

Purchase Order Terms and Conditions - Goods

TASMANIAN PORTS CORPORATION PTY. LTD. (ABN 82 114 161 938) and its subsidiaries, Bass Island Line Pty Ltd (ABN 67 617 438 847), King Island Ports Corporation Proprietary Limited (ABN 33 078 720 153) and Flinders Island Ports Company Pty Ltd (ACN 079 544 399) and Southern Export Terminals Pty Ltd (ABN 56 616 370 775) (TasPorts)



1 AGREEMENT AND TERM

- 1.1 The Supplier is taken to have accepted the Purchase Order if it notifies TasPorts that it accepts the Purchase Order or delivers the Goods described in the Purchase Order.
- 1.2 By providing the Goods set out in the Purchase Order, the Supplier acknowledges and agrees that the terms and conditions of this Agreement apply in relation to the supply of Goods by the Supplier to TasPorts. If the Supplier does not agree with the terms and conditions of this Agreement, the Supplier should notify TasPorts promptly and before supplying the relevant Goods to TasPorts.
- 1.3 The Purchase Order once accepted will form a binding Agreement that, subject to clause 16, will continue until the Supplier has discharged all of its obligations under this Agreement to TasPorts' reasonable satisfaction (**Term**).

2 SPECIFICATION OF GOODS

- 2.1 The Supplier must:
 - (a) ensure that the Goods supplied to TasPorts strictly comply with:
 - (i) the Purchase Order (including the Specification) and the Warranties; and
 - (ii) all applicable Laws in force at the date of delivery of the Goods and any relevant Australian Standards;
 - (b) ensure that the Goods are of merchantable quality and fit for their intended purpose;
 - (c) comply with any of TasPorts' quality assurance requirements notified to the Supplier in the Purchase Order and/or Specification; and
 - (d) maintain its quality assurance certification for the duration of the Agreement.

3 WARRANTIES

- 3.1 The Supplier warrants to TasPorts in relation to the Goods as follows:
 - (a) the Goods comply with the requirements of the Purchase Order (including the Specification);
 - (b) the Goods incorporate only proven and reliable technology which complies with all Laws and any relevant Australian Standards;
 - (c) the supply of the Goods to TasPorts, and the use of the Goods by TasPorts, does not and will not infringe the rights, including Intellectual Property Rights, of any third party;
 - (d) the Supplier will carry out the manufacture (or procurement) and (where required) the design, installation, testing and commissioning of the Goods, in a proper and workmanlike manner and to a standard of professional care, skill, judgement and diligence expected of a Supplier experienced in carrying out such work;
 - (e) the Goods are new (unless otherwise specified in the Specification or agreed by TasPorts) and of premium quality and are free from Defects in design, materials and workmanship;
 - (f) the Goods are fit for the purpose communicated by TasPorts to the Supplier or, if no such purpose is communicated, for the purpose for which the Goods would be expected to be reasonably used by TasPorts; and

- (g) the Goods are free from all liens and encumbrances, the Supplier has good and clear title to the Goods, the Supplier has the right to sell the Goods to TasPorts and TasPorts will enjoy quiet possession of the Goods.

3.2 The Supplier warrants to TasPorts that the Supplier:

- (a) has entered into this Agreement in its own capacity and not as trustee of a trust;
- (b) and the Supplier's Personnel have not been convicted of any offences involving Modern Slavery;
- (c) and the Supplier's Personnel, to the best of the Supplier's knowledge having made reasonable enquiries, has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offence or alleged offence of any Modern Slavery Laws; and
- (d) conducts its business in a manner that complies with Modern Slavery Laws and minimises Modern Slavery risks in its operations and supply chains.

