
Terms and Conditions of Purchase

PARTIES

These Terms and Conditions of Purchase are made between the parties:

Newcastle Port Corporation trading as the Port Authority of New South Wales (ABN 50 825 884 846) (**Port Authority**); and

The person, body corporate or entity that sells the Goods or provides the Work or Services to Port Authority (**Supplier**)

BACKGROUND

Supplier has agreed to supply the Goods and/or Work or Services to Port Authority on the terms and conditions set out in the Agreement.

TERMS AND CONDITIONS

1 DEFINITIONS

In the Agreement, unless the context otherwise requires:

Acceptance means acceptance by Port Authority of any Good or Work or Service in accordance with clauses 7(a) and 7(b). **Accept** or **Accepted** has a corresponding meaning.

Agreement means an agreement between Port Authority and Supplier for the supply of Goods and/or Work or Services formed under and constituted by the documents referred to in clause 2(a).

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Conditions means these Terms and Conditions of Purchase, as reasonably updated by Port Authority from time to time.

Confidential Information means information which is by its nature confidential, that a party has designated as confidential, or is capable of protection at common law or equity as confidential information, but does not include information that is or becomes public knowledge other than through a breach of the Agreement, or that a party receiving the information independently knows or develops.

Contract Price means the amounts for Goods and/or Work or Services as set out in the Order, excluding any GST component payable, as adjusted under these Conditions.

Deliver means deliver, and unload, the Goods, or perform the Work or Services, at the Delivery Place in accordance with clauses 3 and 6. **Delivery**, **Delivering** and **Delivered** have a corresponding meaning.

Delivery Date means, in relation to a Good or Service, the date specified in the Order on which the Good or Work or Service is to be Delivered, as adjusted under the Agreement or as otherwise agreed in writing by the parties.

Delivery Place in relation to a Good or Service, means the location(s) for Delivery stated in the Order for that Good or Service, or as otherwise agreed in writing by the parties.

Good means a good described in the Order and **Goods** means all of them, as varied under these Conditions or by the parties in writing.

GST means the tax payable on taxable supplies under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IPR means any and all intellectual or industrial property rights throughout the world in relation to (without limitation) inventions, ideas, patents, applications for patents, copyright (including an author's moral rights under the *Copyright Act 1968* (Cth)), registered and unregistered designs, registered and unregistered trademarks, rights in relation to circuit layouts and circuit layout designs, rights in relation to technologies in development, trade secrets, know-how and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organization of July 1967, whether registered or unregistered and whether or not now existing and in all cases for the duration of those rights; and any licence, consent, application or right to use or grant the use of any the foregoing rights, including all renewals and extensions.

Network means Port Authority's ICT (information and communications technology) systems, devices and environments, including software, hardware and other infrastructure.

Port Authority Equipment means any item stated in the Order to be made available by or on behalf of Port Authority to Supplier for the purpose of Supplier performing Work or Services in accordance with the Agreement. For example, Port Authority Equipment may be provided to Supplier so that Supplier can perform Work or Services in the nature of repairs and maintenance to the Port Authority Equipment.

Order means any purchase order or other written instruction by Port Authority for the procurement of Goods or Work or Services from Supplier.

WHS Law means the *Work Health and Safety Act 2011* (NSW), including regulations and other instruments under the Act, any Codes of Practice and consolidations, amendments, re-enactments or replacements of the Act, and any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (NSW).

Work or Service means the work or service described in the Order and **Work or Services** means all of them, as varied under these Conditions or by the parties in writing.

