to navigate and perform tasks in SAP Ariba Network from the 'Download Tutorials' under 'Event Messages' link. Alternatively, the Participant may access support via the following corporate website: <https://www.cbh.com.au/suppliers-and-contractors/cbh-etendering>

2.8. CBH Event Owner, Correspondence and Key Dates

2.8.1. CBH Event Owner

At any time during the RFX Event, the Company may delegate the CBH Event Owner.

2.8.2. Correspondence during the RFX Event Period

- (a) Participants will be notified by email of any communications issued by the Company through the SAP Ariba Network. Participants can access all communications using the 'Event Message' screen of the 'Event Details' column within the SAP Ariba Network.
- (b) The participants acknowledge that;
 - (i) no other Company employee, agent, consultant, contractor or advisor is to be contacted in relation to this RFX Event unless directed to do so in writing by the CBH Event Owner;
 - (ii) the Company reserves the right to disqualify and reject RFX Responses that do not comply with the requirements at section 2.8.2(a);
 - (iii) verbal communications, including modifications to RFX Responses will not be recognised unless communicated in writing through the SAP Ariba Network or by other electronic means as communicated by the Company; and
 - (iv) the Company will convey responses to the Participant's submitted questions and queries to all Participants using the SAP Ariba Network, or other electronic means as communicated by the Company so that each Participant is equally informed.

2.8.3. RFX Event Key Dates

- (a) The Participant will be notified by the Company of any Key Dates and associated amendments to the Due Date by email and via the 'Event Messages' screen of the 'Event Details' column within the SAP Ariba Network.
- (b) It is the Participant's responsibility to inform itself of the Due Date by using the 'Review Event Details' tab of the 'Event Details', 'Checklist' tab within the SAP Ariba Network.

2.8.4. RFX Event briefing and site visit

The Company may hold a briefing session and/ or site visit to further familiarise Participants with the Requirement. Further details regarding the briefing session and/ or site visit will be provided to Participants when applicable.

2.9. Participation & Acknowledgement

2.9.1. Intent to participate

The Participant confirms its intention to participate in the RFX Event by completing the 'Review and Accept Prerequisites' screen in the 'Checklist' tab of the 'Event Details' column within the SAP Ariba Network.

2.9.2. Withdrawing intent to participate

- (a) The Participant is able to deregister and withdraw its earlier registration of intent by using the <Decline to Respond> function in the SAP Ariba Network or via the email notification.
- (b) By deregistering from the RFX Event, the Participant will cease to have access to the RFX Event on the SAP Ariba Network, and the Participant is required to permanently delete all electronic copies of issued RFX Documents including all hard copies created by the Participant.

2.9.3. Acknowledgement of RFX Terms and Conditions

By participating in this RFX Event and/or submitting a RFX Response, the Participant confirms their acceptance to be bound by the RFX Terms and Conditions as set out in this RFX Document and as published on the corporate website : <https://www.cbh.com.au/suppliers-and-contractors/supplying-to-cbh>

2.10. Downloading RFX Documents

Upon registering its intent to participate in the RFX Event as set out in section 2.9.1, the Participant is able to download the RFX Documents.

To download the RFX Documents, the Participant must navigate to the 'Review Event Details' screen and click on the <Download Content> button and either 'Download Content' or 'Download Attachments'.

2.11. Lodgement of RFX Responses

2.11.1. Participant RFX Response

- (a) RFX Response(s) may be for all or part of the Requirement and may be accepted by the Company either wholly or in part.
- (b) Participants acknowledge that the Company may rely upon all statements made by the Participant in their RFX Response or in subsequent correspondence or negotiations with the Company or its representatives.

