



## Gladstone Ports Corporation

*Growth, Prosperity, Community.*

### PURCHASE ORDER TERMS & CONDITIONS

#### 1 Definitions

In this Purchase Order, the following definitions apply:

- (a) **Acceptance** has the meaning given in clause 14.
- (b) **Authorised Representative** means the Purchaser's authorised representative nominated on the Purchase Order.
- (c) **BCIPA** means the *Building and Construction Industry Payments Act 2004* (Qld).
- (d) **Consequential Loss** means:
- (i) loss of contract;
  - (ii) loss of business opportunity;
  - (iii) loss of profit;
  - (iv) loss of production;
  - (v) loss of revenue; and
  - (vi) loss of business continuity, arising out of or in connection with this Purchase Order and whether or not foreseeable or in the ordinary contemplation of the Parties at the date of this Purchase Order, but shall not include:
    - (vii) the costs of any repair, replacement, additional works, hiring or other direct costs arising from a defect in any Goods and/or Services;
    - (viii) the Supplier's liability pursuant to its indemnity obligations under this Purchase Order; and
    - (ix) the Supplier's liability for fraud, wilful or deliberate breach of this Purchase Order, abandonment or criminal or illegal or unlawful acts.
- (e) **Cost** has the meaning given in clause 8.
- (f) **Date of Delivery** means the date that the Goods and/or Services are delivered to the Purchaser in accordance with the terms of this Purchase Order.
- (g) **Defects Liability Period** means, unless otherwise stipulated in the Purchase Order, the period commencing on the date of Acceptance of Goods and/or Services and expiring on the date that is 12 months after the date of Acceptance of the relevant Goods and/or Services.
- (h) **Delivery Date at Site** means the date or dates (as applicable) specified in the Purchase Order by which delivery of the Goods and/or Services must be completed.
- (i) **Delivery Duty Paid** means a transaction in which the Supplier must pay for all of the costs related to transporting the Goods and is responsible for the Goods until they have been received and transferred to the Purchaser. This includes paying for the shipping, insurance, duties and any other expenses incurred while shipping the Goods.
- (j) **Delivery Point** means the location specified in the Purchase Order to which the Supplier must deliver the Goods and/or Services.
- (k) **Goods and/or Services or Goods or Services** means the goods and/or services specified in the Purchase Order, as the context requires.
- (l) **GST** is goods and services tax, as governed by the GST Law.
- (m) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.
- (n) **HSSE** means health, safety, security and environment.
- (o) **Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, moral rights, know how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation in 1967.
- (p) **Legislation** means all:
- (i) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the supply of the Goods and/or Services;
  - (ii) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods and/or Services;
  - (iii) the requirements of any authority with jurisdiction in respect of the Goods and/or Services; and
  - (iv) fees and charges payable in connection with the foregoing.
- (q) **Party or Parties** means Purchaser and the Supplier together or individually as the context requires.
- (r) **Personal Information** means any information or an opinion, whether true or otherwise or in a material form, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, and includes information:

- (i) required to meet or monitor compliance with health and safety requirements;
  - (ii) relating to the qualifications or performance of an individual; and
  - (iii) relating to an individual's use of computer equipment.
- (s) **PPSA** has the meaning given in clause 28.
- (t) **Price** means:
- (i) where the price is a fixed lump sum amount, the amount specified in the Purchase Order;
  - (ii) where the price is calculated on the basis of rates and prices, the amount calculated in accordance with the Purchase Order.
- (u) **Privacy Legislation** means any Legislation governing privacy or Personal Information, including the *Privacy Act 1988* (Cth), the *Information Privacy Act 2009* (Qld) and any codes of conduct, directives or orders made or issued under such law.
- (v) **Purchase Order** means the Purchase Order issued by the Purchaser to the Supplier which refers to and incorporates these Purchase Order Terms and Conditions.
- (w) **Purchase Order Terms and Conditions** means these Purchase Order terms and conditions.
- (x) **Purchaser** means Gladstone Ports Corporation Limited.
- (y) **Registration** has the meaning given in clause 28.
- (z) **Supplier** means the person or corporation named as such in the Purchase Order.
- (aa) **Valid Tax Invoice** means an invoice which complies with GST Law and contains the Purchase Order number.