2 APPLICATION OF CONDITIONS AND FORMATION OF AGREEMENT

- (a) Subject to clause 2(b), where Port Authority issues an Order for the purchase of Goods and/or Work or Services from Supplier and Supplier commences to provide the Goods and/or Work or Services to Port Authority, an agreement (**Agreement**) is formed in respect of those Goods and/or Work or Services comprising:
 - (i) the Order;
 - (ii) these Conditions; and
 - (iii) any agreed variations recorded by the parties in writing.
- (b) These Conditions shall only apply to Orders for the purchase of Goods and/or Work or Services by Port Authority from Supplier where there is no separately executed contract which applies between Supplier and Port Authority in respect of the Goods and/or Work or Services (**Separate Contract**). Where a Separate Contract applies, that Separate Contract prevails over these Conditions and no Agreement (as defined in these Conditions) will be created by these Conditions.
- (c) These Conditions shall apply to the exclusion of any terms and conditions which Supplier may purport to apply to, or which are endorsed upon any correspondence or documents issued by Supplier to Port Authority in connection with, the Order or the Goods and/or Work or Services the subject thereof, irrespective of their date of communication to Port Authority. Supplier may not rely on any representations by Port Authority that are not included in the Agreement.

- (d) There may be additional terms and conditions specified by Port Authority in an Order for the purchase of Goods and/or Work or Services. In such circumstances, the terms of the Order will prevail if there is any inconsistency between the terms of the Order and these Conditions.
- (e) Supplier's provision of any Goods or Work or Services constitutes Supplier's acceptance, and its agreement to be bound by, these Conditions and the Agreement.

3 OBLIGATIONS

- (a) Supplier must:
 - (i) deliver the Goods or perform Work or Services using due care, skill and diligence;
 - (ii) ensure the Goods or Work or Services meet the specifications specified in the Order;
 - (iii) ensure the Goods or Work or Services are fit for the purposes for which goods, work or services of a similar nature to the Goods or Work or Services are commonly supplied and for any other purposes notified by Port Authority;
 - (iv) ensure that the Goods or Work or Services supplied, if software or data, do not contain any harmful code (such as viruses or other malicious code);
 - (v) in providing any Work or Services:
 - (A) ensure that it is suitably qualified and experienced in the performance of Work or Services similar to the Work or Services; and
 - (B) provide the Work or Services in accordance with any requirements specified in the Order;
 - (vi) do and perform all such other acts, matters and things as may be necessary or convenient to give effect to the intentions of the parties as expressed in the Agreement;
 - (vii) comply with Port Authority's reasonable directions, instructions, procedures and policies, whether such procedures and policies are specifically drawn to the attention of Supplier or as might reasonably be inferred from the circumstances, including the Supplier Code of Conduct available for download at the Port Authority website (as updated, amended or replaced from time to time);
 - (viii) maintain at Supplier's own expense all equipment and supplies necessary to enable Supplier to discharge Supplier's responsibilities under the Agreement;
 - (ix) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect the Delivery of the Goods or Work or Services, give written notice to Port Authority detailing the matter or circumstances and its anticipated effect on the Goods or Work or Services;

- (x) obtain all licenses, approvals and consents necessary to perform its obligations under the Agreement;
 - (xi) comply with all applicable laws and standards (including laws relating to the environment and, where the Goods are being delivered by road, all laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements (generally referred to as “Chain of Responsibility” laws or “Heavy Vehicle” laws));
 - (xii) not sell or otherwise part with possession, custody or control of, nor encumber with any registered or unregistered charge, lien, mortgage, security (including a security interest under the *Personal Property Securities Act 2009* (Cth)):
 - (A) the Goods upon title passing to Port Authority in accordance with the Agreement; or
 - (B) Port Authority Equipment at any time except in accordance with the prior written consent of Port Authority;
 - (xiii) carry out all tests necessary to ensure the Goods or Work or Services (as applicable) comply with the requirements of the Agreement;
 - (xiv) only use Port Authority Equipment:
 - (A) for the sole purpose of performing the Work or Services;
 - (B) in accordance with any directions of Port Authority; and
 - (C) in the manner in which and for the purpose that it was designed;
 - (xv) take all reasonable care of Port Authority Equipment in its possession, custody or control;
 - (xvi) keep all Port Authority Equipment in its possession, custody or control secure and in good order and condition;
 - (xvii) return any Port Authority Equipment in its possession, custody or control to Port Authority on the earliest of:
 - (A) Delivery of all Work or Services the subject of the Order;
 - (B) termination of the Agreement in accordance with its terms; and
 - (C) within 7 days of a request by Port Authority (or any later time agreed by Port Authority); and
 - (xviii) not alter any Goods, any Port Authority Equipment or Work or Services in any way, unless otherwise approved by Port Authority.
- (b) Subject to clause 16, if Supplier engages any person to perform any part of the Delivery of the Goods or Work or Services, Supplier:
- (i) must ensure such person is competent, experienced, appropriately accredited, qualified, licensed and trained; and
 - (ii) agrees it is vicariously liable for the acts and omissions of that person.

