

Purchase Order Terms and Conditions

1 SUPPLY OF GOODS AND/OR SERVICES

- (a) In consideration of payment of the Price by the Buyer, the Supplier must supply to the Buyer the Goods and/or perform the Services in accordance with this Purchase Order.
- (b) The Supplier must, in supplying the Goods or performing the Services:
- (i) not interfere with the Buyer's activities or the activities of any other person at the Delivery Address;
 - (ii) ensure that the Supplier's employees, agents and contractors entering the Delivery Address perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (A) safe working practices;
 - (B) safety and care of property; and
 - (C) continuity of work;
 - (iii) provide all such information and assistance as the Buyer reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services;
 - (iv) on request by the Buyer, provide to the Buyer and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by law, including:
 - (A) producing written reports;
 - (B) recommending efficiency opportunities;
 - (C) collecting data; and
 - (D) monitoring or metering,in respect of any thing used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order.

2 DELIVERY OF GOODS

- (a) The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- (b) Subject to clause 2(c), if the Supplier does not deliver the Goods by the Delivery Date, the Buyer is not required to accept or take possession of the Goods and is not required or obliged to pay the Price for the Goods.
- (c) Notwithstanding clause 2(b), the Buyer may, at its sole discretion:
- (i) accept the Goods and reduce the Price payable for the Goods by 1% for each week which has expired after the Delivery Date; or
 - (ii) change the Delivery Date to a later date.
- (d) The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- (e) All costs associated with the loading and unloading of the Goods will be the sole responsibility of the Supplier.

3 PERFORMANCE OF SERVICES

The Supplier must perform the Services by the Delivery Date or otherwise as specified in this Purchase Order.

4 TITLE AND RISK

- (a) Title in the Goods passes to the Buyer upon payment of the Price.
- (b) Risk in the Goods passes to the Buyer when the Goods are delivered to the Delivery Address and accepted.

5 PRICE

- (a) Unless these Purchase Order Terms and Conditions expressly provide otherwise, the Buyer must pay the Supplier the Price for the Goods and/or Services.
- (b) The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.
- (c) The Buyer must pay the Price within 30 days of receipt of a valid tax invoice (**Invoice**).
- (d) An Invoice must include:
- (i) a reference to this Purchase Order including the line item numbers on the Purchase Order and the Purchase Order number;
 - (ii) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
 - (iii) an individual reference number for the Buyer to quote with remittance of payment;
 - (iv) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
 - (v) the amount of any applicable GST; and
 - (vi) the Supplier's contact name.
- (e) If the Buyer requests, the Supplier must provide the Buyer with all relevant records to calculate and verify the amount set out in any Invoice.
- (f) The Buyer may reduce any payment due to the Supplier under this Purchase Order by any amount which the Supplier must pay the Buyer, including costs, charges, damages and expenses and any debts owed by the Supplier to the Buyer on any account whatsoever. This does not limit the Buyer's right to recover those amounts in other ways.

6 INTELLECTUAL PROPERTY RIGHTS

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- (a) Unless specifically stated in the Purchase Order Form or in documents referenced to in the Purchase Order, the title to all intellectual property rights in or in relation to any Purchase Order Materials shall upon creation vest in the Buyer. The Supplier must ensure that the Purchase Order Materials are used, copied, supplied or reproduced only for the purposes of the Purchase Order.
- (b) The Supplier indemnifies the Buyer, its successors, assigns, customers and users of the Purchase Order Materials against any loss, damage, claim, action or expense (including, without limitation, legal expense and consequential loss) arising out of or in any way connected with any infringement of any patent, registered design, copyright, trade mark or other intellectual property right connected with the Purchase Order Materials or the use of the Purchase Order Materials.

7 WARRANTIES

The Supplier warrants that:

- (a) The Goods and/or Services match the description referred to in the Purchase Order and satisfy the relevant Australian Standards for quality control.
- (b) The Goods and/or Services comply with all laws, legislation, regulations and codes (including, but not limited to, standards laid down by any standards association or any local supply authority and any standards specifically set out in this Purchase Order).
- (c) If the Supplier gave the Buyer a sample of the Goods or a demonstration of the Services, the Goods and/or Services are of the same nature and quality as the sample or demonstration given.
- (d) The Goods and/or Services are fit for the purpose which the Buyer intends to use them.
- (e) The Goods are of merchantable quality and, unless otherwise specified in the Purchase Order, are new.

8 WARRANTY PERIOD

- (a) If, during the Warranty Period, any of the Goods or Services are found to be defective, the Buyer may:
 - (i) return the defective Goods to the Supplier;
 - (ii) reject the defective Services;
 - (iii) repair or make good the defective Goods; or
 - (iv) re-perform or make good the defective Services.
- (b) The Supplier must:
 - (i) repair or replace the defective Goods;
 - (ii) re-perform or make good the defective Services; or
 - (iii) reimburse the Buyer for any expenses incurred in repairing, re-performing or making good (as the case may be) any defective Goods or Services, at the Supplier's cost, if requested to do so by the Buyer.

