



Terms and Conditions

Purchase Order Service

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 Services and comprises the relevant Purchase Order, these Conditions and any other documents referred to in the Purchase Order.

Conditions means these purchase conditions.

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.

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 Services 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 Services to TasPorts.

Quotation means a quotation provided by the Supplier to TasPorts for the supply of the Services.

Service means the Services described in a Purchase Order.

Site means TasPorts place of business referred to in the Purchase Order as the place for the delivery of the Services or the provision of Services (or such other place as advised by TasPorts to the Supplier).

Specification means the specification for the Services 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 provide the Services to TasPorts named as supplier in a Purchase Order and/or their employees, agents or subcontractors.

Warranties means the Supplier's warranties TasPorts out in clause 9.

2 HEALTH SAFETY AND ENVIRONMENT

When performing the Services at a Site: -

2.1 The Supplier must, at its own cost, comply with the TasPorts Health Safety and Environment (HSE) standards in force at the relevant time. Without limiting the generality of its other obligations under this Agreement the Supplier must: -

- (a) Familiarise itself and comply with the TasPorts site induction material provided, including the TasPorts code of conduct;
- (b) Have participated in any induction requirements of TasPorts' before commencing the Services at the Site and carry current induction card at all times;
- (c) Wear the personal protective equipment (PPE) required within the designated work areas for certain tasks;
- (d) Keep themselves informed as to the requirements of, comply with and not do anything which may place TasPorts in breach of applicable workplace health and safety laws and legal requirements.

2.2 The Supplier must, before commencing the Services: -

- (a) Provide the site manager with its health and safety policy;
- (b) Undertake, if requested, and submit to TasPorts a risk assessment and subsequent action plan, which must be approved by the relevant TasPorts manager before commencement of the Services;
- (c) Investigate and satisfy itself of the location and characteristics of any site conditions that may be a hazard to the health and safety of any person;
- (d) Be familiar with and comply fully with TasPorts electrical equipment isolations and permit to work requirements.

2.3 The Supplier must comply with; -

- (a) All relevant work health and safety legislation including regulations, compliance standards, by-laws and other legislative requirements (**WHS Laws**);
- (b) The requirements of any inspector appointed under the WHS Laws; and
- (c) Any improvement notice or prohibition notice issued under the WHS Laws.

2.4 The Supplier must: -

- (a) Ensure all operators of prescribed occupations are appropriately qualified and licensed and provide to TasPorts all information and evidence required by TasPorts (e.g. photocopies of tickets) to enable TasPorts to comply with and satisfy itself as to compliance with all laws and legal requirements and
- (b) Ensure that all electrical and lifting equipment, cranes, mobile equipment, ladders and tools used in connection with the provision of the Services have been tested and marked in accordance with applicable laws and legal requirements.

2.5 The Supplier must, in carrying out the Services and at all times whilst on the Site: -

- (a) Not cause harm, damage or nuisance to the environment and do all things necessary to prevent harm, damage or nuisance to the environment;
- (b) Comply with and not do anything that may place the Supplier or TasPorts in breach of any applicable legislation for the protection of the environment;
- (c) Comply with any environmental permits, consents, licenses or approvals held by the Supplier and/or TasPorts and not do anything that may place the Supplier and/or TasPorts in breach of any of those things;
- (d) Comply with all environmental policies or rules adopted from time to time by TasPorts in connection with the Site; and
- (e) Comply with the applicable standards of the Standards Association of Australia or the

International Standards Organisation, the requirements of any applicable industry code of practice and best industry practice for the protection of the environment.

3 FORMATION OF AGREEMENT

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

3.2 An agreement for the purchase of Services 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 Services will be supplied, or otherwise communicates with TasPorts in any way which confirms or implies acceptance or;
- (b) Delivers the Services to TasPorts to the required Specification.

3.3 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 will have any application to or form part of this Agreement unless and until expressly accepted in writing by an authorised officer of TasPorts.

4 SPECIFICATION OF SERVICES

The Supplier will ensure that the Services supplied 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 or provision of the Services.

5 PRICE

5.1 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 Services. Once the price is agreed the Purchase Order will then be reissued at the agreed price.

5.2 The Price is fixed and not subject to rise and fall or any other adjustment unless the Purchase Order signals that the Price is "estimate only", or that the Price is to be negotiated and accepted by both parties prior to the supply of the Services.

5.3 The Price is the maximum amount payable by TasPorts to the Supplier for the Services 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).

