



TasPorts

## Terms and Conditions

### Purchase Order

### Goods

Tasmanian Ports Corporation Pty Ltd – ABN 82 114 161 938  
( TasPorts)

#### 1 DEFINITIONS

In these conditions –

**‘Agreement’** means the agreement between TasPorts and the Supplier for the supply of Goods, comprising the relevant Purchase Order, these Conditions and any other documents referred to in the Purchase Order.

**‘Conditions’** means these purchase conditions.

**‘Defects Liability Period’** means:

(a) 12 months from the date of delivery of the Goods;  
or

(b) such longer period specified by the Supplier.

**‘Force majeure’** means circumstances including but not limited to the following which are deemed to be outside a party’s control, such as perils of the sea, strikes, lockouts, acts of God, war or warlike measures whether threatened, declared or anticipated, or the outbreak of hostilities between nations or countries, trade sanctions or Government directives, failure by TasPorts to acquire any necessary licenses, explosions, embargoes, fire, flood, drought, riot, sabotage or accident.

**‘Goods’** means the Goods described in a Purchase Order.

**‘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.

**‘Law’** means any act, regulation, statute, by-law, ordinance, order or proclamation whether Federal, State or local.

**‘Price’** means the price for the Goods payable by TasPorts and stated in the Purchase Order.

**‘Purchase Order’** means a document described as such, provided by TasPorts to the Supplier, requesting the supply of Goods to TasPorts.

**‘Quotation’** means a quotation provided by the Supplier to TasPorts for the supply of Goods.

**‘Site’** means any TasPorts place of business referred to in the Purchase Order as the place for the delivery of the Goods (or such other place as advised by TasPorts to the Supplier).

**‘Specification’** means the specification for the Goods contained in the relevant Purchase Order together with any measurements, performance data, plans, drawings or other information either referred to in the Purchase Order or contained in the relevant Quotation or any catalogues, brochures or descriptive literature produced by the Supplier.

**‘Supplier’** means the party who will supply the Goods to TasPorts named as supplier in a Purchase Order and/or their agents or subcontractors.

**‘Warranties’** means the Supplier’s warranties TasPorts out in clause 8.

#### 2 FORMATION OF AGREEMENT

2.1 The delivery of a Purchase Order by TasPorts to the Supplier constitutes an offer by TasPorts to acquire the Goods described in that Purchase Order from the Supplier on the terms contained in that Purchase Order and these Conditions.

2.2 An agreement for the purchase of Goods is formed between TasPorts and the Supplier when the Supplier: -

(a) Confirms acceptance of the Purchase Order or informs TasPorts either in writing or verbally that the Goods will be supplied, or otherwise communicates with TasPorts in any way which confirms or implies acceptance; or

(b) Delivers the Goods to TasPorts to the required Specification.

2.3 No other conditions notified by the Supplier to TasPorts either verbally or in writing or in any other way prior to or subsequent to the delivery of a Purchase Order or otherwise adopted or used by the Supplier will have any application to or form part of this Agreement unless and until specifically accepted in writing by an authorised officer of TasPorts.

### 3 SPECIFICATION OF GOODS

The Supplier must ensure that the Goods delivered to TasPorts: -

- (a) Strictly comply with the Specification and the Warranties; and
- (b) Are in accordance with any and all relevant laws in force at the date of delivery of the Goods.

### 4 PRICE

- 4.1 If a Purchase Order is issued that does not contain a price, the Price is to be negotiated and accepted by both parties prior to the supply of the Goods. Once the price is agreed the Purchase Order will then be reissued at the agreed price.
- 4.2 The Price is fixed and not subject to rise and fall or any other adjustment unless the Purchase Order signals that the Price is an "estimate only" or that the Price is to be negotiated and accepted by both parties prior to the supply of the Goods.
- 4.3 The Price is the maximum amount payable by TasPorts to the Supplier for the Goods and includes:
  - (a) All necessary packaging and delivery costs;
  - (b) All duty, excise, sales or other taxes (excluding GST or income tax), and;
  - (c) All unloading and installation costs (where stipulated in the Purchase Order).

### 5 DELIVERY OF GOODS

- 5.1 All Suppliers must comply with TasPorts' health, safety and environment standards and policies while supplying the Goods.
- 5.2 The Supplier will deliver the Goods to the Site by the date stipulated on that Purchase Order (or by such other date agreed by TasPorts). All deliveries will be made within TasPorts' normal working hours as notified by TasPorts to the Supplier.
- 5.3 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.
- 5.4 The Supplier will notify TasPorts of its unloading requirements within a reasonable time prior to delivery.
- 5.5 The Supplier will provide to TasPorts, with each delivery, 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.
- 5.6 Failure by the Supplier to deliver the Goods by the date and time stipulated on the relevant Purchase Order or in accordance with the requirements of this clause will be a fundamental breach of this Agreement entitling TasPorts to reject the Goods and terminate this Agreement.
- 5.7 If packing is to be returnable, the Supplier must so stipulate on the relevant Quotation and advise the amount of any deposit charges. All returnable packing will be clearly marked as such, bear a return address and be returned freight forward at TasPorts'

convenience by a transporter selected by TasPorts unless otherwise agreed.

