

TERMS AND CONDITIONS OF PURCHASE ORDER - v7 DECEMBER 2023

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions:

- (a) **Buyer** means the person specified as the 'Buyer' in the Purchase Order;
- (b) **Contract** means the agreement between the Buyer and the Supplier resulting from the Supplier's acceptance of the Buyer's offer in accordance with clause 2(b);
- (c) **CoR Laws** means any laws in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, road worthiness and maintenance including the HVNL;
- (d) **Goods** means any goods described as such in the Purchase Order;
- (e) **GST** has the meaning attributed to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (f) **HVNL** means the *Heavy Vehicle National Law and Regulations* and any other laws of any State/Territory which give effect to any of them;
- (g) **Intellectual Property Rights** means all intellectual property rights including:
 - (i) patents, copyrights, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names, trade names and any right to have confidential information kept confidential;
 - (ii) any application or right to apply for registration of any of the rights referred to in clause 1(g)(i); and
 - (iii) all rights of a similar nature to any of the rights in clause 1(g)(i) and 1(g)(ii) which may subsist anywhere in the world (including Australia),whether or not such rights are registered or capable of being registered.
- (h) **MS Law** means the *Modern Slavery Act 2018* (Cth) and any other equivalent laws of any State/Territory;
- (i) **Price** means the 'Total Purchase Order Cost' in Australian dollars as specified in the Purchase Order;
- (j) **Purchase Order** means the document titled 'Purchase Order' signed by the Buyer and attached to these terms and conditions and, where the context permits, includes the Purchase Order as modified or varied by the Special Conditions;
- (k) **Required Delivery Date** means the date specified as such in the Purchase Order;
- (l) **Services** means any services described as such in the Purchase Order;
- (m) **Site** means the 'Delivery Address' stated in the Purchase Order;
- (n) **Special Conditions** means the document (if any) titled 'Special Conditions' signed by the Buyer and attached to these terms and conditions;
- (o) **Supplier** means the person specified as the 'Supplier' in the Purchase Order;
- (p) **Supplier Code of Conduct** means Flinders Port Holdings' code of conduct for suppliers which sets out the minimum standards of behaviour and business practices expected of its suppliers in relation to Environment, Social, Governance and Quality & Innovation, provided by the Buyer to the Supplier.
- (q) **Transport Activities** means activities, including making decisions associated with the use of a vehicle on a road, including driving or maintaining a vehicle, consigning, scheduling, packing, loading, managing the loading or unloading, unloading or receiving of goods for transport by road or carried by road or contracting, directing or employing any person to do the foregoing;
- (r) **Work Health and Safety Laws** means all applicable work health and safety laws and any related codes of practice, standards, notices and directions issued by any relevant authority;
- (s) reference to a person includes a corporation or other entity and its servants or agents;
- (t) the singular includes the plural and vice versa;

- (u) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (v) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2. CONTRACT FORMATION

- (a) The Buyer offers to purchase the Goods and Services from the Supplier on the terms set out in the Purchase Order, any Special Conditions and these terms and conditions. In the event of any inconsistencies between these documents they shall prevail in the following order of priority, first the Special Conditions, secondly the Purchase Order and thirdly these terms and conditions.
- (b) The Buyer's offer is accepted by the Supplier on the earlier of:
 - (i) the date the Supplier notifies acceptance to the Buyer; or
 - (ii) the date the Supplier commences delivery or provision of any Good or Service, andonce accepted, this Contract supersedes all previous agreements or understandings between the Parties in relation to the Goods and Services.
- (c) If the Supplier comprises more than one person they shall be jointly and severally bound to perform the Supplier's obligations under the Contract.
- (d) The Buyer may amend the Purchase Order and/or Special Conditions by agreement with the Supplier to correct any error or omission in which case the Buyer will reissue the relevant document. Any variation to the Contract shall only be valid if in writing and signed by the Supplier and the Buyer.

3. PRICE AND PAYMENT

- (a) In consideration of the Supplier providing the Goods and Services, the Buyer will pay the Supplier the Price in accordance with this clause 3.
- (b) The Price is fixed and inclusive of all applicable duties and taxes (including GST). No other amount is payable for provision of the Goods or Services. All costs of provision of Goods and Services (for example transportation, loading, unloading, testing and inspection) are payable by the Supplier.
- (c) The Supplier must provide the Buyer with valid, GST compliant, tax invoices at the following times:
 - (i) in relation to Goods for which no Services are to be provided, on or after delivery of all of the Goods; and
 - (ii) in all other cases, on the last day of the month in which all Goods have been delivered and all of the Services have been provided, and unless disputed the Buyer will pay invoices within 30 days of receipt.

