

## Forward Purchase Agreement

### 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 and any Work Order.
- (b) The Buyer may issue Works Orders from time to time to the Supplier for Goods and/or Services under the Purchase Order up to the total Price set out in the Purchase Order.
- (c) The Supplier must, in supplying the Goods or performing the Services:
- (1) not interfere with the Buyer's activities or the activities of any other person at the Delivery Address;
  - (2) ensure that the Supplier's Associates 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;
  - (3) 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;
  - (4) 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.
- (d) All provisions of the Port Standards and Procedures apply to the Supplier in respect of the supply of Goods and/or Services being made pursuant to this Purchase Order and the Supplier must ensure that it and its Associates comply with the Port Standards and Procedures (which augment the Buyer's rights and powers in this Purchase Order) in respect of the supply of Goods and/or Services being made pursuant to this Purchase Order and the Supplier's use of and access to the Port generally. To the extent of any inconsistency between anything in this Purchase Order and the Port Standards and Procedures, this Purchase Order will always prevail and override the Port Standards and Procedures.

### 2. Work Orders

- (a) The Buyer must include the following details in every Work Order:
- (1) a description of the specific Goods to be supplied and/or the Services required to be provided; the commencement date and the duration for which the Services (if any) are required; and
  - (2) any other specific requirements of the Buyer in relation to the Goods and/or Services.

- (b) The Supplier must be available to provide the Goods or perform the Services following the issue of a Work Order pursuant to this Purchase Order.

### 3. Delivery of Goods

- (a) The Supplier must deliver the Goods to the Delivery Address by the Delivery Date, free of Encumbrances.
- (b) Subject to clause 3(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 3(b), the Buyer may, at its sole discretion:
- (1) accept the Goods and reduce the Price payable for the Goods by 1% for each week which has expired after the Delivery Date; or
  - (2) 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.

### 4. Performance of Services

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

### 5. 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.

### 6. 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 in accordance with any Work Order(s).
- (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**) that complies with the requirements of clause 6(d).
- (d) An Invoice must include:
- (1) a reference to this Purchase Order including the line item numbers on the Purchase Order and the Purchase Order number;
  - (2) a true and complete copy of the relevant Work Order(s) issued by the Buyer;
  - (3) 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;
  - (4) an individual reference number for the Buyer to quote with remittance of payment;
  - (5) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
  - (6) the amount of any applicable GST; and
  - (7) 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.

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- (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.
- (g) Without limiting any other right of remedy, the Buyer may withhold payment of any invoice that it disputes until that dispute is resolved and is not obliged to pay any amount if the Goods or Services (or any part of them) are Defective or if the Buyer has any other claim.

### 7. Intellectual property rights

- (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.

### 8. 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; and
- (e) the Goods are of merchantable quality and, unless otherwise specified in the Purchase Order, are new.

### 9. Warranty period

- (a) If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Buyer may:
- (1) return the Defective Goods to the Supplier;
  - (2) reject the Defective Services;
  - (3) repair or make good the Defective Goods; or
  - (4) re-perform or make good the Defective Services.
- (b) Without affecting any other right or remedy of the Buyer, the Supplier must:
- (1) repair or replace the Defective Goods;
  - (2) re-perform or make good the Defective Services; or
  - (3) 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.

### 10. Insurances

- (a) At all times, the Supplier must, at its own expense, obtain and maintain in connection with this Purchase Order all appropriate insurances, including:
- (1) workers' compensation Insurance in an amount no less than \$50,000,000 arising from any one event covering all claims and liabilities under any statute and at common law for the death or injury of any person employed by the Supplier.
  - (2) public liability insurance for a sum of no less than \$50,000,000 for any one occurrence to cover the liability of the Supplier for loss of or damage to and loss of use of any property and personal injury, death or illness to any person (other than liability required under workers' compensation law) arising out of or in connection with the provision of Goods or Services pursuant to this Purchase Order.
  - (3) where the Services require the Supplier to provide a motor vehicle, motor vehicle third party liability insurance in an amount no less than \$30,000,000 for any one occurrence or accident covering legal liability for property loss or damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used in connection with this Purchase Order;
  - (4) where the Supplier is performing services or providing Supplier designed or constructed goods, professional indemnity insurance in an amount not less than \$10,000,000 for any one claim and \$20,000,000 for all claims in the aggregate during any one 12 month period of insurance.
- (b) 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.

### 11. Indemnity

The Supplier must indemnify, and keep indemnified, 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) any act or omission on the part of the Supplier or any of its Associates in the Port;
- (b) a breach of this Purchase Order by the Supplier;
- (c) any warranty given by the Supplier in this Purchase Order being incorrect or misleading in any way;
- (d) 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
- (e) 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.

### 12. Confidentiality

The Supplier must:

- (a) treat as confidential and keep confidential, all Confidential Information; and
- (b) not disclose Confidential Information other than: (i) to the extent required by law; (ii) by the rules of any stock exchange; or (iii) Confidential Information that is already in the public domain.