6 PROVISION AND COMPLETION OF SERVICE

- 6.1 The Supplier must comply with TasPorts' safety, health and environment standards and policies while performing the Services.
- 6.2 The Supplier will deliver and provide the Services at the Site by the date stipulated on that Purchase Order (or by such other date agreed by TasPorts). All Services will be provided within TasPorts' normal working hours as notified by TasPorts to the Supplier.
- 6.3 The Supplier must provide on completion of the Services full documentation identifying the relevant Purchase Order and a description of the Services provided for approval and signature of an authorised TasPorts employee.
- 6.4 Failure by the Supplier to complete the Services by the date and time stipulated on the relevant Purchase Order or in accordance with the requirements of this clause 6 will be a fundamental breach of this Agreement entitling TasPorts to reject the Services and terminate this Agreement.
- 6.5 TasPorts may inspect and test the Services at any time after completion. Where TasPorts considers (acting reasonably) that the Services 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 re-perform the Services to comply with this Agreement. All payments for rejected Services will be held by TasPorts at the Supplier's risk.

7 INSURANCE, RISK, INTELLECTUAL PROPERTY

- 7.1 Upon commencement of the Services at the Site the Supplier must comply with TasPorts' site policies and procedures.
- 7.2 All intellectual property (including copyright) 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 acts and execute all documents (and require any of its personnel to do all acts and execute all documentation) required to vest title in the Contract Material in TasPorts.
- 7.3 If requested to do so by TasPorts, the Supplier will respond to a survey seeking details of response time, quality of Services including re-performance, quality of people, adherence to site policies and housekeeping.
- 7.4 The Supplier must have and maintain with a reputable insurer: -
- (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);

- (b) A workers' compensation insurance policy as required under any laws and, where applicable, an employer liability insurance policy; and
- (c) Motor vehicle insurance for all vehicles used in the provision of the Services with at least \$20 million third party property and injury cover.

8 TERMS OF PAYMENT

- 8.1 Subject to the Supplier:
- (a) complying with its obligations under this Agreement; and
- (b) providing a valid invoice to TasPorts in accordance with clause 8.2; 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 8.
- 8.2 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 TasPorts 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) include a signature of an authorised representative of TasPorts acknowledging satisfactory completion of the Services.
- 8.3 Subject to clause 8.1, TasPorts will pay the Price to the Supplier no later than thirty (30) days after the end of the month in which the tax invoice is received by TasPorts unless otherwise agreed or stipulated in the relevant Purchase Order.

9 WARRANTIES

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

- (a) The Services are suitable for the needs of TasPorts as disclosed to the Supplier prior to the delivery of the Quotation;
- (b) The Services 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 Services and TasPorts will be entitled and licensed to use such intellectual property and all such technologies in its own right in respect of the Services free of claim or payment;
- (d) 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;

- (e) Any supplies and materials incorporated in the Services will comprise the best available material suitable for purpose and will be of good and acceptable quality free from defects;
- (f) The Services are of acceptable quality and are free from defects in design, materials and workmanship;
- (g) The Services 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 services of that type are usually acquired and otherwise correspond to the description given in the relevant Quotation and the Specification.

10 INDEMNITIES

10.1 The Supplier shall be solely responsible for and indemnify TasPorts against the payment of all taxes, levies and charges imposed on the Supplier in relation to the Services or in respect of personnel used by the Supplier to perform the Services.

10.2 To the maximum extent permissible by law, the Supplier must indemnify and at all times keep indemnified TasPorts and its employees, contractors and agents at all times 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) the performance of the Services by the Supplier or any of its personnel;
- (b) a breach by the Supplier or any of its personnel of any obligations under this Agreement (including any Warranties); and/or
- (c) any infringement of any intellectual property rights by the Supplier or any of its personnel in the course of providing the Services;
- (d) act or omission of the Supplier or any of its personnel,

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

10.3 The Supplier must, at its own cost and at the request of TasPorts, defend TasPorts in any proceedings in connection with this clause.

11 VARIATIONS

11.1 The Supplier must not vary the Services or any part of the Services 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 Services or provide different Services 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 Services or the varied Services to TasPorts until the terms of the variation have been agreed.

12 CANCELLATION AND SUSPENSION

12.1 TasPorts may cancel or suspend the Services at any time by notice in writing to the Supplier.

12.2 Where TasPorts cancels or suspends the Services 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 Services and substantiated to the reasonable satisfaction of TasPorts. TasPorts will not be 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 the 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 the 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 made 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 Services to the extent that such costs and 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 this Agreement.

16 EXCLUSION OF SUPPLIER TERMS

16.1 Subject to clause 19.11, the Supplier's standard or usual terms and conditions of supply 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 Services without 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 shall 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 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.

19.9 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.

19.10 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.

19.11 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.

19.12 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 that results in the severance of any conflicting provision.

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

19.14 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.

19.15 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.

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.