4. SITE ACCESS, DELIVERY, RECEIPT AND INSPECTION

- (a) Unless the Buyer directs otherwise:
 - (i) Goods shall be delivered to the Site on the Required Delivery Date; and
 - (ii) Services shall be provided at the Site by the Required Delivery Date.
- (b) Prior to accessing the Site, including to deliver Goods or provide Services, the Supplier's personnel shall undertake all induction courses required by the Buyer. In all instances the Supplier must arrange a suitable access time with the Buyer.
- (c) Receipt of the Goods is not taken to have occurred unless the Supplier has obtained acknowledgement of delivery in writing from the 'Receiver Contact' named in the Purchase Order. Receipt does not constitute acceptance.
- (d) The Buyer (acting reasonably) may require the Supplier to make complete inspections and tests of the Goods and upon completion of the Services (including for compliance with any particular specification requirements set out in the Purchase Order) and provide those inspection and test records, and any Certificate of Compliance required by the Buyer, to the Buyer.

- (e) The Goods and/or Services may be rejected by the Buyer after inspection if they are defective or do not strictly conform to the Purchase Order. Failure to reject Goods or Services does not constitute acceptance. If Goods or Services are rejected, the Buyer may either terminate the Contract and require the Supplier to promptly reimburse the Buyer for any amounts paid for the rejected Goods or Services, or require the Supplier to replace, modify or resupply them at the Supplier's cost.
- (f) Acceptance of Goods occurs on the earlier of:
 - (i) the Buyer confirming acceptance in writing to the Supplier; or
 - (ii) the Buyer paying for the relevant Goods or Services.
- (g) The Supplier shall be liable for all risks and expenses incurred by the Buyer or the Supplier as a result of any rejection, including in relation to inspection, handling, insurance and transportation costs.
- (h) When accessing the Site or entering the Buyer's premises, the Supplier and the Supplier's Personnel may be supervised by the Buyer and must comply with all reasonable directions given by the Buyer.
- (i) The Buyer may provide equipment or other property to the Supplier for use when supplying the Goods or providing the Services. However without limiting any other provision of this Contract:
 - (i) the Buyer gives no warranties in relation to that equipment or property;
 - (ii) the Supplier must undertake reasonable investigations to assure itself if that equipment or property is appropriate and safe for use by the Supplier; and
 - (iii) the Supplier uses that equipment or property (and any other equipment or property of Supplier or supplied by a third party) entirely at its own risk.
- (j) The Supplier must not store any equipment or property of the Supplier or any third party at the Site or on any property of the Buyer or under the Buyer's control without obtaining the prior written approval of the Buyer and any such storage shall be entirely at the Supplier's risk.

5. TITLE AND RISK

- (a) Property in any Goods shall pass to the Buyer on the earlier of payment being made for the Goods to, or acceptance of the Goods by, the Supplier.
- (b) The Supplier shall bear all risks to the Goods until the Buyer has accepted the Goods and all related Services have been completed.
- (c) Goods supplied must carry any applicable manufacturer's warranty and, at the request of the Buyer, the Supplier must assign to the Buyer the benefit of any warranty or guarantee that the Supplier has received.

6. ACKNOWLEDGMENT & WARRANTIES

- (a) The Supplier acknowledges and agrees that:
 - (i) it is solely responsible for the provision, management and completion of the Services and the manufacture and supply of the Goods in accordance with the Contract;
 - (ii) the Buyer is relying on the Supplier's advice, skill, expertise and judgement in the performance of the Services and manufacture, supply and installation of the Goods;
 - (iii) the Supplier has primary responsibility for managing work health and safety for, or in connection with, the supply or provision of the Goods and Services; and
 - (iv) all invoices and other documentation provided by the Supplier in relation to the Contract will include the Purchase Order number.
- (b) The Supplier warrants that:
 - (i) any information provided to the Buyer by the Supplier is true and correct;
 - (ii) all Goods will be supplied and Services provided:
 - A. by persons with the relevant qualifications and with the degree of skill, care and diligence that would be expected of a person qualified, skilled, professional and experienced in providing the same or similar Goods and Services;
 - B. free from defects in design, materials and workmanship;
 - C. in good and merchantable quality and fit for their intended purposes; and
 - D. without breaching any obligation of confidence or infringing any Intellectual Property Rights of any person;
 - (iii) in supplying Goods and providing Services the Supplier will, and will ensure that the Supplier's servants and agents, comply with