- 5.8 TasPorts may inspect and test the Goods at any time after delivery. Where TasPorts considers (acting reasonably) that the Goods are defective or do not comply with the Specification or the Warranties, they may be rejected and the Supplier notified of their rejection and the reason for their rejection. If required by TasPorts the Supplier will replace the rejected Goods with Goods that comply with this Agreement. All rejected Goods are held by TasPorts at the Supplier's risk.

### 6 PROPERTY, RISK IN GOODS AND INSURANCE.

- 6.1 All Purchase Orders will contain nominated delivery terms.
- 6.2 Risk and title in the Goods will pass to TasPorts upon delivery in accordance with the Purchase Order.
- 6.3 If the Goods are lost or damaged whilst at the Supplier's risk, the Supplier will with all due diligence either replace the Goods or arrange repairs, whichever is acceptable to TasPorts, at their own cost.
- 6.4 The Supplier must have and maintain with a reputable insurer product liability insurance, transit insurance in respect of the Goods, workers' compensation insurance as required under any laws and, where applicable, an employer liability insurance policy.

### 7 TERMS OF PAYMENT

- 7.1 Subject to the Supplier:
  - (a) complying with its obligations under this Agreement;
  - (b) providing a valid invoice to TasPorts in accordance with clause 7.2; and
  - (c) providing all documentation and other material required by this Agreement or any law to be provided,
 TasPorts agrees to pay the Price in accordance with this clause 7.
- 7.2 The Supplier will issue TasPorts with a tax invoice for the Price, 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; include particulars of the date and time of delivery of the Goods; and
  - (d) include a signature of an authorised representative of TasPorts acknowledging delivery of the Goods.
- 7.3 Subject to clause 8.1, TasPorts will pay the Price to the Supplier no later than thirty (30) days after the end of month in which the tax invoice is received by TasPorts unless otherwise agreed or stipulated in the relevant Purchase Order.

### 8 WARRANTIES

The Supplier warrants to TasPorts in relation to the Goods as follows: -

- (a) The Goods are suitable for the needs of TasPorts as disclosed to the Supplier prior to the delivery of the Quotation;
- (b) The Goods incorporate only proven and reliable technology which complies with all laws and any relevant Australian Standards;
- (c) The Supplier has good title to and the right to use free of interference or claim all of the intellectual property comprised in the Goods and their use and TasPorts will be entitled and licensed to use such intellectual property and all such technologies in its own right in respect of the Goods free of claim or payment;
- (d) The Supplier will carry out the manufacture (or procurement) and (where required) the design, installation 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) Any supplies and materials incorporated in the Goods will comprise the best available material suitable for the intended use of the Goods ;
- (f) The Goods are of acceptable quality and are free from defects in design, materials and workmanship;
- (g) The Goods are fit for the purpose communicated by TasPorts to the Supplier prior to the date of the Purchase Order or, if no such purpose is communicated, for the purpose for which Goods of that type are usually acquired and otherwise correspond to the description given in the relevant Quotation and the Specification, and;
- (h) 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.

## **9 DEFECTS LIABILITY PERIOD**

- 9.1 TasPorts will promptly notify the Supplier of any defects in the design, materials or workmanship of the Goods (**Defects**) occurring or arising during the Defects Liability Period.
- 9.2 The Supplier must rectify any Defect (at no extra cost to TasPorts) to TasPorts' reasonable satisfaction within a reasonable period of time required and specified by TasPorts in its notice to the Supplier.
- 9.3 The Supplier agrees to carry out any rectification required under clause 9.2 in a manner causing as little inconvenience to TasPorts as reasonably possible and in accordance with TasPorts' reasonable directions.
- 9.4 If any Defect outlined in, and notified by TasPorts to the Supplier under clause 9.2 is not remedied in accordance with clause 9.3 or otherwise to TasPorts' reasonable satisfaction, TasPorts may have the Defect remedied by a third party, without prejudice to any rights TasPorts may have against the Supplier under this Agreement or at law, and the Supplier indemnifies TasPorts against all reasonable costs and expenses

incurred by TasPorts in exercising its rights under this clause 9.4.

- 9.5 This clause 9 survives the termination (for any reason) or expiry of this Agreement.

## **10 INDEMNITIES**

- 10.1 The Supplier must indemnify and at all times keep indemnified TasPorts for, from and against all liabilities, proceedings, penalties whether civil or criminal; (except where to recover the same is unlawful or renders any part of this clause void for public policy reasons), fines or other sanctions, judgements, damages, losses, claims, costs and expenses whatsoever and howsoever arising from or connected with:

- (a) the supply, design, installation or commissioning of the Goods;
- (b) any breach of this Agreement by the Supplier or any of the supplier's personnel (including, without limitation, any breach of the Warranties or any law; including also any reasonable legal costs and the reasonable costs of other advisers);
- (c) any act or omission, negligence or default of the Supplier or any of its personnel; and
- (d) any infringement of any third party intellectual property rights by the Supplier or any of its personnel in the course of supplying the Goods, except to the extent caused by the negligence or default of TasPorts.