4 DELIVERY OF GOODS

- 4.1 The Supplier must supply the Goods:
 - (a) by delivering the Goods to the Site by the date stipulated in the Purchase Order (if any) or by such other date agreed by the parties and in accordance with any reasonable delivery requirements as notified by TasPorts to the Supplier within a reasonable timeframe prior to delivery. All deliveries will be made within TasPorts' normal working hours as notified by TasPorts to the Supplier;
 - (b) with due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in supplying the Goods and items similar to the Goods;
 - (c) together with all Documents required to transfer ownership of the Goods to TasPorts (including copies of any warranties and third party warranties in relation to the Goods) and full documentation identifying the contents of each package delivered and each package and each delivery document will be endorsed with the number of the relevant Purchase Order; and
 - (d) in accordance with TasPorts' reasonable directions and policies as notified by TasPorts within a reasonable timeframe prior to delivery.
- 4.2 TasPorts will be responsible for unloading the Goods unless the Goods (including packaging) weigh more than one tonne or are shipped on pallets exceeding the Australian Standard pallet size or unless otherwise stipulated in the relevant Purchase Order.
- 4.3 The Supplier will notify TasPorts of its unloading requirements within a reasonable time prior to delivery of the Goods to the Site.
- 4.4 If clause 4.2 does not apply, the Supplier is responsible for unloading all Goods at the Site (within normal business hours at a time suitable to TasPorts) and in accordance with TasPorts' reasonable directions.
- 4.5 Prior to delivery of the Goods to the Site, the Supplier must stipulate if packaging used to protect the Goods is to be returned to the Supplier, and advise the amount of any deposit charges which are to be included in the Price. All returnable packaging will be clearly marked as such by the

Supplier, bear a return address of the Supplier and be returned freight forward at TasPorts' convenience by a transporter selected by TasPorts unless otherwise agreed by the parties.

- 4.6 TasPorts may inspect and test the Goods for compliance with this Agreement at any time within 7 days after delivery. Where TasPorts considers (acting reasonably) that the Goods are Defective, or are short supplied, that is, the Goods are not supplied in the quantities referred to in the Purchase Order (**Non-Complying Goods**), the Non-Complying Goods may be rejected by TasPorts and the Supplier notified of their rejection, the reason for their rejection and TasPorts' election under clause 4.7.
- 4.7 If TasPorts rejects any Goods under clause 4.6, the Supplier must within a reasonable time period (which will not exceed 7 days unless agreed by both parties in writing), comply with a requirement of TasPorts to collect the Non-Complying Goods from TasPorts and:
- (a) replace, without cost to TasPorts, the Non-Complying Goods with goods that comply with this Agreement;
 - (b) refund any amounts paid in advance for the Non-Complying Goods; or
 - (c) in the case of a Defect in the Non-Complying Goods, repair the Non-Complying Goods to the satisfaction of TasPorts in accordance with the Supplier's obligations under this Agreement.
- 4.8 Where the Goods are Non-Complying Goods due to a short supply in the Non-Complying Goods, the Supplier must provide additional Goods within 7 days of receiving notification from TasPorts under clause 4.6, so that the quantities of Goods supplied to TasPorts comply with the requirements of the relevant Purchase Order.
- 4.9 The Supplier acknowledges and agrees that the acceptance of any Goods by TasPorts under this Agreement does not prejudice or limit any future claim by TasPorts against the Supplier in relation to any Defect in the Goods that could not have been reasonably ascertained at the time of acceptance.
- 4.10 The Supplier must promptly obtain for TasPorts the benefit of any manufacturer's warranty that can reasonably be obtained applicable to the Goods supplied under this Agreement.
- 4.11 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on TasPorts by the *Competition and Consumer Act 2010* (Cth) or any other applicable Law that cannot be excluded, restricted or modified by agreement.