all relevant laws (including Work Health and Safety Laws, CoR Laws and MS Law), Australian standards and industry codes, with all reasonable directions of the Buyer and all of the Buyer's policies (as notified to the Supplier by the Buyer from time to time) including the Buyer's policies, procedures and instructions concerning work health and safety and the Supplier Code of Conduct;

- (iv) in supplying the Goods, the Supplier shall ensure, so far as is reasonably possible, the safety of its Transport Activities and shall not do anything which would cause a person to breach any CoR Law. The Supplier shall ensure that it has appropriate policies and procedures in place to eliminate or, where not possible, mitigate risks to the public arising from its Transport Activities;
- (v) in supplying Goods and providing Services the Supplier will, and will ensure that the Supplier's servants and agents, promptly notify the Buyer of any circumstance which has caused or is reasonably likely to cause any damage, risk or hazard to any property or person as a result of the provision of the Goods or supply of the Services.

7. INFORMATION DISCLOSURE AND TRAINING

- (a) The Supplier shall:
 - (i) keep sufficient records to enable the Buyer to verify the source of supply of any Goods and/or Services;
 - (ii) upon request by the Buyer, provide the Buyer with reasonable access to its records and premises for the purposes of the MS Law; and
 - (iii) report to the Buyer any actual or suspected instances of modern slavery (as defined in the MS Law) in the supply chain of any of its Goods and Services.
- (b) The Supplier shall cooperate with the Buyer (to the extent reasonably required by the Buyer) to facilitate training of its employees and sub-suppliers on the MS Law.

8. INSURANCE

- (a) The Supplier shall, at its cost, effect and maintain with a reputable insurer, until the Supplier has performed its obligations under the Contract in full, the following insurances to cover liability that arises out of, under or pursuant to the Contract:
 - (i) professional indemnity insurance for at least \$5 million for any one loss or occurrence;
 - (ii) product and public liability insurance for at least \$20 million for any one loss or occurrence;
 - (iii) workers compensation insurance as required by law;
 - (iv) property insurance for the Goods for their full replacement cost; and
 - (v) works insurance for the full value of the Services and any Goods or other materials required to complete the Services,
 - (vi) including covering all persons employed or engaged by the Supplier, and other insurances as reasonably required by the Buyer.
- (b) Upon request by the Buyer, the Supplier must provide the Buyer with certificates of currency with respect to these insurance policies.

9. INTELLECTUAL PROPERTY

- (a) All material provided to the Supplier by the Buyer and all Intellectual Property Rights in that material ("**Buyer Material**") is and will remain the property of the Buyer and, unless otherwise agreed, all Buyer Material (including any copies) must be delivered to the Buyer with the Goods or upon completion of the Services (as relevant).
- (b) The Supplier will do all things reasonably necessary to protect the Buyer's Intellectual Property Rights.
- (c) All material generated, designed or created by the Supplier in providing the Goods and Services and all Intellectual Property Rights in that material ("**Other Material**"), will vest upon its creation in the Buyer. The Supplier must, if and whenever required by the Buyer to do so, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in the Buyer (or its nominee).

10. TERMINATION

- (a) The Buyer may, at its option and without prejudice to any of its other rights, terminate the Contract immediately upon giving notice in writing to the Supplier if:

- (i) the Buyer reasonably forms the opinion that the Supplier will be unable to perform its obligations under the Contract;
- (ii) the Supplier breaches of any of the provisions of the Contract which is not, in the reasonable opinion of the Buyer, capable of rectification;
- (iii) the Supplier is guilty of any serious and wilful misconduct or gross neglect in relation to performing its obligations under the Contract; or
- (iv) the Supplier goes into liquidation or provisional liquidation, has an administrator or controller appointed to it or any of its property, fails to comply with a statutory demand, is unable to pay its debts or otherwise becomes insolvent, but only to the extent that the terminating Party is permitted by applicable law to exercise this termination right, and

the Supplier shall not be entitled to claim any compensation in respect of or arising from any such termination.

