

Draft Procurement Clause Set (State Procurement)

Audit rights, Evidence Pack and substitution controls — aligned to Annexure Evidence Codes (E1–E10)

Jurisdiction header: [NSW/VIC/QLD/WA/SA/TAS/ACT/NT] Government — [Agency]

Contract/PO: [Insert reference] | Project/Site: [Insert] | Version/date: [v4 / DD Mon YYYY]

Part 1 — Head contract special condition

SC [XX] Building Product Verification, Audit Rights and Substitution Controls

1. Definitions and interpretation

- 1.1 Annexure X means Annexure X — Compliance Evidence Schedule (By Product Type) to the Contract.
- 1.2 Evidence Codes means the evidence items E1–E10 described in Annexure X (as varied by the Agency under Annexure X where permitted).
- 1.3 Evidence Pack means, for a Product, the Evidence Codes identified as required for that Product type in Annexure X, provided in a complete, current and unaltered form and specific to the Product actually supplied (including batch/lot where applicable).
- 1.4 Product includes any building product, material, system, component or assembly supplied for incorporation into the Works (including insulation products).
- 1.5 Substitution means any change (including “or equivalent”) to a Product that may affect compliance or performance, including a change to brand, manufacturer, composition, thickness/density, declared values, certification scope, country of manufacture, or configuration of a tested/assessed system.

2. Hold points — Evidence Pack required

- 2.1 The Contractor must not order, supply, deliver, install, or permit installation of a Product unless the Contractor has first provided the Evidence Pack to the Principal (or its nominee) and obtained written confirmation that the Evidence Pack is complete (Hold Point).
- 2.2 The Principal may request clarification or additional information where the Evidence Pack is incomplete, inconsistent, out of date, not product-specific, or otherwise insufficient to substantiate claims.

3. Audit, access and verification

- 3.1 The Principal (and its representatives) may, at any time, verify compliance and performance claims by auditing the Evidence Pack and supporting records, inspecting Products on site/in storage, and confirming the authenticity, scope and currency of documents with issuing bodies (including laboratories and certification bodies).
- 3.2 The Principal may arrange reasonable sampling and independent verification testing under a documented chain-of-custody process. The Contractor must provide reasonable cooperation and assistance to facilitate access, sampling and verification.
- 3.3 Costs: Where an audit or verification identifies nonconformance or the Contractor’s failure to provide a compliant Evidence Pack, the Contractor bears the Principal’s reasonable costs of audit/verification, plus all costs of removal, replacement, rectification and associated delay. Otherwise, audit/verification costs are borne by the Principal (unless the Contract provides otherwise).

4. Substitution controls — “verify before substitution”

- 4.1 The Contractor must not implement any Substitution without the Principal’s prior written approval.
- 4.2 A request for approval of a Substitution must include: (a) a clear description of the proposed change and reasons; (b) the like-for-like Evidence Pack required under Annexure X for the substituted Product; (c) an assessment of impacts on performance, durability, interfaces and any safety/fire considerations relevant to the application; and (d) an update to the as-built Product Register (clause 6).
- 4.3 A Substitution implemented without written approval is a defect and a material breach. The Principal may direct removal and replacement at the Contractor’s cost.

5. Nonconforming or unsubstantiated Products

- 5.1 If a Product’s claims cannot be substantiated to the Principal’s reasonable satisfaction, or verification indicates nonconformance, the Principal may direct: cessation of installation; quarantine; removal; replacement; and rectification of affected Works.
- 5.2 The Principal may withhold payment for the Product and any affected Works until the matter is resolved, and may set off and recover costs as a debt due (without limiting other rights).
- 5.3 The Contractor is not entitled to an extension of time or additional costs arising from a direction under clause 5.1 where the cause is inadequate/misleading evidence, or nonconformance.

6. Records and as-built Product Register

- 6.1 The Contractor must maintain an as-built Product Register identifying Products installed, their locations, and a link to the applicable Evidence Pack (Evidence Codes E1–E10 per Annexure X).
- 6.2 The Contractor must provide the as-built Product Register and Evidence Packs at Practical Completion (or earlier on request) and retain copies for not less than ten (10) years, or such longer period required by law or the Contract.

7. Flow-down

- 7.1 The Contractor must include equivalent obligations to this SC [XX] (including the requirement to provide Evidence Packs by Evidence Codes) in all relevant supply and subcontract arrangements. The Contractor remains responsible for compliance by its subcontractors and suppliers.

8. Public sector disclosure

- 8.1 The Contractor acknowledges the Principal may be required to disclose Contract information and/or Evidence Packs under applicable information access, integrity, audit and public accountability requirements. Any confidentiality markings by the Contractor do not bind the Principal where disclosure is required by law.

Part 2 — Agency purchase order clause

PO [XX] Evidence Pack and substitution conditions (incorporated into Agency PO terms)

1. Evidence Pack (condition of supply)

- 1.1 The Supplier must not supply, and the Agency is not obliged to accept or pay for, any Product listed in PO Annexure PO-X unless the Supplier has first provided the Evidence Pack required for that Product (Evidence Codes E1–E10 as specified in PO Annexure PO-X).

2. Substitution

- 2.1 The Supplier must not substitute any Product (including “or equivalent”) without the Agency’s prior written approval. A substitution request must include the like-for-like Evidence Pack required under PO Annexure PO-X for the substituted Product, and written approval must be obtained before delivery.

3. Audit and verification

- 3.1 The Agency may audit Evidence Packs and supporting traceability records and may verify document authenticity with issuing bodies. The Agency may arrange reasonable sampling/testing under chain-of-custody where required.

4. Remedies

- 4.1 If the Evidence Pack is not provided or is inadequate, or the Product is nonconforming/unsubstantiated, the Agency may reject the Product, require removal/replacement at the Supplier’s cost, and withhold payment. The Agency may recover associated costs as a debt due (without limiting other rights).

5. Records retention

- 5.1 The Supplier must retain Evidence Packs and supporting traceability records for not less than seven (7) years (or longer if required by law or the PO) and provide copies to the Agency on request.

6. Disclosure

- 6.1 The Supplier acknowledges the Agency may be required to disclose information, including Evidence Packs, under applicable public sector accountability and information access laws and policies.