5 INSTALLATION WORKS

- 5.1 Where required by TasPorts in a Purchase Order, the Supplier must undertake the Installation Works at the Site within a reasonable time period as stipulated in the Purchase Order (if any) or within such other period agreed between the parties.
- 5.2 If Installation Works are required, the Supplier will ensure that the Supplier's Personnel undertaking the Installation Works:
- (a) have undertaken all training and have obtained all relevant qualifications, licences and accreditations necessary to carry out the Installation Works; and
 - (b) use and wear all safety and protective equipment required to carry out the Installation Works (if any).
- 5.3 The Supplier must:
- (a) obtain and maintain, at its cost, all Approvals required for the Supplier to deliver (and if applicable, install) the Goods in accordance with this Agreement and produce evidence on request by TasPorts of all such relevant Approvals; and
 - (b) (if required by TasPorts) propose a testing regime and program for the Goods for TasPorts' approval (including validation points in the manufacture of the Goods at

which the Goods (or any part of them) must be tested and inspected) and upon TasPorts' approval, must comply with the testing regime and program and provide all test results to TasPorts' reasonable satisfaction.

- 5.4 Where the Installation Works include design, development or completion of the design of any part of the Installation Works, a performance specification or any combination of these, the Supplier must:
- (a) exercise skill, care and diligence to the standard expected of a professional engineer or consultant as the case may be providing design services in Australia of a similar nature in respect of projects comparable to the Installation Works; and
 - (b) ensure that the design services result in the Installation Works being fit for their intended purposes.
- 5.5 If TasPorts discovers any Defects in any aspect of the Installation Works within 12 months following the completion of those Installation Works, TasPorts will notify the Supplier of the Defect and the Supplier agrees to:
- (a) rectify any such Defects within a reasonable timeframe following notification of the Defect (which will not exceed 7 days unless agreed by both parties in writing) so that the Installation Works comply with all aspects of this Agreement; or
 - (b) if the Supplier fails to rectify the Defects to TasPorts' reasonable satisfaction in accordance with clause 5.5(a), TasPorts may perform, or have performed, the necessary work to rectify the Defect and the Supplier must indemnify TasPorts for all reasonable costs incurred by TasPorts as a result, except to the extent caused by the negligence or default of TasPorts.

6 ACCESS TO SITE BY SUPPLIER

- 6.1 Where the Goods are to be delivered and/or installed at the Site, the Supplier must comply with TasPorts' site policies and procedures, including without limitation TasPorts' WHS and environment standards and policies, as notified by TasPorts to the Supplier within a reasonable timeframe prior to delivery.
- 6.2 Subject to the requirements contained in this clause 6, TasPorts will grant the Supplier such access to the Site or such parts of the Site as is necessary for the Supplier to deliver and install the Goods at the Site.
- 6.3 It is a condition precedent to the Supplier and any of the Supplier's Personnel entering or remaining on the Site, that the Supplier must:
- (a) ensure that any of the Supplier's Personnel who will perform any obligations at the Site have undertaken any induction required by TasPorts; and
 - (b) have provided TasPorts with certificates of currency for all insurances required under clause 8.3.
- 6.4 The Supplier must and must ensure that the Supplier's Personnel:
- (a) fully co-operate with TasPorts, TasPorts' employees, agents and contractors and any other parties on the Site;
 - (b) carefully co-ordinate and integrate the delivery of the Goods with the activities of TasPorts, TasPorts' employees, agents and contractors and any other parties on the Site;
 - (c) deliver the Goods in such a manner so as to avoid interfering with, disrupting or delaying the activities of TasPorts, TasPorts' employees, agents and contractors and any other parties on the Site;
 - (d) take measures necessary to protect people and property;
 - (e) not cause harm, damage or nuisance to the environment and do all things necessary to prevent harm, damage or nuisance to the environment;
 - (f) comply with and not do anything that may place the Supplier or TasPorts in breach of any applicable Laws

(including WHS Laws and Laws for the protection of the environment such as the *Environmental Management and Pollution Control Act 1994* (Tas));

- (g) comply with any Approvals applicable to the supply of the Goods and the performance of the Installation Works and not do anything that may place the Supplier and/or TasPorts in breach of any such Approvals;
- (h) comply with the applicable standards of Standards Australia or the International Standards Organisation or the requirements of any applicable industry code of practice and best industry practice for the protection of the environment as relevant to the supply of the Goods and the performance of the Installation Works;
- (i) prior to any Installation Works being performed, locate all existing utility services on or under the Site and conduct any reinstatement required by any Authority or the Specification in relation to the utility services affected by the installation of the Goods;
- (j) not interfere with any existing utility services except as permitted under this Agreement;
- (k) not interfere with, connect to or access TasPorts' Systems without the prior written consent of TasPorts; and
- (l) not introduce or propagate any Harmful Code on TasPorts' Systems or corrupt or delete TasPorts' Data.