- (b) The Supplier may terminate this Contract by giving 14 days' written notice where the Buyer is in material and substantial breach of the Contract, the Buyer is guilty of any serious or wilful misconduct or gross neglect in relation to performing any of its obligations under the Contract, or the Buyer goes into liquidation or provisional liquidation, has an administrator or controller appointed to it or any of its property, fails to comply with a statutory demand, is unable to pay its debts or otherwise becomes insolvent.
- (c) This Contract may otherwise be terminated by the Buyer giving 14 days' notice to the Supplier.
- (d) If this Contract is terminated pursuant to clause 10(c) then:
 - (i) the Supplier must promptly cease providing the Services and/or delivering the Goods, as directed by the Buyer;
 - (ii) the Buyer must pay the Supplier for that part of the Services and/or those Goods authorised by the Buyer and delivered by the Supplier to the Buyer's satisfaction prior to the date of termination; and
 - (iii) except to the extent to which payment is required to be made by the Buyer under clause 10(d)(ii), the Buyer agrees to reimburse the Supplier's reasonable and demonstrable costs or expenses incurred prior to the date of termination which are directly attributable to this Contract and which the Supplier is not otherwise able to recoup. The Supplier is responsible for mitigating any such costs or expenses.

11. NON-ASSIGNMENT

Neither party shall delegate, subcontract or assign any duties, performance of work or claims under the Contract without the prior written consent of the other party.

12. DISPUTE RESOLUTION

- (a) If any matters of dispute arise between the parties in relation to the Contract, the disputing party must give written notice to the other party setting out the details of the dispute ("**Dispute Notice**").
- (b) An appropriate officer of each party must meet within 7 days of receipt of the Dispute Notice and negotiate in good faith with a view to settling the dispute.
- (c) If the dispute is not resolved within 5 days of a meeting held in accordance with clause 12(b), either party may take further action.

13. INDEMNITY

The Supplier indemnifies the Buyer at all times against all third party claims made against the Buyer as a result of:

- (a) any negligent act or omission, wilful default, fraud, breach of duty, or breach of law by the Supplier or the Supplier's servants or agents;
- (b) any breach of the Contract, or a warranty given under the Contract, by the Supplier;
- (c) the actual or alleged infringement of any of the Buyer Material or Other Material; and
- (d) any loss of, or damage to, any property or injury to or death of any person arising out of or related to any act or omission of the Supplier or its servants or agents in, or related to, the provision of the Goods, Services and/or the Supplier's other obligations under the Contract (including by use of equipment or other property referred to in clause 4(i)).

This indemnity is reduced to the extent the loss or damage being claimed was contributed to by the Buyer and this clause survives the termination of the Contract.

14. SET-OFF

Without limiting either party's rights against the other, where a party is owed any money whatsoever by the other party then the first party may apply a right of set-off in respect of any money it owes under this Contract to the other party.

15. SEVERANCE

In the event that the whole or any part or parts of any clause in the Contract is found to be illegal, unenforceable or invalid then such clause or part of such clause shall be to that extent severed from the Contract without effect to the validity and enforceability of the remainder of the Contract.

16. WAIVER

A waiver of any provision of or right under the Contract must be in writing, signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out.

17. GOVERNING LAW AND JURISDICTION

The Contract is governed by the laws of the State or Territory in which the Goods are supplied and the Services are performed, or the majority of the Goods are supplied and the Services are performed. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

18. NOTICES

Any notice given pursuant to this Contract must be signed by an authorised representative of the party providing notice, be written in English and delivered to the recipient's address stated in the Purchase Order (or as otherwise notified by that party) and shall be deemed to be received:

- (a) if given by hand, at the time and date of delivery;
- (b) if sent by pre-paid post, at 9am 5 days after it was posted; or
- (c) if sent by email, at the time and date of successful delivery as stated in the sender's message delivery report,

except that if any notice is deemed to have been received after 5pm on a day as a result of this clause, it shall instead be taken to have been received at 9am the following day or, if that day is a weekend or public holiday in the place of receipt, the next day that is not a weekend or public holiday.