

ROADS AND MARITIME SERVICES PURCHASE ORDER TERMS AND CONDITIONS

1 Structure of Agreement

- 1.1 These Terms and Conditions apply to all Purchase Orders for Goods and Services placed by RMS with the Supplier where there is no existing and valid written contract in place between RMS and the Supplier that would be applicable to the supply of those Goods and Services.
- 1.2 The acceptance of a Purchase Order or the supply of Goods or Services by the Supplier pursuant to a Purchase Order (whichever occurs first) constitutes acceptance of these Terms and Conditions by the Supplier.
- 1.3 These Terms and Conditions prevail over any terms in any quote, proposal or invoice from the Supplier or any terms included on other Supplier documentation.

2 Supply of Goods

In respect of a supply of Goods, the Supplier must:

- (a) deliver the Goods to RMS in accordance with the Agreement, all laws, RMS and NSW government policies, guidelines, codes of conduct and all relevant Australian and international standards, as applicable from time to time;
- (b) deliver the Goods to the delivery address and by the time for delivery, as stipulated in the Purchase Order, or as otherwise notified by RMS;
- (c) provide a Delivery Note with the supply of Goods;
- (d) package all Goods to ensure maximum protection against theft or damage during transit, delivery, loading and unloading;
- (e) clearly label all packages of Goods with the address for delivery, the name of the RMS officer who ordered the Goods and the PO Number;
- (f) provide, with each consignment or delivery of Goods, all other information (including test results, manuals, guides, instructions, procedures and drawings) necessary for the proper and safe handling, transport, storage, use, operation, maintenance, repair and disposal of the Goods;
- (g) Install the Goods (if required by the relevant Purchase Order) in a proper, timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced installer of goods that are similar to the Goods; and

- (h) deliver and Install (as applicable) the Goods only on Business Days, unless otherwise authorised by RMS in writing.

3 Supply of Services

In respect of a supply of Services, the Supplier must provide:

- (a) the Services to RMS in accordance with the Agreement, all laws, RMS and NSW government policies, guidelines, codes of conduct and all relevant Australian and international standards, as applicable from time to time;
- (b) the Services in a proper, timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced provider of services that are similar to the Services;
- (c) all equipment (including all consumables and installation materials) necessary for the performance of the Services and ensure that the Supplier (including its Personnel) holds any and all licences, permits and approvals necessary to operate such equipment; and
- (d) the Services at the time and place nominated in the Purchase Order, or if no time or place is nominated, at the time and place requested by RMS from time to time.

4 Title and Risk

4.1 Goods or Services supplied by the Supplier are only accepted by RMS when the following (as applicable) occurs:

- (a) the Supplier has provided the Goods or Services to RMS (or other nominated party) by the delivery date specified in the Purchase Order (if any); and
- (b) RMS has inspected the Services, the Goods or the Installed Goods and an authorised officer of RMS has communicated acceptance of the Services or the Goods in writing.

4.2 Title and risk to the Goods vests in RMS upon acceptance by RMS in accordance with clause 4.1.

5 Defective Goods or Services

5.1 Without limiting any other clause in the Agreement, and whether before or after acceptance of a Good or Service:

- (a) RMS may reject or return some or all of the Goods or Services if they are not in accordance with the Agreement (including if RMS considers Defective);
- (b) if requested by RMS, the Supplier must, at its own cost, promptly remove any rejected Goods from the delivery location;

- (c) RMS is not required to pay Fees in respect of any Goods or Services that RMS considers Defective;
 - (d) RMS may direct the Supplier to rectify the Defective Goods or Services, by way of repairing, replacing, modifying, performing or taking other actions acceptable to RMS (acting reasonably) within and by such time as agreed by RMS; and
 - (e) if the Supplier fails to rectify the Defective Goods or Services described in clause 5.1(d), RMS may arrange for the resupply or remedial work by a third party at the Supplier's expense.
- 5.2 If the Goods are recalled for any reason, the Supplier must:
- (a) immediately advise RMS of the recall;
 - (b) comply with all laws relating to the recall;
 - (c) promptly comply with any direction by RMS to remove the Goods from RMS' premises and provide to RMS a complete refund for those recalled Goods; and
 - (d) pay all costs associated with the recall.