## 2 Contract

This Purchase Order, when bearing an official Purchase Order number, is the only form of agreement which will be recognised by the Purchaser as authority for the Supplier charging the Goods and/or Services to the Purchaser's account and supersedes all previous communications and negotiations between the Parties.

This Purchase Order constitutes the entire agreement between the Parties. No terms stated by the Supplier in making a quotation or accepting or acknowledging this Purchase Order shall be binding on the Purchaser.

## 3 Supplier's General Obligations

The Supplier must:

- (a) deliver the Goods and/or Services:
  - (i) in accordance with the requirements of this Purchase Order and all Legislation;
  - (ii) unless otherwise stated, Delivery Duty Paid; and
  - (iii) to the satisfaction of the Purchaser;

- (b) perform the functions required to be performed by the Supplier under this Purchase Order and comply with the obligations imposed on the Supplier by this Purchase Order.

The Supplier warrants that the Goods and/or Services shall, as at the Date of Delivery:

- (c) comply with this Purchase Order and appropriate Australian or International Standards or equivalent specifications (including any specifications forming part of this Purchase Order) relevant to the Goods and/or Services;
- (d) comply with all Legislation;
- (e) are of good and sound design, materials and workmanship;
- (f) are of merchantable quality and fit for the known purpose for which it is supplied;
- (g) are new (in the case of Goods) (unless otherwise specified);
- (h) are free from defects (including defects in design, materials and workmanship); and
- (i) are free from all liens and encumbrances (in the case of Goods) and the Supplier has good marketable title thereto.

These warranties are in addition to any warranty or service guarantee contained in this Purchase Order or implied by any Legislation.

The Supplier is responsible at its own risk and expense, for all permits, licences, registrations, certificates or other administrative authorisations required by any Legislation in order to comply with its obligations under this Purchase Order.

The Supplier's warranties shall remain unaffected notwithstanding any inspection, comment, or direction given by the Purchaser, any variation to the Goods and/or Services by the Purchaser, nor for any information provided by the Purchaser to the Supplier.

## 4 Variations to Goods and/or Services

The Purchaser reserves the right to vary the Goods and/or Services. Any such variation shall be by way of issue of an amended Purchase Order and may include an increase or decrease in the quantity, character, quality, kind or execution of the Goods and/or Services.

The Purchaser may return excess quantities of Goods and/or Services to Supplier at Supplier's expense. The Purchaser is not obliged to pay for excess Goods and/or Services in the event that the Supplier delivers quantities in excess of those specified on the Purchase Order.

This Purchase Order does not prevent the Purchaser from entering into arrangements or agreements with other suppliers for the purchase of equivalent or similar goods or services to the Goods and/or Services.

## 5 Inspection and Expediting of Goods and/or Services

The Supplier agrees that the Purchaser or the Purchaser's designated agent shall have the right of inspection and expediting of all Goods and/or Services while in any stage of engineering,

manufacture, provision or installation. The Supplier shall make this a condition of any sub-contracted work.

The Supplier:

- (a) must provide the Purchaser; and
- (b) must ensure all subcontractors provide the Purchaser,

with access to any premises used to manufacture, perform, assemble or supply the Goods and/or Services.

The Purchaser or its designated agent may reject any work performed, or being performed, in relation to the Goods and/or Services if:

- (c) the Goods and/or Services do not comply with this Purchase Order; or
- (d) the Supplier has breached any terms of this Purchase Order,

whereupon the work rejected in relation to the Goods and/or Services shall be redone or rectified by the Supplier at no additional cost to the Purchaser. Any inspection or expediting by the Purchaser shall not relieve the Supplier of its obligations in this Purchase Order.

