

# STANDARD TERMS AND CONDITIONS OF CONTRACT FOR PURCHASE OF GOODS OR SERVICES

## 1 GENERAL

- 1.1 These Port of Townsville Limited (the Port) standard terms and conditions of contract for purchase of goods or services (**Terms and Conditions**) are the standard terms and conditions referred to in the purchase order.
- 1.2 Subject to clause 2, these terms and conditions apply to any contract entered into by the Port and the supplier, whether as an offer or acceptance of an offer, to provide the goods or services.
- 1.3 Subject to clause 2 these terms and conditions will prevail in any conflict between them and the terms of offer or acceptance by the supplier.

## 2 SPECIAL TERMS AND CONDITIONS

- 2.1 These terms and conditions do not apply where the Port and the supplier have entered into a written goods or services contract or other agreement specifying the terms and conditions which are to apply to the provision of these goods or services.
- 2.2 Where any special terms and conditions are included and they are inconsistent with these terms and conditions, the special terms and conditions will prevail to the extent of the inconsistency.

## 3 INTERPRETATION

- 3.1 In these terms and conditions, unless the contrary intention appears:
- (a) a reference to this document or another instrument includes any variation or replacement of either of them;
  - (b) the singular includes the plural and vice versa;
  - (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
  - (d) a reference to a person includes a reference to the person's executors administrators successors, substitutes and assigns;
  - (e) if a period of time is specified and dates from a given day or the day of an act or event it is to be calculated exclusive of that day;
  - (f) a reference to a clause is a reference to a clause in this document; and
  - (g) a reference to a third person or a third party is a reference to a person who is not a party to these terms and conditions.
  - (h) headings are inserted for convenience and do not affect interpretation of these terms and conditions.

## 4 DEFINITIONS

- 4.1 In these terms and conditions:
- 'Building Product'** has the same meaning as the term in the *Queensland Building and Construction Commission Act 1991* (Qld).
- 'Contract'** means the contract between the Port and the supplier consisting of this purchase order, any specifications and / or the requirements of any special terms and conditions;
- 'the Port'** means Port of Townsville Limited;
- 'Goods'** means the goods specified in the purchase order;
- 'Heavy Vehicle National Laws'** means the State or Commonwealth road transport law relating to the regulation of vehicle maintenance, speed, mass, dimension or load restraint or driver fatigue management, including but not limited to legislation based on or adapted from the Heavy Vehicle National Law in force from time to time in each State or Territory.
- 'Intellectual Property Rights'** means all intellectual property rights, including copyright, patents, trademarks, designs, trade secrets, inventions, know-how, copyright, rights in circuit layouts and confidential information, any application for any of the foregoing rights and any rights of a similar nature;
- 'Material'** means any material brought into existence as part of, or for the purpose of manufacturing the goods or performing the services and includes but is not limited to documents, equipment, information or data stored by any means;

**'Purchase Order'** means the document used by the Port to purchase goods or services on behalf of the Port and which refers to Port's standard terms and conditions;

**'Security Interest'** as defined in the *Personal Property Securities Act 2009* (Cth).

**'Services'** means the services specified in the purchase order;

**'Special Terms and Conditions'** means any terms and conditions specified in the purchase order;

**'Supplier'** means the party, individual or corporation to whom the purchase order is addressed;

**'Tax Invoice'** has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

## 5 PACKING

- 5.1 The supplier must ensure the goods are packed to ensure their safe delivery and in accordance with any specific packing, marking or labelling required by the Port.

## 6 DELIVERY

- 6.1 Goods or services must be delivered at the time, place and in the manner specified in the purchase order or by the Port.

## 7 INCLUSIVE PRICE

- 7.1 The price specified in the purchase order includes:
- (a) Goods or Services Tax (GST);
  - (b) all other taxes, duties and other imposts for which the supplier is liable;
  - (c) all amounts payable for the use (whether in the course of manufacture or usage of the goods or performance of the services) of patents, copyrights, registered designs, trade marks and other Intellectual property rights; and
  - (d) all charges for supply of goods or performance of services.

## 8 PROVISION OF GOODS OR SERVICES

- 8.1 **Goods Guarantee.** The supplier must ensure the goods provided pursuant to this contract:
- (a) conform to the requirements of the contract;
  - (b) are of acceptable quality, that is safe, lasting, with no faults, look acceptable and do all the things someone would normally expect them to do for the type of goods and cost;
  - (c) match descriptions made by the supplier's salesperson, on packaging and labels and in promotions or advertising;
  - (d) match any demonstration model or sample provided by the supplier;
  - (e) be fit for the purpose the supplier told the Port it would be fit for and for any purpose that the Port makes known to the supplier before purchasing;
  - (f) come with full title and ownership free from any charge, encumbrance or other security interest;
  - (g) not carry any hidden debts or extra charges;
  - (h) come with undisturbed possession such that no one has the right to take the goods away or prevent the Port from using them;
  - (i) meet any extra promises made about performance, condition and quality, such as life time guarantees and money back offers; and
  - (j) have spare parts and repair facilities available for a reasonable time after purchase unless the Port is told otherwise by the supplier.
- 8.2 **Services Guarantee.** The supplier must ensure the services provided pursuant to this contract:
- (a) conform to the requirements of the contract;