7 WORKPLACE HEALTH AND SAFETY

7.1 The Supplier acknowledges and agrees that during the Term, the Supplier must, and must ensure that all of the Supplier's Personnel, comply with all WHS Laws at all times while delivering the Goods and performing any Installation Works.

7.2 The Supplier:

- (a) must provide to TasPorts all things reasonably necessary to enable TasPorts to meet its obligations under any applicable WHS Laws;
- (b) agrees that, unless the Supplier has submitted a written request to TasPorts for such information prior to or at the commencement of the Term and such information is yet to be provided, the Supplier has received from TasPorts all relevant information held by TasPorts that may reasonably be required by the Supplier to discharge the duties imposed on the Supplier by any applicable WHS Laws;
- (c) must provide to TasPorts upon request, evidence reasonably satisfactory to TasPorts of the Supplier's compliance with any WHS Laws; and
- (d) must, as far as is reasonably practicable, consult, cooperate and coordinate its activities with TasPorts in all WHS matters connected, arising out of, or associated with providing the Goods and this Agreement.

7.3 When delivering the Goods, or performing any Installation Works, the Supplier must:

- (a) promptly notify TasPorts of the occurrence of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any WHS Laws; and
- (b) notify TasPorts in writing where there is a conflict between the delivery of the Goods or the performance of the Installation Works and any applicable WHS Laws and must consult, co-operate and co-ordinate with TasPorts to find an appropriate resolution.

8 PROPERTY, RISK IN GOODS AND INSURANCE.

8.1 Risk of loss of or damage to the Goods, and title in the Goods, will only pass to TasPorts upon delivery of the Goods to the Site and acceptance of the Goods by TasPorts.

8.2 The parties acknowledge and agree that the Supplier is responsible for all costs and risks until the Goods are:

- (a) delivered to Site in accordance with the Purchase Order; and
- (b) accepted by TasPorts in accordance with this Agreement.

8.3 The Supplier must have and maintain with a reputable insurer public and product liability insurance, professional indemnity insurance (where required by TasPorts in the Purchase Order or Specification), transit insurance in respect of transportation of the Goods to the Site, contract works insurance for the value of any Installation Works (where required by TasPorts in the Purchase Order or Specification) and workers' compensation insurance as required under any applicable Laws. The Supplier must provide copies of their insurance certificates to TasPorts upon request.

9 PRICE

9.1 If a Purchase Order is issued that does not contain a price or is referred to as an "estimate only" or "to be negotiated", the price is to be negotiated and accepted by both parties prior to the supply of the Goods or performing any Installation Works. Once the price is agreed, the Purchase Order will then be reissued with the Price and the reissued Purchase Order will prevail over the original Purchase Order to the extent of any inconsistency.

9.2 The Price is fixed and not subject to rise and fall or any other adjustment.

9.3 The Price includes:

- (a) all necessary packaging and delivery costs;
- (b) all deposit charges for return packaging;
- (c) all duty, excise, sales or other taxes (excluding GST); and
- (d) all unloading, installation and testing costs (where stipulated in the Purchase Order).

9.4 TasPorts will not be liable to pay for:

- (a) any Non-Complying Goods that are rejected under clause 4.6 by TasPorts or a nominee of TasPorts due to a Defect;
- (b) any Goods not supplied to TasPorts due to short supply; or
- (c) any costs arising from inspection or rejection of the Non-Complying Goods.