The Supplier must reimburse the Purchaser for any costs or expenses incurred by the Purchaser as a consequence of the rejection of the Supplier's work in accordance with this clause 5.

## **6 Engineering Data and Documents**

The Supplier shall provide to the Purchaser all engineering, documentation and other data in accordance with this Purchase Order and within the time stated in this Purchase Order or such other time as notified to the Supplier by the Purchaser.

## **7 Firm Price**

All Prices are firm and not subject to escalation or variation for any reason unless otherwise stated.

## **8 Invoices and Payment**

The Supplier must be registered for GST and for Australian Business Number purposes, and indemnifies the Purchaser against any loss resulting from it not being registered for those purposes.

If any supply made under this Purchase Order is, or becomes, subject to GST, the party to whom the supply is made must pay to the party making the supply, as consideration, in addition to any consideration payable or to be provided elsewhere in this Purchase Order, subject to issuing a valid tax invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Purchase Order is the amount of the Cost incurred, less the amount of any credit or refund of GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

The Supplier must provide to the accounts payable department [accountspayable@gpcl.com.au](mailto:accountspayable@gpcl.com.au) of the Purchaser, upon delivery of the Goods and/or Services to the Delivery Point, a Valid Tax Invoice. The Purchaser shall pay the Supplier 30 days (or the

next business day thereafter) from the end of the calendar month in which a Valid Tax Invoice is received by the Purchaser.

By delivering an invoice to the Purchaser for payment for the Goods and/or Services, the Supplier warrants to the Purchaser that:

- (a) the Goods and/or Services comply with the requirements of this Purchase Order;
- (b) the Supplier is registered for GST; and
- (c) the Supplier is not insolvent within the meaning of any applicable law relating to the insolvency of corporations or individuals.

Making a payment will not be construed as evidence or an admission that the Goods and/or Services have been supplied in accordance with this Purchase Order, but is a payment on account only.

Where an invoice that has been delivered to the Purchaser in respect of the Goods and/or Services is not a Valid Tax Invoice, the Purchaser may return the invoice to the Supplier and payment may not be made.

Unless otherwise provided for in this Purchase Order, the Supplier must pay all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Purchase Order and the supply of the Goods and/or Services.

Unless otherwise specified in this Purchase Order, all stated amounts are GST exclusive.

Words and expressions which are not defined in this Purchase Order but which have a defined meaning in GST Law have the same meaning as in the GST Law.

## **9 Cancellation**

The Purchaser may cancel all or part of the Goods and/or Services for its convenience by written notice to the Supplier.

Upon receipt of a cancellation notice under this clause 9, the Supplier shall:

- (a) cease manufacturing, supplying or providing the Goods and/or Services in accordance with and to the extent specified in the notice; and
- (b) immediately do everything possible to mitigate any costs incurred by the Supplier and any subcontractors.

If the Purchaser cancels for its convenience, then to the extent that the cancellation relates to:

- (c) Goods which are stocked by the Supplier in the usual course of its business, the Purchaser shall be entitled to return the Goods at the Purchaser's expense; and
- (d) Goods which are manufactured or fabricated to the Purchaser's specification or specifications prepared by the Supplier for the Purchaser's exclusive use or Services performed on behalf of the Purchaser, the Supplier shall be entitled to the payment of reasonable and documented expenses directly incurred by the Supplier for satisfactory performance or delivery of the Goods and/or Services prior to the date of cancellation.

## **10 Termination for Default**

The Purchaser, without prejudice to any other rights it might have, may by written notice cancel any undelivered Goods and/or Services and terminate this Purchase Order with immediate effect in the event:

- (a) of a breach by the Supplier of any of the terms, conditions or warranties contained in this Purchase Order; or
- (b) that the Supplier:
  - (i) becomes insolvent, or a receiver of its business or assets is appointed;
  - (ii) is unable to pay its debts when they are due; or
  - (iii) makes an assignment or arrangement for the benefit of its creditors.