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- (b) be provided with due care and skill, by suitably qualified and licensed personnel, to a high standard and taking all necessary steps to avoid loss and damage;
- (c) be fit for the purpose or give the results that the supplier and the Port had agreed to; and
- (d) be delivered in accordance with clause 6 or within a timely and efficient time when there is no agreed delivery date.
- 8.3 **Building Products.** The supplier must ensure that any building products supplied to the Port:
- (a) is, or will be, safe;
- (b) does, or will, comply with relevant legislation, standards and codes of practice; and
- (c) performs, is capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- The supplier is required to provide the Port, where available, conformity certifications that outlines:
- (a) the suitability of the building product for its intended use;
- (b) if the building product is to be only used in a particular circumstance or conditions, what they are;
- (c) instructions about how the building product must be associated with the building for its intended use; and
- (d) instructions on how the building product must be used in order to ensure that it is not a non-compliant building product.
- The supplier acknowledges that the Port will notify the Queensland Building and Construction Commission should it become aware or suspects false or misleading claims have been made by the Supplier with respect to conformance of a building product.
- 8.4 **Dangerous Goods.** Goods or services identified as “Dangerous” in the Australian Code for Transport of Dangerous Goods by Road and Rail or by the relevant State or Territory Authorities, must be labelled, manifested and accompanied by an Emergency Procedure Guide according to the relevant regulations covering transportation of dangerous goods.
- 8.5 **Rejection of Goods or Services.** The Port may at any time prior to acceptance reject any goods or services found not to be in accordance with the contract.
- 8.6 **Latent defects.** After receiving the goods or services, the Port may reject the goods or services for any non-conformity with the contract which could not have been discovered by reasonable inspection before receipt.
- 8.7 **No payment for rejected goods or services.** The Port will not be liable to pay for any rejected goods or services or for any damage done to or arising from inspection or rejection of the goods or services.
- 8.8 **Replacement, refund or repair.** If the Port rejects any goods or services, the supplier must, at the Port's option, without prejudice to the Port's rights otherwise arising under the contract or the general law:
- (a) replace, without further cost to the Port, the rejected goods or services with goods or services that comply with the contract;
- (b) refund all payments related to the rejected goods or services; or
- (c) repair the goods and services on site or otherwise to the satisfaction of the Port,
- and, in the case of (a) or (b), remove the rejected goods and services at the supplier's expense.
- 8.9 **Approval of samples.** If the Port requires the supplier to submit samples of the goods or services, the supplier must not proceed to bulk manufacture the goods or fully develop the services until the Port has approved the samples.
- 8.10 **Inspection.** Without additional cost to the Port, and upon being sent reasonable notice from the Port in writing, the supplier must provide reasonable access to premises, including the premises of approved sub-contractors, and all other necessary assistance for the Port's representatives to inspect the manufacture of the goods or the performance of the services.
- 8.11 **Receipt of Goods and/or Services** Notwithstanding clause 14 of this contract, receipt of the goods or services by the Port will not under any circumstances be deemed to be acceptance of those goods or services by the Port.
- 9 ACCEPTANCE**
- 9.1 The performance of this contract is deemed to be acceptance of the terms and conditions.
- 10 VARIATIONS**
- 10.1 No agreement or understanding varying the terms and conditions is legally binding upon the supplier or the Port unless in writing and signed by the supplier and the Port.
- 10.2 No agreement or understanding varying or extending the purchase order is legally binding until the Port issues an amended purchase order confirming the variation.
- 11 PAYMENT**
- 11.1 The Port will pay the supplier 30 days from receipt of a valid tax invoice by the contract superintendent or where there is no contract superintendent, the accounts payable office except:
- (a) to the extent that the valid tax Invoice is in dispute, or;
- (b) where the Port has an arrangement with the Supplier to make payment within other agreed terms.
- 11.2 A valid Tax Invoice means an invoice that:
- (a) is addressed in accordance with the purchase order; (c) identifies the purchase order number;
- (d) is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- (e) is, if GST is applicable, a valid tax invoice in accordance with GST legislation; and
- where the Port is satisfied with the goods or services.
- 11.3 Notwithstanding any other conflicting provisions, the Port is not obliged to pay for any taxable supply made by the supplier unless and until the Port receives a valid tax invoice or adjustment notice for that supply.
- 11.4 The supplier acknowledges that the Port's method of payment is by electronic funds transfer directly to the supplier's bank account unless an arrangement to pay by cheque is agreed in writing by the Port and the supplier.
- 11.5 The supplier must provide the Port with the supplier's bank account for payment with respect to the purchase order.
- 11.6 The supplier must notify the Port of a change of the supplier's bank account no later than 14 days before a payment by the Port is due (the **cut-off-date**). The Port is not liable to make any additional or interim payments to the supplier if details of the supplier's bank account are incorrectly notified by the supplier or notified after the cut-off-date.
- 11.7 The Port must provide a remittance advice to the supplier when the Port instructs its bank to make an electronic funds transfer or when the Port makes a cheque payable to the supplier.
- 11.8 This section does not apply for purchases made using the Port's purchasing cards. A valid tax invoice must be provided by the supplier for these types of purchases.
- 12 INDEMNITY**
- 12.1 The supplier indemnifies the Port against all loss, damage, expense or legal costs arising in respect of any action or claim for alleged infringement of any Intellectual Property Rights or any misuse or unauthorised disclosure of personal information whether arising under the *Privacy Act 1988* (Cth) or otherwise, by reason of the purchase, possession or use of the goods or services.

