

Mid West Ports Authority ("MWPA") – ABN 73 384 989 178
1 DEFINITIONS

Business Day means any day on which registered banks are open for business in Western Australia other than a Saturday, Sunday or public holiday.

Chain of Responsibility Legislation means State or Commonwealth Road transport law relating to the regulation of vehicle maintenance, speed, mass, dimension, load restraint or driver fatigue management, including but not limited to legislation based on or adapted from the Heavy Vehicle National Law in force from time to time in each State or Territory.

Confidential Information includes all business, operations, finances, and plans, as well as any patterns, drawings and specifications prepared, supplied or derived by or on behalf of MWPA.

Contract means the contract comprising the Purchase Order and these Terms and Conditions unless otherwise stated.

Data means drawings, data, manuals, detailed specifications, certifications and any other data specified or related to the Purchase Order.

Defects Liability Period means the period specified on the Purchase Order or a period of 12 months from the latter of the date of delivery or the installation of the goods or services by the Supplier, whichever is longer.

Documents means correspondence and any other documents (including but not limited to specifications and drawings).

Force Majeure means circumstances that are outside a party's control, which prevents a party from discharging an obligation under the Contract, including perils of the sea, strikes, lockouts, acts of God, war or warlike measures whether threatened, declared or anticipated, or the outbreak of hostilities between nations or countries, trade sanctions or Government directives, failure by MWPA to acquire any necessary licenses, explosions, embargoes, fire, flood, drought, riot, sabotage or accident (but does not include a shortage of funds, a breach of a contract (including the Contract) or law by the Supplier, an occurrence that is a risk assumed by the Supplier under the Contract, a shortage or delay in the supply of Goods and/or Services required under the Contract, wet or inclement weather, strikes or personnel issues related or connected to the Supplier or its Related Bodies Corporate, design errors, manufacturing errors or equipment failures).

Goods unless otherwise defined herein, includes goods, materials, equipment, parts, inventory and any other ancillary items provided by the Supplier to MWPA as identified in the Purchase Order under the Contract and which are not required to be expressly manufactured, fabricated or built to MWPA specific design or requirements and can be categorised as being "inventory" Goods.

GST means the Goods and Services Tax as defined in A New

Tax System (Goods and Services Tax) Act 1999 (Cth). "GST Act" and "GST Law" also has direct reference to this Act.

Human Rights means all internationally recognised human rights laws and standards, including those rights and standards expressed in:

- (a) the International Bill of Human Rights;
- (b) the principles concerning the rights set out in the *International Labour Organisation's Declaration on Fundamental Principles and Rights at Work*;
- (c) the UNGPs; and
- (d) the VPI.

Intellectual Property means any subject matter, whether tangible or intangible, that attracts or is susceptible to protection by Intellectual Property rights.

Modern Slavery means:

- (a) any exploitative practices and crimes including:
 - i. human trafficking or trafficking in persons as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations' *Convention against Transnational Organized Crime*, done at New York on 15 November 2000 ([2005] ATS 27);
 - ii. or the worst forms of child labour as defined in Article 3 of the ILO Convention (No. 182) concerning the *Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, done at Geneva on 17 June 1999 ([2007] ATS 38);
 - iii. slavery and slavery like practices; servitude; forced labour; debt bondage; forced marriage; sale of or sexual exploitation of children; deceptive recruiting for labour or services; removal of organs; and organ trafficking; or
- (b) any activity, practice, or conduct that would constitute an offence or is otherwise defined as modern slavery in any applicable anti-slavery and human trafficking legislation.

MWPA means Mid West Ports Authority.

Party or **Parties** refers to MWPA and the Supplier individually as "a Party" or collectively as "the Parties". Nothing in the Contract is or will be taken as constituting the relationship of partners, agents, servants, employees, representatives or joint ventures between two parties.

Personal Data means any information relating to an identified or identifiable natural person (data subject) which is provided by MWPA to the Supplier in connection with these Terms and Conditions, an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social

identify of that natural person.

Personnel means:

- (a) in relation to MWPA, any of MWPA's or its Related Bodies Corporates' employees, contractors, agents, consultants or representatives;
- (b) in relation to the Supplier, any of the Supplier's or its subcontractors' or their Related Bodies Corporates' employees, contractors, agents, consultants, officers or representatives, and any Site Invitee.