2.11.2. RFX Response lodgement and format requirements

- (a) The Participant must submit their RFX response by uploading their RFX Response to the SAP Ariba Network (as detailed in section 2.11.3) prior to the Due Date.
- (b) All RFX Response must be prepared in English and contain the information requested in Section 4 of the RFX Document and any RFX Event online questionnaires.
- (c) Each document that forms part of the RFX Response must not exceed 100MB per file and 2GB for the RFX Response as a whole.
- (d) Documents can be of PDF and native file type format (for example Microsoft Word, Excel, PowerPoint, Project). However, RFX Responses must be self-contained, no hyperlinked or other material may be incorporated by reference.
- (e) Any RFX Response that does not comply with this requirement may be deemed a non-conforming RFX Response.
- (f) In the event that the Participant updates a previously submitted RFX Response or submits multiple RFX Response(s) for the same portion of work with respect to the Requirement, the Company shall deem the last submitted RFX Response as the valid conforming RFX Response that the Participant wishes to submit.

2.11.3. Lodgement Instructions

To lodge a RFX Response, the Participant must follow these instructions:

- (a) Click on <Submit Response> tab in the 'Checklist' column of the 'Event Details' page within the SAP Ariba Network;
- (b) Follow the instructions on the 'Lodge a Response' page to upload RFX Response documents.

2.11.4. Lodgement Assistance

Should the Participant experience any problems or require assistance to lodge its RFX Response on the SAP Ariba Network, the Participant may contact the CBH Event Owner.

2.11.5. Late RFX Responses

- (a) The Participant is responsible for submitting their RFX Response prior to the Due Date in accordance with the acceptable lodgement requirements described in section 2.11.2. There will be no allowance made by the Company for any delays in transmission of the RFX Response from the Participant to the Company.
- (b) The RFX Event will be locked and inaccessible in the SAP Ariba Network after the Due Date. Therefore, the Participant will not be able to upload RFX Response after the Due Date.
- (c) Any late RFX Responses received by the Company by other means of transmission may be removed from further consideration at the Company's sole discretion.

2.11.6. **Acceptance of RFX Responses**

The Company is under no obligation to accept the lowest priced RFX Response or any RFX Response and reserves the right to reject any RFX Response which is incomplete, conditional or non-compliant with the RFX Documents and the Requirement.

A RFX Response will not be deemed to have been accepted by the Company, unless and until either:

- (a) a written Notice of Award or Notice of Preferred Participant (or similar notification) has been issued and the Company has received the signed returned Notice acknowledging the Preferred Participant(s) agreement to the conditions of the Notice;
- (b) the Company and the Preferred Participant(s) have both executed a written Agreement for the Requirement; or
- (c) the Company has issued a Purchase Order to the Preferred Participant(s) for the Requirement, whichever is the earlier.

2.11.7. **Alternative RFX Responses**

The Participant may submit an alternative RFX Response if they feel it may offer the Company additional benefits whilst still complying with the Requirement. The Company reserves the right to accept or reject any proposed alternative either wholly or in part.

2.11.8. **Validity of RFX Responses**

RFX Responses submitted in response to this RFX Event are to remain valid for an initial period of ninety (90) days from the Due Date unless the parties agree in writing to another period of time or extension.

2.11.9. **Participant Withdrawals**

A RFX Response may be withdrawn at any time prior to the Due Date by written Notice to that effect to the CBH Event Owner or by clicking onto <Decline to Respond> button in Ariba or via the email notification.

2.11.10. **Costs of preparing RFX Responses**

All costs relating to the preparation and submission of a RFX Response are the sole responsibility of the Participant. The Company shall not pay any Participant, wholly or in part, for its RFX Response.

2.11.11. **Disposal of RFX Documents**

- (a) The Participant must permanently destroy all issued electronic and hard copies of the RFX Documents, within seven (7) days of:
 - (i) notifying the CBH Event Owner of their intention not to participate in the RFX Event (section 2.9.2); or
 - (ii) being notified by the CBH Event Owner that their RFX Response was unsuccessful. Unsuccessful Participants are to also permanently delete any electronic copies of RFX Documents (either issued by the Company or created by the Participant).
- (b) Subsequent to any notification by the Company to the Participant that they are unsuccessful, the Company in turn will ensure that any unsuccessful RFX Response(s) security is maintained.