- 10.2 The indemnities and assumptions of liability contained in this clause and elsewhere in this Agreement will continue in full force and effect notwithstanding termination of this Agreement whether by effluxion of time or otherwise.

## **11 VARIATIONS**

- 11.1 The Supplier must not vary the Goods or any part of the Goods without the written consent of TasPorts.
- 11.2 TasPorts may at any time direct the Supplier to vary the number, type or composition of the Goods or supply different Goods and to the extent that the Supplier can reasonably comply with that direction, it will do so.
- 11.3 The Price and other terms of the variation will be agreed between the parties.
- 11.4 Unless otherwise directed by TasPorts, after receiving a variation direction under clause 11.2, the Supplier will not deliver the Goods or the varied Goods to TasPorts until the terms of the variation have been agreed.

## **12 CANCELLATION AND SUSPENSION**

- 12.1 TasPorts may cancel or suspend delivery of the Goods at any time by notice in writing to the Supplier.
- 12.2 Where TasPorts cancels or suspends delivery of the Goods otherwise than the result of the breach of the Supplier or any of its personnel 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 and substantiated to the reasonable satisfaction of TasPorts. TasPorts will not

liable to compensate the Supplier for any indirect loss (including loss of profit) resulting from any such cancellation or suspension.

### **13 FORCE MAJEURE**

13.1 Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under this Agreement 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 that obligation is suspended so far as it is affected by Force Majeure during the continuance thereof.

13.2 Any costs, losses or savings due to Force Majeure including any costs, losses or savings caused by any frustration of this Agreement due to Force Majeure will be borne, incurred or retained as the case may be by the party incurring or receiving the same.

13.3 Where the event of Force Majeure continues for a period exceeding thirty (30) days, TasPorts may, in its sole discretion, terminate this Agreement without any liability to the Supplier.

### **14 TERMINATION**

14.1 TasPorts may terminate this Agreement and withhold any amounts due under this Agreement if: -

- (a) Subject to compliance with Chapter 5 of the *Corporations Act 2001 (Cth)*, the Supplier becomes insolvent or unable to meet its debts as and when they fall due or is adjudicated a bankrupt, or has a receiver, receiver and manager or similar official appointed over any of its as TasPorts, or makes an assignment for benefit of creditors, or files a petition for an arrangement, composition or compromise with its creditors under any applicable laws, or becomes externally administered, or has a trustee or other officer appointed to take charge of its as TasPorts; or
- (b) The Supplier has committed a fundamental breach of this Agreement or fails to substantially perform any of its obligations under it.

14.2 If this Agreement is terminated under clause 14.1 the Supplier will be liable for and indemnifies TasPorts against: -

- (a) Any costs or expenses incurred by TasPorts in engaging others to provide the same or similar Goods to the extent that such costs or expenses exceed the Price; and
- (b) Any other losses suffered by TasPorts as a result of the termination.

14.3 The procedure provided in this clause 14 for termination is concurrent with and in addition to and without prejudice to, and not in lieu of or in substitution for, any other rights or remedies at law or in equity which TasPorts may have for the enforcement of its rights under this Agreement and its remedies for

any default by the Supplier of the covenants, obligations or conditions of this Agreement.

### **15 QUALITY ASSURANCE**

The Supplier must: -

- (a) Comply with any of TasPorts' quality assurance requirements notified to the Supplier in the Purchase Order; and
- (b) Be quality assured and maintain its quality assurance certification for the duration of the Agreement.

### **16 EXCLUSION OF SUPPLIER TERMS**

16.1 Subject to clause 19.11, 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 with the effect that these Conditions and the terms of the Purchase Order exclusively apply and constitute the entire agreement between the parties.

### **17 ASSIGNMENT AND SUB-CONTRACTING**

17.1 The Supplier must not sub-contract the whole or any part of the supply of the Goods without the prior written consent of TasPorts. 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.

17.2 The Supplier cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of TasPorts.

### **18 RELATIONSHIP**

18.1 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.

### **19 GENERAL**

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

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

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

19.4 This Agreement supersedes any and all prior (written or oral) agreements, arrangements, negotiations, discussions or understandings between the parties.

19.5 No oral explanation or information provided by any party to another party is to: -

- (a) Affect the meaning or interpretation of this Agreement; or
  - (b) Constitute any collateral agreement, warranty or understanding between any of the parties.
- 19.6 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 therein.
- 19.7 Time is of the essence of this Agreement.
- 19.8 This Agreement constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiation in connection with it.
- 19.9 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.
- 19.10 Any waiver by TasPorts of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of TasPorts to avail itself of its rights subsequently.
- 19.11 If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or that 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.
- 19.12 If the parties enter into any other agreement for the supply of the Goods, then the terms of the other agreement will apply over this Agreement to the extent of any inconsistency.
- 19.13 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 that results in the severance of any conflicting provision.
- 19.14 This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 19.15 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.
- 19.16 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.

## **20 GST**

- 20.1 Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are GST exclusive.
- 20.2 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.

20.3 A party's right to payment under clause 20.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

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