6 Price, Invoicing & Payment

- 6.1 Unless otherwise specified in the Purchase Order, prices referred to in a Purchase Order (the **Fees**):
- (a) are fixed;
 - (b) sets out all amounts payable by RMS under the Agreement;
 - (c) are inclusive of insurance, freight, delivery, packaging costs and costs associated with the return of Goods wrongly supplied or Defective Goods or Services; and
 - (d) are inclusive of all taxes other than GST.
- 6.2 RMS will pay the Fees for Goods and Services supplied in accordance with the Agreement within 30 days of receipt of a properly rendered tax invoice. A tax invoice will be properly rendered if it:
- (a) contains a valid PO Number and name of the RMS representative who placed the Purchase Order;
 - (b) is correctly addressed to RMS;
 - (c) is in respect of Goods or Services which have been accepted and not subsequently rejected by RMS; and
 - (d) is complete and, where additional explanation is necessary, is accompanied by documentation substantiating the amount claimed.
- 6.3 Payment by RMS is not an acknowledgement that the Goods or Services have been supplied in accordance with the Agreement.

- 6.4 RMS is entitled to withhold, retain or set off against the Fees for the Goods or Services, any monies that the Supplier owes to RMS. The right to withhold, retain or set off does not limit RMS' rights to recover those amounts in any other way.

7 Warranties & Representations

7.1 General

The Supplier warrants and represents that:

- (a) it is entitled to enter into the Agreement to perform its obligations;
- (b) there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of the Agreement;
- (c) it and its Personnel has and will maintain at all times all licences, authorisations, consents, approvals and permits required by all applicable laws, standards, regulatory and industry requirements in order to perform its obligations under the Agreement;
- (d) no conflict of interest concerning the Supplier and its Personnel, exists or will arise in the performance of its obligations under the Agreement;
- (e) there are no matters which will or may adversely affect its ability to perform its obligations under the Agreement;
- (f) it will provide and maintain at all times appropriate resources to enable it to fulfil its obligations under the Agreement; and
- (g) it will at all times comply with any applicable laws, industry or regulatory requirements.

7.2 Services warranties

The Supplier warrants and represents to RMS that:

- (a) where RMS has either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way to achieve that result;
- (b) all Services will be supplied in a diligent and professional manner with the degree of skill and care that is normally exercised by recognised professionals or tradespersons or entities which supply services of a similar nature;
- (c) the Supplier Personnel will be sufficiently skilled, experienced and qualified to perform the Services;
- (d) it will not engage in any activity that is likely to compromise the ability of the Supplier to perform its obligations under the Agreement fairly and independently; and

- (e) the provision and taking of the benefit of the Services will not infringe the Intellectual Property Rights of any third party.
- 7.3 Goods warranties
- The Supplier warrants and represents that:
- (a) the Goods:
- (i) supplied are free from any charge, encumbrance or liability to third parties;
 - (ii) are new and fit for the purpose disclosed by RMS (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
 - (iii) conform in all respects with the specification (if stated in the Purchase Order or any other document, or if not stated, the original manufacturer's published specifications);
 - (iv) are free from Defects, omissions in design, materials, performance and workmanship; and
 - (v) are of merchantable quality and comply with all laws;
- (b) it is entitled to use and deal with any Intellectual Property Rights which may be used by the Supplier in connection with the Goods;
- (c) where the Goods require Installation, the Installed Goods will be properly Installed and the service warranties in clause 7.2 apply as if the Service is the Supplier's Installation works; and
- (d) where the Goods incorporate computer software, the Supplier warrants that:
- (i) the software is free from viruses, trojan horses, bugs, worms or any other defects that are intended to, or do, damage or interfere with the proper working of the software;
 - (ii) the software will be free from any back door, time bomb, drop dead device or any other code designed to disable the software; and
 - (iii) any software maintenance, upgrade, patch or fix supplied by the Supplier for the software will comply with subparagraph (a) and will be compatible with the existing version of the software.
- 7.4 Where the Goods or Services have been procured from third parties, the Supplier hereby assigns to RMS, the benefit of any warranties (including manufacturer's warranties) given by the third parties in relation to the Goods or Services.
- 7.5 In the event of a breach of a warranty in this clause 7, the Supplier will, at no charge, correct or replace the Goods or alter the Services so that they comply with the warranty breached.
- 7.6 A repeated breach of warranty will be considered a material breach of the Agreement which is not capable of remedy entitling RMS to terminate the Agreement in accordance with clause 12.1(a)(ii).
- 8 Reinstatement**
- The Supplier must, upon RMS giving written notice, immediately rectify and make good, at its cost, any loss or damage to RMS' premises, property or the environment, caused by the Supplier or its Personnel.
- 9 Intellectual Property Rights**
- 9.1 All Intellectual Property Rights developed by the Supplier specifically for RMS in connection with the provision of the Goods or Services vests in RMS from the date they are developed, but any Intellectual Property Rights created by the Supplier before the relevant Purchase Order was issued do not vest in RMS unless the parties have expressly agreed otherwise.
- 9.2 The Supplier grants to RMS a non-exclusive, perpetual, royalty-free, transferable licence to use any Intellectual Property Rights in respect of the Goods or Services to the extent necessary to receive the full use and benefit of the Goods and Services.
- 9.3 RMS grants to the Supplier, and to the extent necessary any relevant subcontractor, a royalty free, non-exclusive, non-transferable licence to use RMS' Intellectual Property Rights only to the extent necessary to provide the Goods and Services under the Agreement.
- 9.4 The Supplier must do all things necessary (including executing any documents) to give effect to this clause 9.
- 10 Indemnity**
- 10.1 The Supplier indemnifies RMS and its employees and agents against all liabilities (including legal costs on a solicitor client basis) or losses which any of them incurs or suffers in respect of:
- (a) a negligent or wilful act or omission of the Supplier;
 - (b) loss or damage to any property;
 - (c) personal injury (including death of any person); and
 - (d) claims that the Goods or Services breach the Intellectual Property Rights of any third party or constitute a misuse of any persons confidential information,
- arising out of or in connection with the performance of the Supplier's obligations under the Agreement, including the failure of the Supplier to provide the