4 CONTRACT PRICE

- (a) The Contract Price is firm (unless a variation is directed in writing under clause 10 or the parties mutually agree in writing) and includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other costs and charges, including costs associated with the return of goods wrongly supplied or defective Goods and any customs or import duties, taxes and any other imposts associated with the Goods or Work or Services.
- (b) The price at which the Goods or Work or Services are provided by Supplier to Port Authority does not (unless otherwise stated or agreed in writing) include GST, which must be added to the Contract Price and paid by Port Authority.

5 PAYMENT

- (a) Port Authority will pay Supplier the Contract Price (or the relevant part thereof) for Goods and/or Work or Services the subject of the Order if:
 - (i) those Goods and/or Work or Services have been Delivered in accordance with any sequence stipulated in the Order;
 - (ii) Port Authority has Accepted those Goods and/or Work or Services; and
 - (iii) Supplier has submitted an invoice:
 - (A) in the form of a valid tax invoice in accordance with the GST Law;
 - (B) that includes sufficiently detailed information and documentary evidence to enable Port Authority to verify its accuracy; and
 - (C) which attaches any other information as may reasonably be requested or advised by Port Authority, including evidence of payment of any subcontractors and workers, workers compensation insurance premiums and payroll tax relating to such persons in a form which complies with the requirements of the *Payroll Tax Act 2007* (NSW), the *Workers Compensation Act 1987* (NSW) and the *Industrial Relations Act 1996* (NSW).
- (b) Within 10 Business Days of receipt of an invoice that complies with clause 5(a), Port Authority will assess the invoice and, if it disagrees with the amount stated, issue a written payment schedule to Supplier certifying the amount it deems payable and specifying the reasons for the difference.
- (c) Within 30 Business Days after receipt of an invoice, Port Authority will:

- (i) if a payment schedule has been issued by Port Authority in accordance with clause 5(b) in respect of the invoice, pay Supplier the amount certified as payable in the payment schedule; or
 - (ii) if no payment schedule has been issued by Port Authority in accordance with clause 5(b) in respect of the invoice, pay the amount stated in the invoice.
- (d) Port Authority is not required to pay any amount to Supplier under the Agreement unless Supplier has complied with clause 5(a).
- (e) Port Authority may reduce or set-off against the Contract Price or any other amount payable by Port Authority to Supplier from time to time, whether under the Agreement or otherwise, any charge, credit, rebate or other amount which should be reimbursed to or is otherwise payable to Port Authority by Supplier.
- (f) Notwithstanding this clause 5, Port Authority may elect to pay Supplier the Contract Price in accordance with the NSW Government Faster Payment Terms Policy, provided Supplier can demonstrate to Port Authority its eligibility to be paid for the Goods and/or Work or Services in accordance with that policy.
- (g) Any payment made by Port Authority under or in connection with the Agreement is not an:
- (i) approval by Port Authority of Supplier's performance of or compliance with the Agreement; nor
 - (ii) admission of liability.

6 DELIVERY AND PERFORMANCE

- (a) Supplier, at its expense, must Deliver each Good or Service(as applicable):
- (i) in accordance with the relevant Delivery Date (time is of the essence);
 - (ii) to or at the relevant Delivery Place(s), and in the relevant sequence (if applicable);
 - (iii) in the relevant quantity; and
 - (iv) between the hours (or otherwise between such other hours as may be reasonably determined by Port Authority and notified as such to Supplier),
- specified in the Order.
- (b) Supplier will promptly unload the Goods or perform the Work or Services at the Delivery Place(s) in accordance with any reasonable directions given by Port Authority.
- (c) If Supplier is a foreign registered entity, then Delivery of the Goods must be in accordance with DDP (Delivered Duty Paid) (Sydney, Australia) (INCOTERMS 2010).
- (d) Supplier acknowledges and agrees that an Order may require Goods or Work or Services to be Delivered:
- (i) at or to multiple Delivery Places; and

- (ii) in a specified sequence.