Following a termination for default under this clause 10, the Purchaser shall not be obliged to make any further payment to the Supplier. Upon termination, the Purchaser may immediately take possession of any of the Goods, for which the Purchaser has paid, to be provided under the Purchase Order, including any documents to be provided under clause 6.

If the Purchaser terminates for the Supplier's default, the Supplier indemnifies, defends and holds harmless the Purchaser against all costs (including legal costs) or expenses incurred by the Purchaser in obtaining the Goods and documents elsewhere and/or arranging for a third party to supply the Goods and/or Services.

## **11 Patents, Trademarks and Copyrights**

The Supplier warrants to the Purchaser and its successors in interest that the manufacture, sale, enjoyment and use of the Goods and/or Services will not infringe any Intellectual Property Rights or involve the misuse of any other person's confidential information.

The Supplier indemnifies the Purchaser and its successors in interest against any loss or damage (including legal fees and costs) arising from breach of this warranty or prevention or hindrance of use of the Goods and/or Services as a result of such breach.

The Supplier grants the Purchaser a non-exclusive, perpetual, irrevocable, sub-licensable, royalty-free licence to all background Intellectual Property Rights belonging to the Supplier necessary for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order. For any background Intellectual Property Rights belonging to any subcontractor of the Supplier necessary for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order, the Supplier must procure the subcontractor to grant the Purchaser a non-exclusive, perpetual, irrevocable, sub-licensable, royalty-free licence to all background Intellectual Property Rights belonging to the subcontractor for the Purchaser to use the Goods and/or Services as contemplated by this Purchase Order.

The Supplier assigns to the Purchaser, immediately on creation, all Intellectual Property Rights created by the Supplier in the supply of Goods and/or Services to the Purchaser in accordance with this Purchase

Order. If any Intellectual Property Rights are created by a subcontractor of the Supplier in the supply of Goods and/or Services with this Purchase Order, the Supplier must procure the assignment of all Intellectual Property Rights created by the subcontractor in the supply of Goods and/or Services to the Purchaser.

The Purchaser grants the Supplier and any subcontractor of the Supplier under this Purchase Order a non-exclusive, sub-licensable, royalty-free licence to the Intellectual Property Rights created by the Supplier or a subcontractor of the Supplier under this Purchase Order in order to provide the Goods and/or Services to the Purchaser as stipulated in this Purchase Order.

## **12 Property in Goods**

Where any part payment for Goods in the course of manufacture or assembly is made by the Purchaser, the title to and property in the partly completed or wholly completed Goods and any materials and parts to be used in its manufacture, shall pass to the Purchaser and shall be appropriately marked.

The Goods remain at the risk of the Supplier until Acceptance by the Purchaser in accordance with clause 14.

## **13 Transportation**

Immediately after the Supplier dispatches the Goods, the Supplier shall notify the Purchaser, including details as to the method by which the Goods will be transported.

All Goods shall be packed, marked and transported as specified in the "Dispatch Via" field of the Purchase Order, but if not specified, then in a proper and suitable manner and in all cases, in accordance with the proper requirements of the carriers and by any applicable laws.

All goods supplied under this Purchase Order shall, wherever applicable, be protected against any and all damage, and be packaged adequately to arrive at the Delivery Point nominated on the Purchase Order undamaged.

The Supplier shall provide detailed delivery dockets in duplicate. One delivery docket must be packaged with the Goods, the other delivery docket must be enclosed and attached to the outside of the packaging containing the Goods. Each delivery docket must contain as a minimum, the following information:

- (a) the purchase order number and item number;
- (b) material number details;
- (c) quantity of Goods dispatched; and
- (d) item description.

## **14 Inspection and Acceptance by the Purchaser**

Notwithstanding any prior payment, acceptance of the whole or part of any Goods and/or Services is subject to inspection and testing by the Purchaser after the provision or arrival and unpacking at the ultimate destination, and if the Goods are to be installed or incorporated at a site or premises such inspection and testing may be carried out by the Purchaser after installation or incorporation and under operating conditions.