Goods or Services in accordance with the Agreement.

- 10.2 The parties agree that the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to any rights, obligations and liabilities arising under the Agreement regardless of how such rights, obligations or liabilities are sought to be enforced.

11 Insurance

- 11.1 The Supplier must hold and maintain appropriate insurance (including where appropriate, public liability, product liability, material damage, motor vehicle liability and CTP, workers' compensation and professional indemnity insurance) to cover the risk for the Goods and/or Services under the Agreement that represent a standard of good practice expected of a competent and prudent supplier of such goods and/or services. The Supplier must provide a certificate of currency for these insurances to RMS on demand.

- 11.2 The Supplier must maintain the insurances required under clause 11.1 for the term of the Agreement and in respect of:

- (a) any professional advisory services, professional indemnity insurance for an additional period of 7 years from the delivery date; and
- (b) any Goods and/or Installation of Goods, product liability insurance for an additional period of any warranty or maintenance period.

12 Termination and Suspensions

- 12.1 Rights to terminate

- (a) RMS may terminate the Agreement immediately by notice to the Supplier if:
 - (i) the Supplier commits a breach of the Agreement which is capable of remedy, and fails to remedy that breach within 7 days from receiving notice of the breach from RMS;
 - (ii) the Supplier commits a breach which is not capable of remedy; or
 - (iii) the Supplier becomes bankrupt, insolvent or an administrator, liquidator, or controller is appointed.
- (b) RMS may terminate the Agreement without cause, by giving written notice to the Supplier, in which case the Supplier must stop supplying the relevant Goods or Services and take steps to mitigate its losses and prevent further costs being incurred. RMS must pay all reasonable amounts due in accordance with clause 6 for all Goods and Services delivered by the Supplier up until

date of termination (but not any loss of prospective profits).

- (c) The Supplier may terminate the Agreement for non-payment of the Fees by RMS, provided that the outstanding amount is an undisputed amount above \$50,000 and the Supplier has issued two reminder notices (the second reminder notice to be issued after 60 calendar days after the first reminder notice) to RMS and the amount still remains outstanding after 60 calendar days from RMS' receipt of the second notice.

- 12.2 Instalments

Notwithstanding that any Goods or Services are to be supplied in instalments, each Purchase Order constitutes a single agreement and if the Supplier fails to deliver or perform any instalment, RMS may treat the whole Purchase Order as repudiated.

- 12.3 Suspension

- (a) RMS may at any time and for any reason direct the Supplier to suspend providing all or part of the Goods or Services. The Supplier must promptly comply with any direction that RMS may give, including a direction to remove its personnel and plant from RMS' premises and must not resume providing the Goods or Services until directed to do so by RMS.
- (b) The Supplier will not be entitled to any payments, or reimbursement of its costs, except for any amounts due in accordance with clause 6 for Goods and Services delivered by the Supplier up until date of suspension.

- 12.4 On expiry or termination of the Agreement, the Supplier must provide all assistance reasonably requested by RMS in relation to the termination of the Agreement ("**Transition Out Services**"). RMS will reimburse the Supplier for any additional out-of-pocket costs where they are incurred in relation to providing the Transition Out Services, except where the termination relates to a breach of the Agreement by the Supplier.