7 ACCEPTANCE OR REJECTION OF GOODS OR WORK OR SERVICES

- (a) Within 14 days after Delivery of a Good or Service, Port Authority will either:
- (i) Accept the Good or Service; or
 - (ii) provide a written notice to Supplier stating that the Good or Work or Service is rejected and specifying the reasons for any rejection.
- (b) If Port Authority does not provide a notice of rejection of a Good or Work or Service pursuant to clause 7(a)(ii), the Good or Work or Service will be deemed to be Accepted by Port Authority upon the expiry of the period for giving a notice of rejection.
- (c) If Port Authority provides a notice of rejection of a Good or Work or Service pursuant to clause 7(a)(ii), the notice will state that Port Authority elects to either:
- (i) terminate the Agreement within 15 days unless Supplier remedies the failure, and the Goods or Work or Services are Accepted in accordance with the Agreement, within that time; or
 - (ii) Accept the Good or Work or Service and claim:
 - (A) damages against Supplier or set-off against the Contract Price, or any other amount payable to Supplier by Port Authority whether under the Agreement or otherwise, an amount reasonably determined by Port Authority to represent the reduction in the value of the Good or Service; and/or
 - (B) the reasonable costs of Port Authority having others (including third parties) rectify the defective Good or provide a replacement Service, which will be a debt due and immediately payable by Supplier to Port Authority upon demand.
- (d) If Supplier receives a notice of rejection under clause 7(c)(i), Supplier must, within 15 days, remedy the failure and rectify or replace the relevant Good or Work or Service at no cost to Port Authority such that it fully complies with the Agreement.
- (e) If, in accordance with clause 7(d), Supplier fails to remedy the failure to the satisfaction of Port Authority within 15 days following receipt of a notice of rejection under clause 7(c)(i), Port Authority may, without limiting any other rights, immediately terminate the Agreement in accordance with clause 17.1 and/or have others (including third parties) rectify the defective Good or provide a replacement Work or Service at Supplier's cost as a debt due and immediately payable by Supplier to Port Authority on demand.
- (f) Signed delivery dockets are not evidence that a Good has been Accepted or rejected by Port Authority.
- (g) The rights and remedies of Port Authority pursuant to this clause 7 are in addition to any other rights and remedies of Port Authority at law.

- (h) Neither Acceptance of a Good or Service, nor any payment made under the Agreement, will be construed as:
 - (i) in any way limiting Supplier's responsibility to provide all Goods or Work or Services in accordance with the requirements of the Agreement;
 - (ii) an acknowledgement by Port Authority that Supplier has complied with its obligations under the Agreement; or
 - (iii) a waiver by Port Authority of any right under the Agreement or any cause of action arising out of any act or omission of Supplier.
- (i) Supplier is not entitled to payment for any Goods or Work or Services rejected in accordance with this clause 7 unless they have been Accepted in accordance with this clause 7. The price of any Goods or Work or Services not Accepted by Port Authority will be deducted from the Contract Price.

8 TITLE AND RISK IN THE GOODS

- (a) Port Authority retains ownership of and title in Port Authority Equipment at all times and nothing in the Agreement confers on Supplier any property right of any kind in any Port Authority Equipment.
- (b) Risk of any loss or damage to Port Authority Equipment will pass:
 - (i) from Port Authority to Supplier when Supplier takes possession, custody or control of the Port Authority Equipment; and
 - (ii) from Supplier back to Port Authority on the later of Delivery or Acceptance of the applicable Work or Services in accordance with the Agreement.
- (c) Risk of any loss or damage to a Good will pass from Supplier to Port Authority on the later of Delivery or Acceptance of the Good in accordance with the Agreement.
- (d) Subject to clause 8(e), ownership of, and unencumbered title in, the Goods or any part of them will vest in Port Authority upon the earlier of Acceptance of or payment for a Good.
- (e) Where payment for a Good occurs before Acceptance and the Good is subsequently rejected under clause 7, title in the rejected Good will re-vest in Supplier from the time of rejection until the Good is Accepted by Port Authority.