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### 13. 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*.
- (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).

### 14. Termination or suspension

- (a) The Buyer may terminate this Purchase Order in whole or in part at any time without cause by giving written notice to the Supplier, following which the Supplier must:
  - (1) cease the manufacture and/or supply of the Goods and all other work related to the supply of the Goods or the performance of the Services (as applicable), which have been terminated;
  - (2) not place any further orders or make any further commitment in relation to that part of the Goods and/or Services that have been terminated; and
  - (3) take all action in relation to the termination that the Buyer may require.
- (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 of the supply of such Goods and/or Services. 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 as a result of such suspension.

### 15. Dispute Resolution

- (a) Any dispute which arises between the Buyer and the Supplier arising out of or in connection with this Purchase Order must be dealt with in accordance with this clause 15.
- (b) Either party may refer a dispute to the other party for resolution, by serving a notice in writing upon the person named in the Purchase Order as the party's representative on behalf of the other party. The notice must specify particulars of the dispute.
- (c) If the parties are unable to resolve the dispute referred to in clause 15(b) within 30 business days from the receipt by one party of a notice from the other party, the dispute may be referred to mediation by either party.

### 16. PPSA

If the Buyer determines that this Purchase Order creates a security interest in favour of the Buyer for the purposes of the PPSA, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information)

which the Buyer asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Buyer to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Buyer has the priority required by it; or
- (c) enabling the Buyer to exercise rights in connection with the security interest.

### 17. Assignment

None of the Suppliers rights, interests, benefits or obligations in this Purchase Order are capable of being assigned or otherwise transferred to an assignee without the prior written consent of the Buyer (which may be given, withheld or given subject to any conditions it sees fit in its absolute discretion).

### 18. Special Provisions

All (if any) of the Special Provisions set out in or annexed to the Purchase Order must be deemed to be incorporated in this Purchase Order. To the extent that any Special Provisions are inconsistent with any provision in these Purchase Order Terms and Conditions, the Special Provisions must prevail to the extent of the inconsistency.

### 19. General

- (a) This Purchase Order contains the entire understanding between the parties as to the subject matter of this Purchase Order and:
  - (1) 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;
  - (2) no party is liable to any other party in respect of those matters; and
  - (3) 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) All of the provisions in Part 1F of the *Civil Liability Act 2002* (WA) are expressly excluded and do not apply to anything arising out of this Purchase Order.
- (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.

### 20. Interpretation

In these Purchase Order Terms and Conditions:

- (a) headings are for convenience only and do not affect interpretation;
- (b) **person** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in

- the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) a person, body or authority which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person, body or authority in its place, is taken to refer to the person, body or authority established or constituted in its place or by which its functions have become exercisable;
- (h) **includes** in any form is not a word of limitation; and
- (i) a reference to **\$** or **dollar** is to Australian currency.

**21. Definitions**

The following terms have the following meanings:

**Associates** means all of the Supplier’s personnel, officers, agents, visitors, invitees, customers, clients, consultants and sub-licensees of the Supplier.

**Buyer** means Southern Ports Authority.

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

**Consequential Loss** means any of the following:

- (a) loss of revenue or production;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business or business reputation;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at date of this Purchase Order,

including any of the above types of loss arising from an interruption to a business or activity.

**Defective** includes damaged, deficient, faulty, inadequate or incomplete

**Defective Goods or Services** mean any Goods or Services (or any aspect of them) which, in the view of the Buyer, are not in accordance with this Purchase Order including if damaged, deficient, faulty, inadequate or incomplete.

**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.

**Encumbrance** means any:

- (a) security interest or other form of security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off

**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 3(c).

**Port** means any or all of Southern Ports Authority’s Albany Port, Bunbury Port and Esperance Port, being the Port(s) relevant to the Goods and/or Services being delivered pursuant to this Purchase Order.

**Port Standards and Procedures** means all “Port Contractor Handbooks”, obligations, standards, notices, rules, powers, practices and procedures relating to health, safety, welfare, emergencies, environmental protection, security, operations, traffic and other matters concerning the Port (or where this agreement applies to more than one Port, the relevant Port) or any surrounding areas that are adopted by the Buyer and published as the Port Standards and Procedures for the Port on the Southern Ports’ Website from time to time.

**PPSA** means the *Personal Properties and Securities Act 2009* (Cth).

**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.

**Southern Ports’ Website** means [www.southernports.com.au](http://www.southernports.com.au) or such other website as may be published by the Buyer from time to time.

**Special Provisions** means any terms and conditions (if any) whether (i) annexed to this Purchase Order; and/or (ii) set out in the Purchase Order, which are incorporated into and form part of this Purchase Order pursuant to clause 18.

**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 commencing on the date on which the Goods are supplied and/or the Services performed.

**Work Order** means any written order given by the Buyer to the Supplier for some or all of the Goods and/or Services specified in the Purchase Order.