13 Confidentiality

- 13.1 The Supplier must:

- (a) keep confidential, disclose to only those of its employees, agents and subcontractors who have a need to know and use only for the purpose of performing its obligations under the Agreement, all data, drawings, samples, specifications and other information, items or things, regardless of form, given or disclosed to the Supplier by RMS, unless otherwise approved in writing by RMS or required by law;

- (b) not issue any information, publication, document or article or make any statement, or advertise in any media about any matters relating to the Agreement, unless otherwise approved in writing by RMS; and
 - (c) if requested by RMS, on delivery and Installation of the Goods (as applicable) or completion of the Services, return all information referred to in clause 13.1(a) to RMS or provide evidence, to the reasonable satisfaction of RMS, that such information has been destroyed.
- 13.2 The Supplier acknowledges that RMS may be required to publish or otherwise make available information in relation to the Supplier (and the supply of Goods or Services under the Agreement) as may be required:
- (a) by law including as required under the Government Information (*Public Access*) Act 2009 (NSW), *Ombudsman Act 1974* (NSW), *Independent Commission Against Corruption Act 1988* (NSW) or *Freedom of Information Act 1982* (Cth);
 - (b) to satisfy the disclosure requirements of the NSW Auditor General or Parliamentary accountability;
 - (c) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
 - (d) to external consultants and advisers of RMS engaged to assist with the tendering process; and
 - (e) to be disclosed by government policy.
- 13.3 The Supplier's obligations under clause 13.1(a) shall survive expiry or termination of the Agreement.

14 Privacy

- (a) The Supplier must, when it collects, receives, uses, discloses, transfers or otherwise handles Personal Information in the course of performing its obligations under the Agreement, comply with the Privacy Laws.
- (b) The Supplier must not do anything or omit to do anything with the Personal Information that will cause RMS to breach its obligations under a Privacy Law.
- (c) The Supplier must co-operate with any reasonable requests or directions of RMS concerning the collection, security, use and disclosure of Personal Information covered by the Agreement, or the rights of individuals to access and correct such Personal Information, except to the extent that compliance with the direction would cause the Supplier to breach a Privacy Law.

- (d) On termination or expiry of the Agreement, the Supplier must destroy or otherwise deal with any Personal Information collected by or provided to the Supplier in accordance with the reasonable directions of RMS.

15 Assignment and subcontracting

- 15.1 The Supplier may not assign or transfer in whole or in part its rights and obligations under the Agreement without the prior written consent of RMS, (which may be given or withheld in its absolute discretion).
- 15.2 The Supplier must not subcontract to any third person any of its obligations under the Agreement without the prior written consent of RMS (which may be given or withheld in its absolute discretion).
- 15.3 The Supplier will not, as a result of any subcontracting arrangement, be relieved from the liabilities or obligations under the Agreement and will be liable for all acts or omissions of a subcontractor as though they were the actions of the Supplier itself.

16 Audit and inspection

On reasonable notice by RMS, the Supplier must provide RMS access to:

- (a) any Personnel, facilities, systems, software, equipment, procedures, processes and other resources used by the Supplier or its Personnel in connection with the supply of the Goods or Services;
- (b) such other premises, documents, records, practices, data and matters as RMS may from time to time wish to audit and inspect, to confirm compliance with the Agreement.

17 Access to RMS's premises

To the extent required for the Supplier to Install the Goods or perform the Services, RMS will grant the Supplier access to its premises, subject to compliance with any conditions that may be reasonably imposed on the Supplier by RMS.

18 No exclusivity and no volume commitment

- 18.1 No provision of the Agreement creates an exclusive agreement between the parties for the supply of Goods or Services.
- 18.2 The Supplier acknowledges that RMS makes no commitment to purchase any quantity of Goods or Services other than as specified in a Purchase Order.

19 Workplace Health and Safety

The Supplier must, and must ensure that its Personnel:

- (a) at all times, in the supply of Services or the Installation of Goods, take all reasonably practicable steps to ensure the health and safety of all persons including its Personnel,

RMS' Personnel and members of the public who may be affected by the performance or by the purported performance of the Services or the Installation of Goods;

- (b) supply the Services in a safe manner;
- (c) comply with RMS' policies on occupational health and safety, as updated from time to time, when performing the Services or Installing of Goods on RMS sites; and
- (d) comply with the WHS Law and Regulations and do all things necessary to assist RMS to discharge its obligations under the WHS Law and Regulations.