10 GST

10.1 Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are GST exclusive.

10.2 If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

10.3 A party's right to payment under clause 10.1 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

10.4 Expressions defined in the GST Act have the same meaning when used in this Agreement.

11 TERMS OF PAYMENT

11.1 Subject to the Supplier complying with its obligations under this Agreement, TasPorts agrees to pay the Price in accordance with this clause 11.

11.2 Subject to clause 11.1 and clause 11.3, TasPorts will pay the Price to the Supplier within fourteen (14) days after the date of receiving the Supplier's tax invoice compliant with this Agreement.

11.3 The Supplier will issue TasPorts with a tax invoice for the Price within 7 days after the delivery (and installation, if applicable) of the Goods to the Site, which must:

- (a) be a valid tax invoice for the purposes of the GST Act;
- (b) include the Purchase Order number;
- (c) include an adequate description of the Goods;
- (d) include particulars of the date and time of delivery (and if applicable, installation) of the Goods; and

(e) be emailed to: accountspayable@tasports.com.au.

11.4 Payment of a tax invoice is not to be taken as:

- (a) evidence or an admission that the Goods have been supplied in accordance with the Specification;
- (b) evidence of the value of the Goods supplied;
- (c) an admission that the Goods were satisfactorily supplied;
- (d) an admission of liability; or
- (e) acceptance or approval of the Supplier's performance, but must be taken only as payment on account.

12 INDEMNITIES

12.1 To the extent permissible by law, the Supplier is solely responsible for and indemnifies TasPorts against the payment of all taxes, levies and charges imposed on the Supplier or any of the Supplier's Personnel in relation to the Goods, prior to delivery and acceptance of the Goods by TasPorts in accordance with this Agreement.

12.2 To the maximum extent permissible by law, the Supplier is liable for and agrees to indemnify and at all times keep indemnified TasPorts, its officers, employees and agents against all claims, demands, actions, costs (including legal costs and expenses on a solicitor/own client basis), charges, expenses, damages, loss or other liability (including without limitation in tort, under any law, in respect of loss or damage to property, compensation for death of or injury to any person or in defending claims) arising directly or indirectly from or in connection with one or more of the following:

- (a) a breach by the Supplier or any of the Supplier's Personnel of any obligations under this Agreement (including, without limitation, any breach of the Warranties);
- (b) any breach of Law by the Supplier or the Supplier's Personnel;
- (c) any interruption to the operations of TasPorts' business and the operations of the Site caused or contributed to by the Supplier or the Supplier's Personnel;
- (d) any negligence of the Supplier or any of the Supplier's Personnel in relation to the supply or failure to supply the Goods or in relation to the performance or failure to perform the Installation Works; and
- (e) any infringement of any Intellectual Property Rights by the Supplier or any of the Supplier's Personnel in relation to the supply the Goods,

except to the extent caused by the negligence or default of TasPorts.

12.3 Each indemnity given by the Supplier under this Agreement is a continuing obligation, separate and independent from the Supplier's other obligations under this Agreement and survives termination of this Agreement for any reason. It is not necessary for TasPorts to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

13 VARIATIONS

13.1 Neither party may vary the Goods unless both parties agree in writing in relation to the scope and price of any such variation.

13.2 The Supplier will not deliver the Goods or the varied Goods to TasPorts, or vary anything required to be done by the Supplier under this Agreement, until the terms of the variation have been agreed.

14 CANCELLATION AND SUSPENSION

14.1 TasPorts may cancel or suspend delivery of the Goods and/or the Installation Works at any time prior to delivery of the Goods or performance of the Installation Works (as applicable) by notice in writing to the Supplier where:

- (a) TasPorts reasonably considers that the supply of the Goods or the performance of the Installation Works may

not be in compliance with the requirements of applicable Laws (including the WHS Laws);

- (b) TasPorts reasonably considers necessary for the protection or safety of any person or property; or
- (c) where TasPorts is entitled to terminate under this Agreement,

provided that where practicable and reasonable to do so, TasPorts has first notified the Supplier and given the Supplier a reasonable opportunity to remedy the non-compliance.