9 DELIVERY PLACE

- (a) Where required, Port Authority will provide Supplier access to the Delivery Place to enable Supplier to comply with its obligations under the Agreement.
- (b) In accessing a Delivery Place to which access has been granted under clause 9(a), Supplier must:
 - (i) act in accordance with the reasonable instructions and directions of Port Authority;

- (ii) attend any inductions relating to work health and safety as may be relevant to the Delivery Place; and

- (iii) at all times, minimise interference with the conduct of Port Authority's business and any of its other contractors at the Delivery Place.

- (c) Supplier is responsible for and assumes the risk of any cost, expense, loss, liability, damage or delay it suffers or incurs arising out of or connected with the physical conditions of any Delivery Place (and its surroundings) and any other premises where any Work or Services are to be performed.

- (d) Supplier must:

- (i) undertake its own identification and analysis of work health and safety risks associated with the Goods or Work or Services;

- (ii) ensure that the Goods or Work or Services conducted by or on its behalf comply with WHS Law;

- (iii) take all necessary measures to assess and eliminate or control risks arising from any hazards associated with the Goods or Work or Services;

- (iv) promptly provide to Port Authority, upon request, any information, documentation or evidence necessary to assist Port Authority to comply with its duties under WHS Law; and

- (v) co-operate fully with, and promptly notify Port Authority of any investigation by, any government agency, parliamentary inquiry, board of inquiry or coronial inquiry with respect to a 'notifiable incident' under section 35 of the *Work Health and Safety Act 2011* (NSW).

- (e) Supplier must:

- (i) provide to Port Authority (by assignment or otherwise) all manufacturer's warranties provided with respect to the Goods or Work or Services (if any); and

- (ii) not take any action that will void or impair any third party warranty unless authorised by Port Authority in writing.

10 VARIATIONS TO GOODS AND WORK OR SERVICES

Port Authority may by written notice to Supplier:

- (a) increase or decrease the quantity of or omit any of the Goods or Work or Services;

- (b) change the specification of any of the Goods or Work or Services; or

- (c) vary the requirements of the Goods or Work or Services,

and Supplier must comply with such direction unless it is unfeasible or unreasonable for Supplier to comply. If such direction causes Supplier to incur more or less cost than it would have otherwise incurred, Port Authority will, acting

reasonably, assess the difference and the Contract Price will be adjusted accordingly.

11 WARRANTIES

Supplier warrants that:

- (a) the Goods are new and unused (unless otherwise specified in the Order), free from deficiencies in design, manufacture and workmanship and that the Goods or Work or Services are fit for the purposes for which goods, work or services of a similar nature to the Goods or Work or Services are commonly supplied and for any other purposes notified by Port Authority;
- (b) the Goods or Work or Services are in accordance with all applicable laws and recognised industry standards and will comply with all the requirements of the Agreement;
- (c) the Goods are free of any registered or unregistered charge, lien, mortgage, security (including a security interest under the *Personal Property Securities Act 2009* (Cth) or other encumbrance at the time title to the Goods passes to Port Authority;
- (d) the Goods or Work or Services will be Delivered with proper diligence and care using best practices and professional skill;
- (e) in providing any Work or Services, it is suitably qualified and experienced;
- (f) it has obtained all licences, authorisations, approvals and consents required for entering into and giving effect to the Agreement; and
- (g) to the best of its knowledge, as at the time of executing the Agreement, it does not have a conflict of interest, and no conflict of interest is likely to arise in the performance of the Agreement.