20 GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.

21 Reports

The Supplier must keep RMS fully informed as to any matters affecting the cost, timing or quality of the Goods or Services (including as to any matters on which RMS may specifically request that the Supplier report) immediately upon the Supplier becoming aware of such matters.

22 Disputes

If a dispute arises, the parties must promptly meet to resolve the dispute. If the parties are unable to resolve the dispute within 15 Business Days, then either party may refer the dispute to the Chief Executive Officers or other representatives nominated by the Chief Executive of each party for resolution before having recourse to litigation. Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under the Agreement. This clause does not prevent a party from seeking urgent interlocutory relief before first complying with this clause.

23 General

23.1 Notices

- (a) Unless expressly stated to the contrary, any notice or other communication given to a party under the Agreement must be given in writing and in English.
- (b) A notice or communication to party under the Agreement is only given if it is:
 - (i) personally served on the party;
 - (ii) left or sent by pre-paid post to the party's current or last known address;
 - (iii) faxed to the current fax number; or

- (iv) sent by electronic email to the party's current email address.

- (c) A notice or communication is deemed to be given or received as follows:
 - (i) if delivered by person, when delivered to the recipient;
 - (ii) if it is posted, 3 Business Days after it is posted;
 - (iii) if it is sent by fax, on receipt of successful confirmation.
 - (iv) if it is sent by electronic mail, the earlier of when the sender has received an acknowledgement that the email has been read by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

23.2 Relationship of the parties

The relationship of the parties is as independent contractors. Nothing in the Agreement is to be construed as creating any relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

23.3 Waiver

- (a) Waiver of any right, power, authority, discretion or remedy arising from any breach of the Agreement must be in writing and signed by the party granting the waiver.
- (b) Failure to enforce a Term does not waive that Term and a waiver of one breach does not waive any other breach.

23.4 Variation

A variation of any term of the Agreement must be in writing and signed by an authorised representative of each of the parties.

23.5 Severability

If any provision of the Agreement is held to be invalid, unenforceable or illegal for any reason, that provision shall be read down to the extent required to preserve validity and if it cannot be read down, then it shall be severed from the Agreement, but the validity of the other provisions will not be affected.

23.6 Governing law and jurisdiction

The Agreement is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

23.7 Including

Any inclusive reference is to be construed without limitation.

24 Definitions

In these Terms and Conditions, unless the context otherwise requires:

Agreement means the agreement between RMS and the Supplier for the supply of Goods or Services (as applicable) as evidenced by these Terms and Conditions and a Purchase Order.

Business Day means a day other than a Saturday, Sunday, a NSW public holiday, or the NSW Government Christmas/New Year shutdown period (if declared).

Defect means any defect, omission or fault in the Goods or Services which is not in accordance with the requirements of the Agreement.

Delivery Note means a written record containing:

- (a) the Supplier's name and business address;
- (b) description and quantity of the Goods delivered;
- (c) name and contact details of the RMS officer who ordered the Goods; and
- (d) the PO Number.

Fees has the meaning given in clause 6.1.

Goods means:

- (a) the goods specified in any Purchase Order (which may include Goods requiring Installation); and
- (b) any goods (including equipment, consumables and Installation materials) that are required for the provision of Services.

GST has the meaning given in the GST Act.

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

Install or Installation means all works necessary to install and commission the Goods on site.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, inventions, discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means the officer, employees, agents, contractors and subcontractors of a party, and includes the officers, employees, agents, contractors and subcontractors of any subcontractor.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act;

- (b) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (c) any legislation, rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data, as amended from time to time.

PO Number means a unique identifying number allocated by RMS to the supply of Goods or Services under the Agreement.

Purchase Order means the record generated by RMS in physical or electronic form which references a PO Number.

RMS means Roads and Maritime Services (ABN 76 236 371 088), a NSW government agency constituted under section 46 of the *Transport Administration Act 1988* (NSW).

Services means:

- (a) the services specified in any Purchase Order; and
- (b) any ancillary or incidental service or function, where such service and/or function is reasonably and necessarily required for the proper performance of the services referred to in paragraph (a), or in connection with the supply of Goods.

Supplier means the entity undertaking the supply of the Goods or Services under the Agreement as named in the Purchase Order.

Terms and Conditions means this document as updated from time to time on the RMS website.

WHS Law and Regulations means the *Work Health and Safety Act 2011* (NSW) ("**WHS Act**") and any applicable regulations, codes of practice or advisory standards made under or in connection with the WHS Act.

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