If upon or after any such inspection or test any Goods and/or Services are found to be unsatisfactory, defective or of inferior quality or workmanship or fail to meet the specifications or any other requirements of this Purchase Order, the Purchaser may, without prejudice to any other rights or remedies it might have:

- (a) return the Goods to the Supplier at the Supplier's expense; or
- (b) refuse to pay for the Goods and/or Services; or
- (c) require the Supplier to rectify the defects in the Goods or re-perform the Services at the Supplier's cost.

The Supplier shall pay to the Purchaser on written demand:

- (d) any amounts paid by the Purchaser on account of the Price of returned Goods or rejected Services; and
- (e) any cost incurred by the Purchaser in connection with the delivery or return of the Goods or rejection of the Services.

The above costs shall constitute a debt immediately due and payable by the Supplier to the Purchaser.

The Goods and/or Services will be deemed to be accepted by the Purchaser the earlier of when the Purchaser notifies the Supplier in writing that the Goods and/or Services have been accepted, or after 30 calendar days from the time that the Supplier has delivered the Goods and/or Services to the Purchaser at the Delivery Point ("**Acceptance**").

#### **15 Rectification of defective Goods and/or Services**

If any defect is found in any Goods and/or Services before or during the Defects Liability Period, the Supplier must, promptly and at its cost, repair, replace or otherwise make good the defect as well as any damage to the Goods caused by the defect. The rectification work must cause as little disruption to the Purchaser as is reasonably possible. The timing of the rectification work must be agreed with the Purchaser prior to such rectification work commencing. The Supplier must bear all incidental costs, including any costs of removal associated with the repair, replacement or making good of the defect or damage.

If the Supplier fails to rectify the defect, or any damage to the Goods or caused by the defective Goods and/or Services within the time agreed or specified by the Purchaser, the Purchaser may proceed to do the work or engage another party to do the work. The costs, including incidental costs, incurred by the Purchaser as a result of such work will be a debt due and owing from the Supplier to the Purchaser.

#### **16 Indemnity**

The Supplier indemnifies the Purchaser against all costs, damage, expense, loss or liability of any nature suffered or incurred by the Purchaser arising out of, in connection with, or as a result of the provision of the Goods and/or Services including:

- (a) physical loss of or damage to the property of the Purchaser;

- (b) damage, expense, loss or liability in respect of loss of or damage to any other property (including any adjoining property);
- (c) damage, expense, loss or liability in respect of personal injury, disease, illness or death;
- (d) damage, expense, loss or liability arising out of or in connection with the presence of the Supplier, its employees, agents, subcontractors, and invitees at the Purchaser's premises; and
- (e) damage, expense, loss or liability of any nature that may be suffered or incurred by the Purchaser by reason of the failure of the Supplier to fulfil its obligations under this Purchase Order, including claims made or brought under or in relation to this Purchase Order,

except to the extent that the costs, damage, expense, loss or liability arises out of the negligent acts or omissions of the Purchaser or a breach of this Purchase Order by the Purchaser.

#### **17 Consequential Loss**

Neither the Supplier nor the Purchaser will be liable to the other for the other's Consequential Loss.

#### **18 Limitation of Liability**

The Supplier's liability to the Purchaser under any principle of law for a breach by the Supplier of its obligations under or in connection with this Purchase Order is limited to the higher of:

- (a) twice (2x) the Price of the Goods and/or Services; or
- (b) an amount equal to any amount which:
  - (i) is payable to the Supplier (or for the benefit of the Supplier) under any policy of insurance maintained by the Supplier pursuant to clause 21 of this Purchase Order; or
  - (ii) would have been payable under any such policy of insurance but for the Supplier failing to obtain and maintain those insurances or through any act or omission prejudicing or vitiating the insurance cover,

provided that this clause does not exclude or limit the Supplier's liability in respect of:

- (c) the indemnity give under clauses 11 and 16;
- (d) breach of any Legislation;
- (e) fraud, fraudulent misrepresentation or wilful, reckless or deliberate breach of the provisions of this Purchase Order,

and any liability of the Supplier in respect of the matters described in paragraphs (c) to (e) of this clause above is not to be counted in determining whether the limit of liability in this clause 18 has been achieved.