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**13 INSURANCE**

- 13.1 The supplier must have and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the supplier is liable in connection with the supply of the goods or services, including, as applicable, product liability insurance, public liability and professional indemnity insurance.
- 13.2 The supplier must provide evidence of such insurance upon request by the Port.

**14 PASSING OF TITLE**

- 14.1 Subject to clause 8, title and risk of loss or damage to the goods or services pass to the Port upon delivery to the Port.

**15 WARRANTIES**

- 15.1 The supplier must provide or assign to the Port its rights in all relevant warranties for the goods and services.
- 15.2 If at any time during the warranty period for goods and services the supplier becomes aware or the purchaser notifies the supplier of any failure of those goods to comply with any of the guarantees given under clauses 8.1, 8.2 and 8.3, the supplier, at its cost, will promptly correct that failure. This clause applies notwithstanding anything to the contrary in any documentation accompanying, or provided by the supplier in connection with, the goods or services.

**16 ASSIGNMENT AND SUB-CONTRACTING**

- 16.1 The supplier must not, without prior consent in writing from the Port:
- (a) assign the supplier's rights under the contract; or
  - (b) sub-contract the whole or any part of the manufacture or supply of the goods or performance of the services.
- 16.2 The supplier must on request provide the Port with the names of any of the supplier's sub-contractors. The supplier agrees, and must ensure that any sub-contractor agrees, that the Port may disclose the sub-contractor's name publicly.
- 16.3 The supplier is liable to the Port for the acts and omissions of any sub-contractors as if those were the acts or omissions of the supplier.
- 16.4 The supplier acknowledges that neither the supplier as contractor nor any sub-contractors are the Port's employee or agent. The supplier also acknowledges that this contract does not create a relationship of employment, agency or partnership between the supplier and the Port.

**17 INTELLECTUAL PROPERTY RIGHTS**

- 17.1 This contract does not assign the Intellectual Property Rights of either party existing at the date of the purchase order.
- 17.2 Intellectual Property Rights in material brought into existence as part of, or for the purposes of, performing the contract vests in the Port. The supplier grants, or must obtain for, the Port a perpetual, world wide, royalty free licence (including a right to sublicense) to use, reproduce, adapt, modify and communicate any other material provided to the Port under the contract.

**18 MORAL RIGHTS**

- 18.1 To the extent permitted by laws and for the benefit of the Port, the supplier consents, and must use its best endeavours to ensure that each author of material consents in writing, to the use by the Port of material even if the use may otherwise be an infringement of their moral rights.

**19 CONFIDENTIAL INFORMATION**

- 19.1 **Confidential Information** means any information that is by its nature confidential, is designated by the Port as confidential, or that the supplier knows or ought reasonably to know is confidential but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of these terms and

conditions.

- 19.2 The supplier must keep secret and confidential all confidential information and must not, without the written consent of the Port, use or disclose it other than to the extent required to perform its obligations under these terms and conditions or required by law.
- 19.3 The Port may at any time require the supplier to give, and require the supplier to arrange for its employees, agents or sub-contractors to give, a written undertaking in a form acceptable to the Port relating to the use and non-disclosure of the Port's confidential information.

**20 PROTECTION OF PERSONAL INFORMATION**

- 20.1 In relation to personal information obtained during the course of providing the goods or services under the contract, the supplier must:
- (a) use or disclose the personal information only for the purposes of the contract;
  - (b) not do any act or engage in any practice that would breach an Information Privacy Principle under the *Privacy Act 1988 (Cth)*;
  - (c) immediately notify the Port if the supplier becomes aware of a breach or possible breach of any of its obligations under this clause 20.
- 20.2 The supplier must ensure that any sub-contract entered into by the supplier for the purpose of fulfilling its obligations under the contract imposes on the sub-contractor the same obligations that the supplier has under this clause 20. (including this requirement in relation to sub-contracts).