14.2 Where TasPorts cancels or suspends delivery of the Goods or the Installation Works otherwise than as the result of the breach of this Agreement by the Supplier or any of the Supplier's Personnel, insolvency of the Supplier or as a result of Force Majeure, TasPorts will pay to the Supplier all reasonable costs incurred by the Supplier directly attributable to the cancellation or suspension of the delivery of the Goods or the Installation Works (as applicable) and substantiated by the Supplier to the reasonable satisfaction of TasPorts.

15 FORCE MAJEURE

15.1 Where a party is unable to perform all or a material part of their obligations under this Agreement due to an event of Force Majeure, which makes performance of an obligation under this Agreement impossible, and not merely more onerous or uneconomical, and that party:

- (a) gives the other party prompt notice and reasonable particulars of that Force Majeure;
- (b) uses all possible diligence to remove and mitigate the effect of Force Majeure; and
- (c) has not caused or contributed to the Force Majeure, then those obligations are suspended so far as they are affected by Force Majeure.

15.2 Each party must bear their own costs incurred arising out of or in connection with an event of Force Majeure.

15.3 Where the event of Force Majeure continues for a period exceeding sixty (60) days, either party may terminate this Agreement by written notice to the other party without any liability to the other party for any failure to perform an obligation under this Agreement caused by an event of Force Majeure.

16 TERMINATION

16.1 Either party may terminate this Agreement:

- (a) at any time by mutual agreement;
- (b) subject to compliance with Chapter 5 of the *Corporations Act 2001* (Cth), immediately in the event that the other party becomes insolvent or is financially unable to proceed with this Agreement; or
- (c) if the other party is in breach of this Agreement which is not remedied within a reasonable time (and in any case within 14 days) of notice by the non-defaulting party to remedy the breach or immediately if the other party is in breach of this Agreement and the breach is unable to be remedied.

16.2 If this Agreement is terminated under clause 16.1 the defaulting party indemnifies the non-defaulting party against:

- (a) any liability or loss arising and any cost incurred (whether before or after termination of this Agreement) in connection with the defaulting party's breach of this Agreement and the termination of this Agreement; and
- (b) the non-defaulting party must take reasonable steps to mitigate its loss.

16.3 This clause 16 is not intended to prejudice any other right or remedy available to a party in connection with a breach (including repudiation) of this Agreement.

17 RELATIONSHIP

17.1 The relationship between TasPorts and the Supplier is a relationship of principal and independent contractor and nothing in this Agreement will be construed so as to create a relationship of employment, agency, partnership, fiduciary relationship or any other category of commercial relationship between the parties recognised at law or in equity as giving rise to specific rights and obligations. The Supplier does not have any authority to contract with third parties on behalf of TasPorts or to otherwise bind TasPorts without prior written agreement from TasPorts.

18 ASSIGNMENT AND SUB-CONTRACTING

18.1 The Supplier must not sub-contract the whole or any part of its obligations under this Agreement without the prior written consent of TasPorts (which will not be unreasonably withheld). If such consent is granted by TasPorts it does not relieve the Supplier from any liability or obligations under this Agreement and the Supplier is responsible for the acts, omissions, defaults or negligence of any sub-contractor, its contractors, agents or workmen as if they were the acts, omissions, defaults or negligence of the Supplier.

18.2 Neither party may assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other party (which will not be unreasonably withheld).

19 MODERN SLAVERY

19.1 The Supplier must and must ensure that the Supplier's Personnel:

- (a) in supplying the Goods, do not engage in any conduct or omission which may contravene any Modern Slavery Laws; and
- (b) comply with all applicable Modern Slavery Laws and do all things reasonably necessary to minimise Modern Slavery risks in the Supplier's operations and in the Supplier's supply chains.

