

# Purchase Order Terms and Conditions - Services

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 supplies the Services described in the Purchase Order.

1.2 By providing the Services 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 Services 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 the Supplier supplies the Services 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 SERVICES

2.1 The Supplier must:

- (a) ensure that the Services supplied to TasPorts strictly comply with:
  - (i) the Purchase Order (including the Specification) and the Warranties;
  - (ii) all applicable Laws in force at the date of provision of the Services and any relevant Australian Standards;
  - (iii) any of TasPorts' quality assurance requirements notified to the Supplier in the Purchase Order and/or Specification; and
  - (iv) TasPorts' reasonable directions and policies as notified by TasPorts within a reasonable timeframe prior to commencement of the Services.
- (b) perform the Services with due care and skill, and to a standard to be expected of a professional person both competent and experienced in providing services similar to the Services;
- (c) supply the Services together with all Documents required to transfer ownership of any supplies and materials incorporated into the Services to TasPorts (including copies of any warranties and third party warranties in relation to those supplies or materials) and, on completion of the Services, full documentation identifying the relevant Purchase Order and a description of the Services;
- (d) maintain its quality assurance certification for the duration of this Agreement; and
- (e) where the Services include design, development or completion of the design or a performance specification or any combination of these, 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 services comparable to the Services.

## 3 WARRANTIES

3.1 The Supplier warrants to TasPorts in relation to the Services as follows:

- (a) the Services comply with the requirements of the Purchase Order (including the Specification);
- (b) the Services incorporate only proven and reliable technology which complies with all Laws and any relevant Australian Standards;
- (c) the Supplier will provide the Services 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 services similar to the Services;
- (d) all Supplier's Personnel undertaking the Services:
  - (i) have undertaken all training and have obtained all relevant qualifications, licences and accreditations necessary to carry out the Services; and
  - (ii) use and wear all safety and protective equipment required to carry out the Services (if any);
- (e) any supplies and materials incorporated in the Services will be new (unless otherwise specified in the Specification or agreed by TasPorts) and of premium and merchantable quality, fit for their intended purpose and free from defects;
- (f) the Services are of acceptable quality and are free from defects in design, materials and workmanship; and
- (g) the Services are fit for the purpose communicated by TasPorts to the Supplier or, if no such purpose is communicated, for the purpose for which the Services would be expected to be reasonably used by TasPorts.

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 PROVISION AND COMPLETION OF SERVICES

4.1 The Supplier must obtain and maintain, at its cost, all Approvals required for the Supplier to carry out the Services in accordance with this Agreement.

4.2 The Supplier must provide the Services by the date stipulated in the Purchase Order (if any) or by such other date agreed by the parties. All Services will be provided within TasPorts' normal working hours as notified by TasPorts to the Supplier within a reasonable timeframe prior to performance of the Services.

4.3 At any time, TasPorts may notify the Supplier if there are Non-Performed Services and provide details of that non-performance and allow the Supplier a reasonable time period to remedy the non-performance (which will not exceed 7 days unless agreed by both parties). Where the Non-Performed Services are not remedied in accordance with this Agreement:

- (a) TasPorts may refuse to provide payment for the Non-Performed Services;
- (b) TasPorts may perform, or have performed, the Non-Performed Services; and
- (c) the Supplier indemnifies TasPorts against all costs incurred by TasPorts in connection with having the Non-Performed Services performed in accordance with clause 4.3(b) that exceed the costs that would have been incurred by TasPorts if the Supplier had performed the Non-Performed Services in accordance with this Agreement, except to the extent caused by the negligence or default of TasPorts.

4.4 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.

4.5 This clause 4 survives the termination or expiry of this Agreement.

## 5 ACCESS TO SITE BY SUPPLIER

5.1 Where the Services are to be performed at the Site, the Supplier must comply with TasPorts' site policies and procedures, including TasPorts' WHS and environment standards and policies, as notified by TasPorts to the Supplier, within a reasonable timeframe prior to performance of the Services.

5.2 Subject to the requirements contained in this clause 5, TasPorts will grant the Supplier such access to the Site or such parts of the Site as is necessary for the Supplier to carry out the Services.

5.3 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 carry out any Services 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.

5.4 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 provision of the Services with the activities of TasPorts, TasPorts' employees, agents and contractors and any other parties on the Site;
- (c) carry out the Services 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 Services 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 Services;

(i) prior to performing any works required as part of the Services, 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 performance of the Services;

(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.

## 6 WORKPLACE HEALTH AND SAFETY

6.1 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 performing the Services.

6.2 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 Services and this Agreement.

6.3 When performing the Services, the Supplier must:

(a) promptly notify TasPorts 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 Services and any applicable WHS Laws and must consult, co-operate and co-ordinate with TasPorts to find an appropriate resolution.