#### **19 Confidential Information**

Any engineering and other data furnished to the Supplier by or on behalf of the Purchaser, or any information obtained by the Supplier in connection with this Purchase Order is confidential and shall not

be disclosed by the Supplier to any third person without the prior written consent of the Purchaser.

Unless otherwise specified in this Purchase Order, all plans, drawings and specifications prepared or supplied by or on behalf of the Purchaser and any document, plan or otherwise made therefrom shall be and remain the property of the Purchaser and shall be used by the Supplier only in performance of this Purchase Order and shall be returned to the Purchaser by the Supplier on completion of this Purchase Order or upon demand.

## 20 The Purchaser's Premises

The following conditions apply where the Supplier, under the terms of this Purchase Order, or to enable its performance, is required to be present or perform the work on or near premises of the Purchaser:

- (a) all work shall be performed in a safe manner;
- (b) defective or unsatisfactory work may be replaced by the Purchaser at the Supplier's expense;
- (c) the Supplier shall supply all labour, tools, supervision, equipment and materials necessary to complete the work and perform this Purchase Order;
- (d) the Supplier shall not impede work in progress by the Purchaser, its contactors or any third parties;
- (e) the Supplier enters the premises on which the work is to be performed at its own risk;
- (f) the Supplier, its employees, agents, subcontractors and invitees shall comply with all safety and other plans, policies, procedures, inductions and regulations applicable to the said premises and shall obey all instructions of the Purchaser and the Authorised Representative of the Purchaser;
- (g) the Supplier must comply with and ensure all of its officers, employees, contractors and other personnel comply with:
  - (i) all Legislation affecting HSSE in respect of the supply of the Goods and/or Services under this Purchase Order; and
  - (ii) the Purchaser's Safety, Environment and Security Standards, Policies and Procedures available on the Purchaser's website.
- (h) it is the Supplier's sole responsibility to ensure the Supplier is familiar with the Purchaser's HSSE policies and the way in which the policies relate to the Supplier's work activities.

The Supplier shall immediately notify the Purchaser of any incident affecting health, safety, security or the environment and provide the Purchaser with such details of the incident the Purchaser requests.

## 21 Insurance

The Supplier shall have in place valid and enforceable policies of insurance:

- (a) with respect to its employees under the provisions of any relevant workers compensation legislation;
- (b) public and third party liability insurance covering legal liability for damage to any real or personal property and injury to, or death of, any person. Such insurances to have a minimum coverage of A\$20,000,000 per occurrence;
- (c) if the performance of the Purchase Order includes or is related to the provision of professional advice or services, the Supplier must effect and maintain from the date of this Purchase Order and for a period of not less than 3 years after completion of the Supplier's obligations under the Purchase Order, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Supplier under the Purchase Order. Such insurance must provide cover to an amount of not less than A\$5,000,000 for each and every claim;
- (d) comprehensive motor vehicle insurance covering loss or damage to property of third parties (including bodily injury or death) arising out of the Supplier's use of a mechanically propelled vehicle (whether owned, rented or leased) in connection with either the supply of Goods and/or Services under this Purchase Order;
- (e) transit insurance with a limit of not less than the total Price of the Goods, covering loss of or damage to the Goods (or any items thereof) during delivery to the Delivery Point; and
- (f) any additional insurance required by law or reasonably requested by the Purchaser, having regard to the nature of the Goods and/or the Services.

The Supplier shall provide the Purchaser with certificates of currency evidencing that the above insurances are in place immediately upon demand by the Purchaser.

## 22 Assignment and Subcontracting

The Supplier may not assign, novate or subcontract this Purchase Order without the Purchaser's prior written consent (which cannot be unreasonably withheld).