12 INDEMNITY

- (a) Supplier bears the risk of and must indemnify and keep indemnified Port Authority and its employees, servants and agents (each an “**Indemnified Party**”) from and against any liability, loss, damage, cost or expense incurred or suffered by any Indemnified Party, including in respect of:

- (i) personal injury, illness or death;
- (ii) loss of or damage to any property; or
- (iii) infringement or alleged infringement of any person’s IPRs,

arising out of or in connection with:

- (iv) Supplier’s (or any of its employees’, agents’ or subcontractors’) unlawful, negligent, reckless or deliberate acts or omissions in providing the Goods or performing the Work or Services or the Agreement; or
- (v) Supplier’s breach of the Agreement,

except that this indemnity is reduced proportionally to the extent that a negligent act or omission of Port

Authority, or any of its employees, servants or agents, caused or contributed to the liability, loss, damage, cost or expense.

13 INSURANCE

- (a) Supplier must procure and maintain all insurances a prudent supplier providing goods, work or services similar to the Goods or Work or Services would procure and maintain, including:
 - (i) transit insurance for the full cost of the replacement value of the Goods and/or any Port Authority Equipment in the possession, custody or control of Supplier;
 - (ii) public and product liability insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with the supply of the Goods or Work or Services (including loss or damage to Port Authority Equipment) for the insured amount of not less than \$20,000,000 per occurrence;
 - (iii) all insurances required by legislation, including workers compensation insurance and, if motor vehicles are used in providing the Goods or Work or Services, compulsory third party (CTP) insurance;
 - (iv) if the Work or Services are in the nature of professional services, professional indemnity insurance for the insured amount of not less than \$5,000,000 in the aggregate and which is maintained for a period of 5 years following the completion or earlier termination of the Agreement; and
 - (v) if the performance of the Work or Services requires or involves the use of watercraft:
 - (A) marine hull and machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
 - (B) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.
- (b) The insurances required by this clause 12 must be on commercially acceptable terms and with an insurer that is the holder of a current licence issued by the Australian Prudential Regulation Authority and which has a financial rating of no less than A- from Standard & Poors (Australia) Pty Limited.
- (c) At the date of execution of the Agreement and any time at Port Authority’s request thereafter, Supplier must provide satisfactory evidence of the insurances procured and maintained in accordance with this clause 13. Such evidence may include certificates of currency (no more than 20 days old).
- (d) Notwithstanding any other provision of the Agreement, any obligation of Supplier under the Agreement to procure policies of insurance (including those policies

under clause 13(a) do not apply while Supplier is a member agency of the NSW Government's risk management self-insurance scheme known as the Treasury Managed Fund.

14 INTELLECTUAL PROPERTY

- (a) Supplier:
- (i) warrants that it has all IPRs necessary to provide the Goods to Port Authority and perform any Work or Services;
 - (ii) grants (or will procure for) Port Authority an irrevocable, non-exclusive, perpetual and royalty-free licence (including a right of sub-licence) to use all IPR necessary for Port Authority (and any of its successors) to have the full benefit of the Goods or Work or Services for any non-commercial purpose;
 - (iii) warrants that:
 - (A) the provision of the Goods and Port Authority's use of the Goods; and
 - (B) its performance of any Work or Services, will not infringe any person's IPR;
 - (iv) agrees that it has no right, title or interest (including any IPR) in, and must not use, any documentation, data, drawings, specifications or any other records or documentation provided to Supplier by Port Authority under or in connection with the Agreement (**Port Authority Documents**), otherwise than in accordance with clause 14(b);
 - (v) without limiting any other sub-clause of this clause 14 or clause 8(a), agrees that the provision of any Port Authority Equipment to Supplier under the Agreement does not create in favour of or confer on Supplier any right, title or interest in any IPR associated with the Port Authority Equipment; and
 - (vi) other than strictly in accordance with the Agreement, must not, whether directly or indirectly, modify, vary, improve, adapt, copy, create works derived from, analyse, remove components from, decompile, reverse engineer, or attempt to derive source code, techniques, algorithms or processes from, any Port Authority Equipment or part thereof, or permit or encourage any other person to do so.
- (b) Port Authority grants Supplier a non-transferable, royalty-free and non-exclusive licence to use the Port Authority Documents for the sole purpose of performing its obligations under the Agreement. The licence granted to Supplier by Port Authority in this clause 14(b) will terminate upon the earlier of completion of Supplier's obligations under the Agreement and termination of the Agreement for whatever reason.