## 7 INTELLECTUAL PROPERTY

7.1 Ownership of, and all Intellectual Property Rights in any material produced by the Supplier under this Agreement (**Contract Material**) will immediately vest in TasPorts on its creation for TasPorts' own use and benefit in any manner TasPorts sees fit. The Supplier will do all reasonable acts and execute all documents (and require any of the Supplier's Personnel to do all acts and execute all documentation) required to immediately vest title in the Contract Material in TasPorts.

7.2 Clause 7.1 does not affect the ownership of or any Intellectual Property Rights in any material developed by either party prior to the creation of this Agreement or independently of the performance of either party's obligations under this Agreement (**Existing Material**).

7.3 TasPorts grants to the Supplier a non-exclusive, revocable, royalty-free licence for the Term to use the Contract Material and any of TasPorts' Existing Material relevant to the provision of the Services, only for the purposes of performing its obligations under this Agreement.

7.4 The Supplier grants to TasPorts a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to use any of the Supplier's Existing Material required in order to use the Contract Material.

7.5 The Supplier warrants that:

- (a) the provision of the Services to TasPorts and the licence granted by the Supplier pursuant to clause 7.4 does not infringe the Intellectual Property Rights (including moral rights) of any person;
- (b) it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property Rights as required under this clause 7; and
- (c) all Contract Material is suitable, appropriate, adequate, free from errors and otherwise fit for the purposes specified in this Agreement and complies with the requirements of this Agreement and all Laws.

7.6 This clause 7 survives any termination or expiry of this Agreement.

## 8 INSURANCE

8.1 The Supplier must have and maintain (in the case of professional indemnity insurance for at least six years after the expiry or termination of this Agreement) with a reputable insurer the following insurance policies:

- (a) public liability insurance policy with cover for any one event in the sum of at least \$10 million dollars (or such higher amount as TasPorts may reasonably request prior to commencement of the Services);
- (b) professional indemnity insurance policy for at least \$5 million per claim;
- (c) a workers' compensation insurance policy as required under any Laws;
- (d) motor vehicle insurance for all vehicles used in the provision of the Services with at least \$20 million third party property and injury cover;

- (e) contract works insurance for the value of any works required to be performed as part of the Services, where required by TasPorts in the Purchase Order or Specification,

- (f) and must provide copies of their certificates of currency for such insurance policies to TasPorts upon acceptance of the Purchase Order, on renewal of those policies and otherwise on TasPorts' 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 Services. 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.

## 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 agrees to 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 completion of the Services, 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 Services;
- (d) include particulars of the date and time of delivery of the Services; and
- (e) be emailed to: [accountspayable@tasports.com.au](mailto:accountspayable@tasports.com.au).

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

- (a) evidence or an admission that the Services have been supplied in accordance with the Specification;
- (b) evidence of the value of the Services supplied;
- (c) an admission that the Services were satisfactorily supplied;

- (d) an admission of liability; or
- (e) acceptance or approval of the Supplier's performance,

11.2 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 Services.

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 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 performance or non-performance of the Services; and
- (e) any infringement of any Intellectual Property Rights by the Supplier or any of the Supplier's Personnel in the course of providing the Services,
- (f) 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 Services 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 Services or the varied Services 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 the Services at any time by notice in writing to the Supplier where:

- (a) TasPorts reasonably considers that the supply of the Services 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,

(d) 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 the Services 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 Services 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,
- (d) 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 Services, 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 does 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 services 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 Services, 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 Services, 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.

**'Contract Material'** means the material referred to in clause 7.1.

**'Documents'** mean all material stored by any means and which is relevant to the provision of the Services by the Supplier.

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

**'Existing Material'** means the material referred to in clause 7.2.

**'Force Majeure'** means one or more of the following circumstances provided that the circumstances are outside a party's control: 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.

**'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.

**'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-Performed Services'** means Services that do not comply with this Agreement (including the Specification or the Warranties) in the reasonable opinion of TasPorts.

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

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

**'Privacy Legislation'** means the *Privacy Act 1988* (Cth), 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 Services to be supplied and which may be attached or linked to these Conditions.

**'Services'** means the Services described in a Purchase Order and/or Specification, including the supply of materials, the conduct and completion of works that may be required to be performed in connection with the Services, and anything which is incidental to or which can be reasonably inferred from this Agreement even though not expressly stated.

**'Site'** means any site owned or occupied by TasPorts where some or all of the Services are to be performed, which may be set out in the Purchase Order (or such other site as advised by TasPorts to the Supplier within a reasonable timeframe prior to performance of the Services).

**'Specification'** means the specification for the Services 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 provide the Services 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.