The Purchaser may assign or novate any or all of its rights or obligations under this Purchase Order without obtaining the Supplier's prior written consent. The Supplier must execute any documents reasonably required by the Purchaser to give effect to that assignment or novation.

The Supplier is not, as a result of any subcontracting arrangement, relieved from the performance of any obligation under this Purchase Order. The Supplier is liable for all acts and omissions of a Supplier's subcontractor as though they were the acts of the Supplier itself.

No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach of any other provision.

### 23 Time and Delivery Point

The Supplier shall supply the Goods and/or Services at the Delivery Point by the Delivery Date at Site, or such other date agreed in writing by the Purchaser.

The Parties acknowledge and agree that time is of the essence for the delivery of the Goods and/or the performance of the Services.

### 24 General

- (a) The Purchaser's right to require strict performance of the terms of the Purchase Order are not affected or waived by any failure to enforce any of the terms or by the Purchaser's acceptance of performance under the Purchase Order.
- (b) The Purchase Order does not create any partnership between the Purchaser and the Supplier.
- (c) Headings in the Purchase Order are for convenience only and do not affect the interpretation or construction of the Purchase Order.
- (d) No representation or warranty, express or implied, is or will be made and no responsibility or liability is or will be accepted by the Purchaser as to, or in relation to, the accuracy or completeness of any information made available to the Supplier.
- (e) A person or company who is not a Party has no right under any Legislation to enforce any term of the Purchase Order notwithstanding that any term may be construed as conferring a benefit on such person or company.
- (f) Any notice under the Purchase Order is to be delivered in writing in the English language personally, by courier, by recorded delivery or sent by email (with confirmation) to the other Party at the registered address or an address specified in the "Bill To" and "Email" fields of the Purchase Order and for the attention of any individual specified in the "Buyer" field the Purchase Order.
- (g) If any part of the Purchase Order is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the Purchase Order shall not be affected and every part of the Purchase Order shall be severable and separately valid and enforceable.
- (h) The following clauses survive the cancellation or termination of the Purchase Order: 2, 7, 8, 10, 11, 12, 17, 18, 19, 21, 24 and 26.

### 25 Dispute Resolution

The Parties must, before resorting to court proceedings, refer any dispute under or relating to this Purchase Order initially to a senior representative nominated by the Purchaser and a senior representative nominated by the Supplier, who will in good faith endeavour to resolve the dispute within ten business days of giving notice of the dispute.

If the Parties fail to meet within ten business days of the date of the dispute notice, or if the Parties meet

and fail to resolve the dispute within ten business days of the date of the senior representative meeting, then either Party may commence court proceedings.

Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Purchase Order, subject always to its rights of termination.

### 26 Governing Law

This Purchase Order shall be governed by and construed in accordance with the laws of the State of Queensland.

### 27 Privacy Legislation

The Supplier:

- (a) acknowledges that the Purchaser is required to comply with all laws relating to Privacy Legislation;
- (b) acknowledges that it is bound by its obligations under this Purchase Order even if the Supplier would not otherwise be subject to Privacy Legislation;
- (c) must establish effective measures to:
  - (i) safeguard Personal Information from unauthorised access, modification, use, loss or disclosure;
  - (ii) ensure that any Personal Information will be held, used and disclosed in a manner consistent with the Privacy Legislation; and
  - (iii) ensure accurate and complete records are kept of the Supplier's use, copying and disclosure of Personal Information provided by the Purchaser; and
- (d) must ensure that its terms and conditions for engaging employees or subcontractors, so far as possible, authorise the Supplier to disclose to the Purchaser, and the Purchaser to collect and use, Personal Information about those employees or subcontractors for the purposes of this Purchase Order.

### 28 Personal Property Securities Act

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and the terms "collateral", "financing statement", "financing change statement", "grantor" and "register" have the meaning given in the PPSA.