19.2 The Supplier must promptly notify TasPorts as soon as it becomes aware of a potential, suspected or actual breach by the Supplier or the Supplier's Personnel of any Modern Slavery Laws in connection with this Agreement.

19.3 TasPorts has a supplier code of conduct (available on TasPorts' website and as amended from time to time) which prescribes a set of minimum ethical business standards which TasPorts expects of its suppliers. Any breach of the obligations stipulated in TasPorts' supplier code of conduct is considered a breach of this Agreement by the Supplier.

20 CONFIDENTIALITY

20.1 Except as required by law, each party must treat as confidential information which is so designated in writing by the other party as confidential or which a party should reasonably have known to be confidential, including (without limitation) any information relating to the contents, operation or performance of this Agreement.

21 PERSONAL INFORMATION

21.1 Each party agrees that it will not collect, use, disclose, store, transfer or otherwise handle Personal Information that it collects in connection with this Agreement except to the extent that is reasonably necessary for the performance of its obligations under this Agreement, and then only in accordance with any Privacy Legislation that apply to each party.

22 EXISTING CONTRACTS

22.1 This Agreement does not apply to supplies of goods and installation works under an Existing Contract but TasPorts must still raise a Purchase Order and allocate a Purchase Order number in order to pay for such supplies.

22.2 If there is any inconsistency between this Agreement and the Existing Contract, the order of precedence will be:

- (a) the Existing Contract;
 - (b) this Agreement,
- to the extent of the inconsistency.

23 GENERAL

23.1 This Agreement binds and benefits each party and their respective successors, assigns and legal personal representatives.

23.2 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

23.3 Each party must at its own cost do all things reasonably to give effect to this Agreement.

23.4 A notice or other communication given under this Agreement must be in writing and either hand delivered or sent by postage prepaid to the address of the parties specified in the Purchase Order.

23.5 Time is of the essence of this Agreement.

23.6 Subject to clause 22, this Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes and cancels all prior (written or oral) arrangements, agreements, understandings and negotiation in connection with it. For the avoidance of doubt, the Supplier's standard or usual terms and conditions of supply (including, without limitation any terms or conditions dealing with retention of title) are expressly excluded from this Agreement.

23.7 In the event of an inconsistency between any of the documents comprising this Agreement, the order of precedence between those documents will be (i) the Purchase Order, (ii) the Specification, and (iii) these Conditions.

23.8 Each party acknowledges that it has had the opportunity to review this Agreement before entering into it and has not relied on any oral or written representations made by or on behalf of the other party as an inducement to enter into this Agreement.

23.9 The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.

23.10 The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

23.11 If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement unless the severance would change the underlying principal commercial purpose or effect of this Agreement and does not affect the validity, operation or enforceability of any other provision of this Agreement.

23.12 If two or more provisions of this Agreement are inconsistent or contradictory, the numerical position of these provisions must not be a determinative factor in any decision, order or ruling which results in the severance of any conflicting provision.

23.13 This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

23.14 Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of this Agreement, and all other matters and agreements referred to in this Agreement.

23.15 The law of this Agreement is the law of Tasmania. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of Tasmania.

24 DEFINITIONS

In these Conditions:

'Agreement' means the agreement between TasPorts and the Supplier for the supply of Goods and if applicable, the performance of the Installation Works, comprising the relevant Purchase Order, the Specification, these Conditions and any other documents referred to in the Purchase Order.

'Approval' means any approval, licence, permit, authorisation, consent, determination, accreditation, certificate or other requirement of any Authority.

'Australian Standards' means all Australian standards, codes and certifications relevant to the Goods, as amended from time to time.

'Authority' means any government authority (including local government), administrative or judicial body or tribunal, public authority or statutory corporation.

'Conditions' means these terms and conditions.

'Defect' means any error, deficiency, fault, failure, malfunction or other defect (including defects in design) in relation to the Goods or the Installation Works, which results in the Goods not complying with this Agreement (including the Specification and the Warranties), and **'Defective'** has a corresponding meaning.

