

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

## 1 GENERAL

1.1 These Port of Townsville Limited 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 POTL 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 POTL 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 Good 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 POTL and the Supplier consisting of this Purchase Order, any specifications and / or the requirements of any Special Terms and Conditions;

**'POTL'** 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 POTL to purchase Goods or Services on behalf of the POTL and which refers to POTL's standard terms and conditions;

**'Security Interest'** means a 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 POTL.

## 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 POTL.

## 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 POTL it would be fit for and for any purpose that POTL 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 POTL 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 POTL 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;
- (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 POTL had agreed to; and
- (d) be delivered in accordance with clause 6 or within a Timely

**8.3 Building Products.** The Supplier must ensure that any Building Products supplied to POTL:

- (a) is, or will be, safe;
- (b) does, or will, comply with relevant legislation, standards and codes of practice; and

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(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 POTL, 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 POTL 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.** POTL 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, POTL 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.** POTL 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 POTL rejects any Goods or Services, the Supplier must, at POTL's option, Without prejudice to POTL's rights otherwise arising under the Contract or the general law:  
(a) replace, without further cost to POTL, 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 POTL, 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 POTL 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 POTL has approved the samples.

**8.10 Inspection.** Without additional cost to POTL, and upon being sent reasonable notice from POTL in writing, the Supplier Must provide reasonable access to premises, including the premises of approved sub-contractors, and all other necessary assistance for POTL'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 POTL will not under any circumstances be deemed to be acceptance of those Goods or Services by POTL.

### 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 POTL unless in writing and signed by the Supplier and POTL.

10.2 No agreement or understanding varying or extending the Purchase Order is legally binding until POTL issues an amended Purchase Order confirming the variation.

### 11 PAYMENT

11.1 POTL 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 POTL 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 POTL is satisfied with the Goods or Services.

11.3 Notwithstanding any other conflicting provisions, POTL is not obliged to pay for any taxable supply made by the Supplier unless and until POTL receives a valid Tax Invoice or adjustment notice for that supply.

11.4 The Supplier acknowledges that POTL'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 POTL and the Supplier.

11.5 The Supplier must provide POTL with the Supplier's bank account for payment with respect to the Purchase Order.

11.6 The Supplier must notify POTL of a change of the Supplier's bank account no later than 14 days before a payment by POTL is due (the **Cut-off-Date**). POTL 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 POTL must provide a remittance advice to the Supplier when POTL instructs its bank to make an electronic funds transfer or when POTL makes a cheque payable to the Supplier.

11.8 This Section does not apply for purchases made using POTL'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 POTL 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.

### 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 POTL.

### 14 PASSING OF TITLE

14.1 Subject to clause 8, title and risk of loss or damage to the Goods or Services pass to POTL upon delivery to POTL.

### 15 WARRANTIES

15.1 The Supplier must provide or assign to POTL its rights in all relevant warranties for the Goods and Services.

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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 POTL:

- (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 POTL with the names of any of the Supplier's sub-contractors. The Supplier agrees, and must ensure that any sub-contractor agrees, that POTL may disclose the sub-contractor's name publicly.

16.3 The Supplier is liable to POTL 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 POTL'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 POTL.

### 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 POTL. The Supplier grants, or must obtain for, POTL a perpetual, world wide, royalty free licence (including a right to sublicense) to use, reproduce, adapt, modify and communicate any other material provided to POTL under the Contract.

### 18 MORAL RIGHTS

18.1 To the extent permitted by laws and for the benefit of POTL, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by POTL 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 POTL 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 POTL, 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 POTL 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 POTL relating to the use and non-disclosure Of POTL'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 POTL 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 POTL, the Supplier may be providing personal information which will not be used for the purpose of delivering services and carrying our POTL 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 POTL 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, POTL may, at any time, by written notice to the Supplier, terminate the Contract.

22.2 If the Contract is terminated under clause 22.1, POTL:

- (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 POTL may occur in doing so.

22.3 POTL 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 POTL for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

### 24 USE OF POTL PREMISES AND FACILITIES

The Supplier must, when using POTL's premises or facilities, comply with all reasonable directions of POTL relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by POTL 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.

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26.3 The Supplier agrees to provide POTL with access to the Supplier's premises and records, at POTL's discretion, to ensure that POTL 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 nonexclusive jurisdiction of the courts of the State of Queensland.

**29 CONTRACTOR CONDUCT AND COMPLIANCE**

The Contractor must, and must ensure that its employees, agents and subcontractors:

- a) comply with all applicable laws, regulations, codes and standards, including but not limited to work health and safety, environmental, employment, anti-discrimination and privacy legislation
- b) comply with all applicable Port of Townsville policies, procedures, standards and lawful directions, as amended from time to time;
- c) comply with the Queensland Government Supplier Code of Conduct (as amended from time to time), and ensure that its employees, agents and subcontractors meet the standards of behaviour set out in that Code;
- d) perform the Services in a safe, lawful, ethical and professional manner, and take all steps to ensure the health and safety of persons and to prevent injury, harm or damage arising from its activities so far as is reasonably practicable;
- e) immediately report, in writing, to their nominated Port of Townsville contact any hazards, incidents, injuries, near misses or unsafe conditions arising in connection with the Services;
- f) not engage in any conduct that is unlawful, unsafe, fraudulent, corrupt, misleading, deceptive, discriminatory, harassing, or otherwise inconsistent with the standards of conduct reasonably expected by Port of Townsville;
- g) ensure that all Port property, assets, systems and information are used only for authorised purposes and are protected from misuse, loss or unauthorised access as required by its policies, standards and procedures;
- h) maintain confidentiality of all information obtained in connection with the Services and not disclose or use such information except as expressly authorised by Port of Townsville in writing, or as otherwise required by law;
- i) disclose, in writing, to their nominated Port of Townsville contact any actual, potential or perceived conflict of interest as soon as reasonably practicable and take all reasonable steps to manage or resolve the conflict to the satisfaction of Port of Townsville;
- j) immediately notify, in writing, to their nominated Port of Townsville contact any actual or suspected breach of this clause, the Queensland Government Supplier Code of Conduct, any Port of Townsville policy, procedure, standard and/or any applicable law; and
- k) ensure that all subcontractors engaged in connection with the Services are bound by, and comply with, the terms set out in this clause.

POTL may, acting reasonably, direct the removal of any person engaged by the Contractor from any Port site who fails to comply with this clause, and may treat any material breach of this clause as a breach of the Contract, which may give rise to a right to suspend or terminate the Contract.

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