**21 PRIVACY COLLECTION NOTICE**

- 21.1 As a result of supplying goods or services to the Port, the supplier may be providing personal information which will not be used for the purpose of delivering services and carrying out the Port business.
- 21.2 Any personal information provide is handled in accordance with the *Privacy Act 1988 (Cth)* and will be accessed by personnel who have been authorised to do so. Information will not be given to any other person or agency unless the supplier has given the Port permission or the disclosure is required by law.

**22 TERMINATION**

- 22.1 Without prejudice to any other rights and remedies it has under the contract or otherwise, the Port may, at any time, by written notice to the supplier, terminate the contract.
- 22.2 If the contract is terminated under clause 22.1, the Port:
- (a) is liable only for payments under clause 11 for accepted goods or services provided in accordance with the contract before the effective date of termination;
  - (b) may recover from the supplier all sums paid for unperformed services, undelivered goods, defective goods or goods or services which are not in accordance with the contract; and
  - (c) may purchase similar goods or services from alternative suppliers and claim by way of indemnity from the supplier any loss the Port may occur in doing so.
- 22.3 The Port is not liable to pay compensation under clause 22.2 for an amount which would, in addition to any amounts paid or due, or becoming due, to the supplier under the contract, exceed the total amount payable for the goods or services under the contract.

- 22.4 The supplier is not entitled to compensation for loss of prospective profits.

**23 SECURITY**

The supplier must ensure that any material and property (including security-related devices and clearances) provided by the Port for the purposes of the contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

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**24 USE OF THE PORT PREMISES AND FACILITIES**

The supplier must, when using the Port's premises or facilities, comply with all reasonable directions of the Port relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by the Port or as might reasonably be inferred from the circumstances.

**25 COMPLIANCE WITH LAWS**

25.1 The supplier must ensure, in carrying out the contract that it and any sub-contractor approved under this contract comply with all relevant laws.

**26 TRANSPORT**

26.1 The supplier shall comply with all road transport laws and the National Heavy Vehicle Legislation.

26.2 The supplier acknowledges that nothing in this contract requires the supplier or its personnel to breach their obligations under the National Heavy Vehicle Legislation.

26.3 The supplier agrees to provide the Port with access to the supplier's premises and records, at the Port's discretion, to ensure that the Port complies with its obligations under the Heavy Vehicle National Laws.

**27 PERSONAL PROPERTY SECURITIES ACT (CTH) ("PPSA")**

27.1 If one party (the "Secured Party") determines that the contract (or a transaction in connection with it) is or contains a security interest, the other party (the "Grantor") agrees to promptly do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supply information) which is reasonably requested by the secured party and which is reasonably necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected (including, where possible, by "control" (as defined in the PPSA) in addition to registration) and otherwise effective; or
- (b) enabling the secured party to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the secured party; or
- (c) enabling the secured party to exercise rights in connection with the security interest.

27.2 Everything that a party is required to do under this clause 27 is at that party's expense, and neither party will be responsible for any costs or expenses incurred or payable by the other party.

**28 GOVERNING LAW AND JURISDICTION**

28.1 This contract is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non- exclusive jurisdiction of the courts of the State of Queensland.

**29 QUEENSLAND GOVERNMENT ETHICAL SUPPLIER THRESHOLD**

29.1 The Queensland Government Ethical Supplier Threshold applies to this purchase of goods or services.

29.2 The supplier warrants that it does and will comply with the threshold and that it or its subcontractors have not:

- (a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth) or committed an offence against the *Fair Work Act 2009* (Cth);
- (b) contravened a civil remedy provision of Chapter 2, 3, 4, 5 or 7 of the *Industrial Relations Act 2016* (Qld), committed an offence against the *Industrial Relations Act 2016* (Qld) or failed to pay employment related levies, or other payments established under Queensland legislation.
- (c) failed to make superannuation contributions on behalf of employees in accordance with law;
- (d) purported to treat employees as independent contractors when they are not;

- (e) required person who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors;
- (f) engaged persons on unpaid work trials or as unpaid interns when they should be treated as employees;
- (g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017* (Qld) or a supplier who is an unlicensed provider under the *Licensing Act 2017* (Qld); and
- (h) paid employees wages below those provided in an applicable modern award.

29.3 The supplier acknowledges that non-compliance with clause 29.2 above will entitle the Port to terminate the supply for purchase of goods or services from the supplier with immediate effect.

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*This is the end of the Standard Terms and Condition*

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