'Documents' mean all material stored by any means and which is relevant to the provision of the Goods or the performance of the Installation Works by the Supplier.

'Existing Contract' means an existing contract signed by TasPorts and the Supplier for the supply of Goods and any Installation Works (and for the avoidance of doubt, excludes the Supplier's standard or usual terms and conditions of supply).

'Force Majeure' means any one or more of the following circumstances provided that the circumstances are outside a party's control: perils of the sea, strikes, lockouts, acts of God, war or warlike measures whether threatened, declared or anticipated, terrorism, or the outbreak of hostilities between nations or countries, trade sanctions or Government directives, explosions, embargoes, fire, flood, drought, riot, sabotage or accident, epidemics, pandemics or travel/border restrictions.

'Goods' means the Goods described in a Purchase Order and/or the Specification.

'GST' has the meaning given in the GST Act.

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

'Harmful Code' means any computer program, trojan, virus or other code which is not intended to serve a legitimate purpose, and which is harmful, destructive or disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information, data or software.

'Installation Works' means any works required to install or fix the Goods at or to the Site as specified in a Purchase Order and/or the Specification.

'Intellectual Property Rights' includes present and future intellectual and industrial property rights conferred by statute, at civil, common law or in equity including:

- (a) copyright;
- (b) design, patent, trademark, semiconductor, circuit layout, database rights or plant breeder rights (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name; and
- (d) know how or inventions, processes (whether in writing or recorded in any form),

and includes any right to licence and sub-licence any of the above.

'Law' means any act, regulation, statute, by-law, ordinance, order, awards or proclamation whether Federal, State or local.

'Modern Slavery' has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

'Modern Slavery Laws' means any law, statute or regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which TasPorts or the Supplier is registered or conducts business or in which activities relevant to the Agreement are to be performed.

'Non-Complying Goods' has the meaning given to this term in clause 4.6.

'Personal Information' has the meaning given in the *Privacy Act 1988* (Cth).

'Price' means the amount payable by TasPorts for the Goods as stated in the Purchase Order (excluding any GST component stated in the Purchase Order).

'Privacy Legislation' means the *Privacy Act 1988* (Cth) and the *Personal Information Protection Act 2004* (Tas) and any other legislation in force from time to time that is applicable to TasPorts or the Supplier.

'Purchase Order' means the document described as such, provided by TasPorts to the Supplier, describing the Goods to be supplied and any required Installation Works, and which may be attached or linked to these Conditions.

'Site' means the place referred to in the Purchase Order as the place for the delivery of the Goods and the performance of any Installation Works (or such other place as advised by TasPorts to the Supplier within a reasonable timeframe prior to delivery).

'Specification' means the specification for the Goods and any required Installation Works contained in or attached to the relevant Purchase Order which may include any measurements, performance data, plans, drawings, timeframes or other information.

'Supplier' means the party who will supply the Goods to TasPorts and named as supplier in the Purchase Order and includes the Supplier's Personnel.

'Supplier's Personnel' means the officers, employees, secondees, agents, consultants, contractors and subcontractors of the Supplier.

'TasPorts' Data' means all of the data and information which is stored in, processed by or retrievable from TasPorts' Systems.

'TasPorts' Systems' means the following, owned or used by TasPorts:

- (a) hardware, equipment, machinery components, instruments or accessories;
- (b) applications, services, network connections or communications together with any relevant documentation; and
- (c) any operating system or any temporary or permanent replacement equipment.

'Term' has the meaning given to this term in clause 1.3.

'Warranties' means the Supplier's warranties as set out in clause 3.

'WHS' means work health and safety.

'WHS Laws' means the *Work Health and Safety Act 2012* (Tas), the *Work Health and Safety Regulations 2012* (Tas) and all other WHS Laws operative in Tasmania or otherwise applicable to any works under this Agreement.