2.12. **RFX Response Price**

All rates and prices contained in the RFX Response must:

- (a) separately detail the amount of any goods and services tax;
- (b) be in Australian Dollars unless otherwise stated;
- (c) be inclusive or exclusive of any delivery terms as specified; and
- (d) be inclusive of all costs, insurances, taxes, fees, expenses, liabilities, obligations risk, overheads, statutory charges and other things necessary for the performance of the

Requirement. Any charge not stated in the RFX Response(s) as being additional will not be allowed as a charge against any transaction under any resultant agreement and/or Purchase Order.

2.13. Evaluation of RFX Responses

The Company shall set criteria to be used in the assessment and evaluation of RFX Response(s) as set out in the RFX Document. The Company may request additional information from the Participant to assist with conducting further analysis and evaluation of RFX Response(s).

2.14. Other General Obligations

2.14.1. Confidentiality Deed

Where requested by the Company, the Participant must execute a confidentiality deed in the form proposed by CBH and return it to the CBH Event Owner.

2.14.2. Request for RFX Response Confidentiality

Without limiting the requirements of any confidentiality deed executed pursuant to this RFX Event (if any), this RFX Event and any other Information may not be used for any purpose other than the preparation of the RFX Response(s) and may not (without the Company's prior written consent), be disclosed or released to any other third party. Where a confidentiality deed between the Company and Participant is executed, the terms of the confidentiality deed are extended to the Participant's employees, consultants, agents or any person to whom the Participant supplies the Information in accordance with the terms of the confidentiality deed.

2.14.3. Public Announcements

Neither the Participant nor the Company shall make any public announcements or disclosures regarding the RFX Event, any RFX Response(s) or otherwise without prior written consent of the other party (except as required by any applicable law or regulation).

2.14.4. Privacy

- (a) Each Party warrants that it will comply with all applicable Privacy Laws in relation to the collection, use or disclosure of Personal Information that may be collected during this RFX Event process.
- (b) Without limiting clause 2.14.4(a) both Parties must:
 - (i) only use Personal Information for the purpose of fulfilling their respective obligations as part of this RFX Event;
 - (ii) not disclose, or permit to be disclosed, any Personal Information without the other Party's approval in writing;
 - (iii) not disclose Personal Information outside Australia;
 - (iv) take all reasonable steps to protect Personal Information from misuse and loss from unauthorised access, modification or disclosure; and
 - (v) comply with any reasonable direction of the other Party with respect to collection, use, disclosure, storage and disposal of the other Parties Personal Information.

2.14.5. Competition and Consumer Act

The Participant acknowledges that the Competition and Consumer Act 2010 (Cth) and the CBH Standards and Procedures prohibits, among other things;

- (a) collusion in the RFX Event and exchange of RFX Event Response information;
- (b) price fixing;
- (c) sharing the market by territory; and
- (d) collusion on trading terms.

2.14.6. **Deemed Compliance**

- (a) The RFX Terms and Conditions shall govern the RFX Event process between the Parties and will apply to any information submitted in response to this RFX Event.
- (b) When a Participant submits its RFX Response(s) it is deemed to have acknowledged and accepted these RFX Terms and Conditions.
- (c) Should the Participant disagree with any of the terms and conditions of the RFX Terms and Conditions they must immediately provide notice, prior to the submission of a RFX Response to the CBH Event Owner. If the Parties cannot agree on a compromise, the Company may at their sole discretion remove the Participant from the RFX Event.

2.14.7. **Governing Law**

This RFX Event shall be construed according with the laws of Western Australia and the Participant agrees to submit to the exclusive jurisdiction of the West Australian courts in any dispute which may arise in relation to an RFX Event.