- (c) In this clause 14, the words "use" or "using" includes reproducing, making adaptations of, modifying, or incorporating into other work.

15 CONFIDENTIALITY AND PRIVACY

- (a) Each party must ensure that Confidential Information provided by the other party is not disclosed, except to the extent the disclosure is:
- (i) authorised by the prior written approval of the other party;
 - (ii) required by law (including the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**)) or statutory or portfolio duties or required for public accountability reasons, including following a request by parliament or parliamentary committee;
 - (iii) necessary for the conduct of any legal proceedings arising in relation to the Agreement; or
 - (iv) necessary for a party to fulfil its obligations under the Agreement.
- (b) Clause 15(a) does not apply to a disclosure to a professional adviser, insurer, financier or auditor of a party to the extent necessary for the purposes of the Agreement.
- (c) Supplier must, at its expense and within the time requested by Port Authority, provide Port Authority with access to and copies of (if required by Port Authority) such information requested by Port Authority in Supplier's possession relating to the Agreement for the purposes of Port Authority's compliance with the GIPA Act, including information supplied by or on behalf of Port Authority to Supplier.
- (d) If in the performance of any Work or Services Supplier requires access to the Network or any sensitive Port Authority information or data, including Confidential Information, Port Authority may require Supplier to execute additional data security and confidentiality terms prior to granting Supplier such access, and Supplier agrees to execute any such additional terms.
- (e) To the extent Supplier acquires Personal information in connection with the Agreement, Supplier must at all times:
- (i) comply with all laws relating to privacy (including the *Privacy Act 1998* (Cth) and the *Privacy and Personal Information Act 1998* (NSW) as though those Acts applied to Supplier);
 - (ii) take all necessary measures to ensure such Personal Information is protected against any loss and unauthorised access, use, modification or disclosure; and
 - (iii) notify Port Authority if it has reasonable grounds to believe that there has been a breach of the *Privacy Act 1998* (Cth) or the *Privacy and*

Personal Information Act 1998 (NSW) in connection with the Agreement.

- (f) For the purposes of clause 15(e), the term “Personal Information” has the meaning given in the *Privacy and Personal Information Act 1998* (NSW).

16 SUBCONTRACTING, ASSIGNMENT & ADVERTISING

- (a) Supplier must not:
- (i) assign, novate or subcontract the Agreement or any part of the Delivery of any of the Goods or Work or Services; or
 - (ii) advertise or publish anything concerning the Agreement,
- without the prior written consent of Port Authority.
- (b) An approval given by Port Authority permitting Supplier to subcontract any portion of the Delivery of the Goods or Work or Services does not relieve Supplier from its obligations and liabilities pursuant to the Agreement, and Supplier will be liable for the acts and omissions of its subcontractors.

17 TERMINATION

17.1 TERMINATION FOR CAUSE

- (a) Port Authority may terminate the Agreement if:
- (i) Supplier:
 - (A) does not Deliver a Good or Work or Service by the relevant Delivery Date or to the relevant Delivery Place; or
 - (B) notifies Port Authority that it will be unable to Deliver a Good or Work or Service by the relevant Delivery Date or to the relevant Delivery Place;
 - (ii) Port Authority does not Accept a Good or Service for the reasons specified in clause 7(e);
 - (iii) Supplier experiences a material adverse change in its circumstances, its legal structure or its identity which in the opinion of Port Authority adversely impacts Supplier’s ability to perform its obligations under the Agreement;
 - (iv) Supplier has been wound up or becomes insolvent;
 - (v) Supplier breaches the Agreement and the breach is not capable of remedy; or
 - (vi) Supplier does not remedy a breach of the Agreement which is capable of remedy within the period specified by Port Authority in a notice of default issued by Port Authority to Supplier.
- (b) If the Agreement is terminated by Port Authority in accordance with this clause 17, Port Authority is liable only for payments due and payable under clause 4 for Goods or Work or Services

Accepted before the effective date of termination.