The Supplier may not register a financing statement under the PPSA against the Purchaser as grantor (a "**Registration**") except with the prior written consent of the Purchaser.

Without limiting the rights of the Purchaser under the PPSA, if at any time there is no collateral which is subject to a Registration, then the Supplier undertakes, at its own cost, to promptly:

- (a) notify the Purchaser that there is no collateral subject to that Registration;
- (b) register a financing change statement on the register to end the Registration; and
- (c) do anything the Purchaser reasonably requires (including completing and signing any document) to notify any relevant

authority or other person of the end of the Registration.

**29 Building and Security Payments Act**

(a) The Parties agree that the Authorised Representative of the Purchaser is the agent of the Purchaser for the purposes of:

- (i) accepting service of payment claims served by the Supplier under the BCIPA;
- (ii) assessing payment claims served by the Supplier under the BCIPA; and
- (iii) providing the Supplier with payment schedules under the BCIPA.

If the Supplier delivers or arranges to deliver to the Purchaser any written communication in relation to the BCIPA, the Supplier must ensure that a copy of the written communication is provided to the Authorised Representative of the Purchaser at the same time.

(b) Without affecting the Purchaser's right to issue payment schedules itself, the Purchaser authorises the Authorised Representative to issue payment schedules on the Purchaser's behalf. If within the time allowed by the BCIPA for service of a payment schedule by the Purchaser, the Purchaser does not:

- (i) give the required notice itself; or
- (ii) notify the Supplier that the Authorised Representative does not have authority from the Purchaser to issue the payment schedule on its behalf,

then a payment certificate issued by the Authorised Representative under the Purchase Order which relates to the relevant period shall be taken to be the payment schedule for the purpose of the BCIPA, whether or not it is expressly stated to be a payment schedule.

(c) The Supplier must:

- (i) promptly give the Purchaser and Authorised Representative a copy of any notice the Supplier receives from any subcontractor; and
- (ii) ensure that each subcontractor promptly gives the Purchaser and the Authorised Representative a copy of any notice that the subcontractor receives from another person,  
under sections 19, 20 and 30 of the BCIPA.

(d) If the Purchaser becomes aware that a subcontractor is entitled to suspend work pursuant to section 33 of the BCIPA, the Purchaser may pay the subcontractor such money that is, or may be, owing to the subcontractor in respect of the work forming part of the Supplier's delivery of the Goods

and/or Services, and any amount paid by the Purchaser is recoverable as a debt due from the Supplier to the Purchaser.

(e) The Supplier indemnifies the Purchaser against any cost or expense and lawyer's fees and expenses on an indemnity basis, suffered or incurred by the Purchaser arising out of:

- (i) a suspension by a subcontractor of work, which forms part of the Supplier's provision of the Goods and/or Services under section 33 of the BCIPA; and
- (ii) a failure by the Supplier to comply with this clause.

(f) If the Supplier intends to exercise its right under the BCIPA to suspend the Supplier's delivery of the Goods or performance of the Services, it must give notice to the Principal of no less than five (5) business days prior to the Supplier exercising that right.

**30 Subcontractor's Charges Act**

(a) The Supplier must promptly give the Purchaser and the Authorised Representative a copy of any notice of charge lodged under the *Subcontractors' Charges Act 1974* (Qld) received by the Supplier.

(b) The Purchaser may deduct from any payment otherwise due and payable to the Supplier, any payment which the Purchaser makes in accordance with the *Subcontractors' Charges Act 1974* (Qld) to or in respect of a claim made under that Act by a subcontractor to the Supplier. Any payment which is not recovered by way of deduction is a debt due and payable by the Supplier to the Purchaser.

(c) The Supplier must indemnify the Purchaser against any loss, cost, damage, liability or expense of any nature suffered or incurred by the Purchaser as a result of any charges lodged under the *Subcontractors' Charges Act 1974* (Qld) which are lodged or notified as a consequence of the Supplier's failure to pay, or delay in making payments to, any subcontractor.