9 INSURANCES

- (a) Workers' Compensation Insurance: The Supplier must have in place for the Supplier's employees, valid workers' compensation insurance.
- (b) Public Liability Insurance: The Supplier, if performing any works whatsoever on the Buyer's premises or site, then the Supplier must have adequate public liability insurance.
- (c) Professional Indemnity Insurance: Where the Supplier is performing services or providing Supplier designed or constructed goods, then the Supplier must have adequate professional indemnity insurance.
- (d) A certificate stating the currency of insurance shall be provided to the Buyer with this Purchase Order, upon the renewal of the Supplier's insurance and upon request.

10 INDEMNITY

The Supplier must indemnify the Buyer against any loss, damage, claim, action or expense (including, without limitation, legal expense and consequential loss) which the Buyer may suffer as a direct or indirect result of any of the following:

- (a) a breach of this Purchase Order by the Supplier;
 - (b) any warranty given by the Supplier in this Purchase Order being incorrect or misleading in any way;
 - (c) the provision of the Goods and/or the Services or any activity directly or indirectly associated with the provision of the Goods and/or the Services, or both; and
 - (d) any negligent act or failure to act by the Supplier or any of the Supplier's employees, agents, officers or contractors.
- If an indemnity payment is made by the Supplier, the Supplier must also pay the Buyer an additional amount equal to any tax which is payable in respect of that indemnity payment.

11 CONFIDENTIALITY

The Seller must:

- (a) treat as confidential and keep confidential, all Confidential Information; and
- (b) not disclose Confidential Information other than to the extent required by law or by the rules of any stock exchange.

12 GST

- (a) All prices or other *consideration* referred to in this Purchase Order are inclusive of *GST*.
- (b) The Buyer is not required to pay the *GST* component of the price or other *consideration* until it has received a *tax invoice* from the Supplier in respect of the *taxable supply*.
- (c) If an *adjustment event* occurs, the Supplier must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the *GST* on the *taxable supply*.

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(d) Italicised expressions used in this clause have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13 TERMINATION OR SUSPENSION

- (a) The Buyer may terminate this Purchase Order at any time without cause by giving written notice to the Supplier.
- (b) On termination, subject to any rights the Buyer may have of set off or deduction, the Buyer's only obligation is to pay the Supplier for Goods which have been delivered, and/or for Services which have been provided in accordance with this Purchase Order prior to the date of termination. Without limitation, the Buyer will not be liable for any direct, consequential, indirect, special or punitive damages that the Supplier or any third party may suffer.
- (c) The Buyer may suspend all or part of the supply of the Goods and/or the Services at any time for any period of time by giving written notice to the Supplier. The Supplier must comply with the notice and recommence supply when notified by the Buyer. The Supplier is not entitled to any additional payment.

14 GENERAL

- (a) This Purchase Order contains the entire understanding between the parties as to the subject matter of this Purchase Order and:
- (i) all previous negotiations, understandings, representations, warranties, documents or commitments concerning the subject matter of this Purchase Order are merged in and superseded by this Purchase Order and are of no further effect;
 - (ii) no party is liable to any other party in respect of those matters; and
 - (iii) any terms and conditions of the Supplier (whether or not provided to the Buyer) do not apply to this Purchase Order.
- (b) No alteration can be made to this Purchase Order without the written authorisation of the Buyer.
- (c) Clauses of this Purchase Order which deal with warranties, indemnities and consequences of termination survive the termination or expiry of this Purchase Order and may be enforced at any time by the Buyer.
- (d) In the event that any of the above provisions are inconsistent with information contained on the front of this Purchase Order, then the information contained on the front of this Purchase Order will prevail to the extent of such inconsistency.
- (e) The laws of the State of Western Australia apply to this Purchase Order and the courts of the State of Western Australia will determine any dispute in relation to this Purchase Order.

15 DEFINITIONS

The following terms have the following meanings:

"**Buyer**" means Southern Ports Authority.

"**Confidential Information**" means any information in respect of the Buyer in whatever form.

"**Delivery Address**" means the "Deliver To" address indicated on the Purchase Order Form.

"**Delivery Date**" means the "Required By" date on the Purchaser Order Form.

"**Goods**" means the products, chattels, plant, equipment, machinery, stores, associated services and/or the like the subject of the Purchase Order.

"**HSEC**" means health, safety, environment and community.

"**Invoice**" has the meaning given to it in clause (c).

"**Purchase Order**" means the agreement for the Supplier to supply the Goods and/or the Services to the Buyer and comprises the Purchase Order Form, these Purchase Order Terms and Conditions and any other documents specified in the Purchase Order Form.

"**Purchase Order Form**" means the purchase order form to which these terms and conditions are appended.

"**Purchase Order Materials**" means all data, plans, drawings, software, specifications, procedures, reports, documents and other information prepared by the Supplier for the purposes of this Purchase Order.

"**Purchase Order Terms and Conditions**" means this document.

"**Price**" means the price set out in this Purchase Order.

"**Supplier**" means the person, firm or corporation to whom the Purchase Order is addressed.

"**Service**" means the services, if any, described or referred to in the Purchase Order Form.

"**Warranty Period**" means the period of 12 months from commencing on the date on which the Goods are supplied and/or the Services performed.