17.2 TERMINATION FOR CONVENIENCE

- (a) In addition to any other rights or remedies it has under the Agreement, Port Authority may at any time terminate the Agreement for convenience by notifying Supplier in writing. Supplier’s only remedy for such termination will be payment for any sums due and payable by Port Authority to Supplier for any Accepted Goods and Work or Services Delivered in accordance with the Agreement up until the date of termination. Supplier will not be entitled to payment of any other costs, expenses or damages in connection with the termination, including for any loss of profit or anticipated profit.
- (b) If Port Authority issues a notice under clause 17.2(a), Supplier must stop work in accordance with the notice, comply with any directions given by Port Authority and mitigate all loss, costs, and expenses in connection with the termination. Supplier will not be entitled to profit anticipated on any part of the Agreement as a result of the termination.

17.3 CONSEQUENCES OF TERMINATION

- (a) On termination or expiry of the Agreement, without limiting any other rights or remedies Port Authority may have, Supplier must:
- (i) immediately cease Delivering the Goods or Work or Services; and
 - (ii) within 7 days, at Port Authority’s election, return to Port Authority or destroy (or in the case of machine readable records, erase) all property, Port Authority Equipment, documents and other materials provided by Port Authority to Supplier, including any Confidential Information.
- (b) Without limiting clauses 17.1 and 17.2, termination of the Agreement for any reason will not affect any rights or remedies accrued by either party, whether under the Agreement or at law, prior to the date of termination.

18 MODERN SLAVERY

- (a) Supplier warrants that:
- (i) it will not supply any Goods or Work or Services it knows (or ought to know through the making of reasonable inquiries) are the product of; and
 - (ii) it does not use any labour practices involving, Modern Slavery.
- (b) If Supplier is a ‘reporting entity’ for the purposes of any state or federal Modern Slavery legislation, including the *Modern Slavery Act 2018* (Cth), it must provide Port Authority with a copy of any report it is required to prepare under that legislation at Port Authority’s request.

- (c) For the purposes of this clause 18, “**Modern Slavery**” has the meaning given in section 4 of the *Modern Slavery Act 2018* (Cth), and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.

19 NO EXCLUSIVITY

Entering into the Agreement with Port Authority does not:

- (a) give Supplier the right to be the sole deliverer or supplier of any goods or Work or Services to Port Authority;
- (b) oblige Port Authority to acquire any particular quantity of any goods from Supplier; or
- (c) prevent Port Authority from obtaining goods, work or services that are the same as, or similar to, the Goods or Work or Services from other suppliers.

20 GENERAL

- (a) The Agreement records the entire agreement between the parties and supersedes all previous negotiations, understandings, representations and arrangements, in relation to its subject matter.
- (b) Supplier must ensure its employees, servants and agents comply with Supplier’s obligations under the Agreement as if they are party to it.
- (c) Nothing in the Agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) makes a party an agent of another party for any purpose.
- (d) A right or remedy created by the Agreement cannot be waived except in writing signed by the party entitled to that right.
- (e) Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (f) If any part of the Agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Agreement shall not be affected and shall be read as if that part had been severed.
- (g) No provision of the Agreement or a right conferred by it can be varied except in writing signed by the parties.
- (h) The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which Part 4 of that Act would apply but for this clause 20(h).
- (i) The rights and remedies under the Agreement are in addition to, and do not limit, any other rights of Port Authority at law.
- (j) In the Agreement, a reference to:

- (i) legislation or a legislative provision includes any statutory modification, amendment or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision; and

- (ii) a document is to that document as varied, novated, ratified or replaced from time to time.

- (k) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of that provision in the Agreement.

- (l) The Agreement is governed by the laws of the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of such State and any courts competent to hear appeals from those courts.