Port Authorities Act means the *Port Authorities Act 1999* (WA).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price (or **Contract Sum** with respect to Works) means the price for, or the aggregate of, the quantities multiplied by the Purchase Order rates for supply of the Goods and/or Services or performance of the Services sold to MWPA by the Supplier under the Contract.

Purchase Order means the document containing a unique purchase order number provided by MWPA to the Supplier called the 'order', 'original order', 'purchase order' or other document of similar style or type and all Documents attached thereto or expressly incorporated therein and any other provisions, things or matters agreed between the Parties and expressly incorporated therein.

Related Body Corporate or **Related Bodies Corporate** has the meaning given to it in section 50 of the *Corporations Act 2001* (Cth).

RCTI means recipient-created tax invoice.

RCTI Agreement means an agreement between the Parties relating to the provision of RCTIs with respect to the Goods and/or Services.

Services includes all services provided and performed by the Supplier under the Contract, including any Works, and includes any part of the specified Service and the results of the specified Services.

Site means any MWPA place of business nominated as the place for the delivery of the Goods or Services (as applicable).

Site Invitee means any person invited on to the Site by MWPA or its Personnel.

Supplier means the person, business or entity described in the Purchase Order or otherwise from whom the Goods and/or Services have been ordered.

Supplier's Equipment means all appliances, equipment, plant, vehicles, vessels, tools and things that the Supplier requires for the performance of the Services, whether leased, hired or owned.

Terms and Conditions means these terms and conditions comprising Parts A, B and C.

UNGPs means the *United Nations' Guiding Principles on Business and Human Rights*.

VPI means the *Voluntary Principles for Security and Human Rights*.

Works means the services and deliverables which the Supplier is required to carry out and complete under the Contract, including any variations, remedial work, construction plant and temporary works.

PART A – STANDARD CONDITIONS

APPLICATION OF THIS PART

Part A conditions apply to all Contracts for the supply of Goods and/or Services.

2 CONTRACT AND PRECEDENCE

- (a) Unless otherwise expressly agreed to in writing by the Parties, the Contract encompasses the Purchase Order, all Documents attached to or expressly incorporated by reference in the Purchase Order and these Terms and Conditions, including any Schedules or Annexures.
- (b) The Purchase Order, bearing an order number issued by MWPA, is the only form which will be recognised by MWPA as authority for charging Goods and/or Services to MWPA account and supersedes all previous communications and negotiations.
- (c) No terms stated by the Supplier in making a quotation or accepting or acknowledging the Purchase Order which differ from the terms of the Purchase Order shall be binding upon MWPA or shall be deemed to be any part of the Contract between the Parties.
- (d) Where other terms of the Contract (including anything incorporated in the Purchase Order by reference) conflict with these Terms and Conditions then the Contract shall take precedence over and be construed as varying these Terms and Conditions to the extent to which the conflict occurs.
- (e) Once the Supplier has received the Contract, acceptance may occur by:
 - i. signing and returning a copy of the Contract;
 - ii. advising MWPA orally of acceptance; or
 - iii. performance of the Supplier's obligations under the Contract.
- (f) These Terms and Conditions shall supersede any previous terms and conditions between the Parties and shall prevail to the extent of any difference with the Supplier's standard terms and conditions (if any).

3 PRICE

- (a) Unless otherwise specified in the Contract, all Prices are fixed and not subject to escalation, are in Australian Dollars, exclusive of GST, fully inclusive of delivery, and mobilisation, and inclusive of all other direct and indirect taxes, levies, insurances, duties, costs and charges.
- (b) The Price is the maximum amount payable by MWPA to the Supplier for the Goods and/or Services.

4 INVOICING AND PAYMENT

- (a) MWPA standard terms for payment are 30 days from invoice date or via RCTI (if an RCTI Agreement is in effect).
- (b) If an RCTI Agreement is in effect:
 - i. the Supplier shall not issue any tax invoices for Goods and/or Services without the written consent of MWPA;
 - ii. MWPA may specify in writing that particular classes of Goods and/or Services provided by the Supplier shall be invoiced by the Supplier; and
 - iii. where MWPA has not specified in writing that Goods and/or Services provided by the Supplier shall be invoiced by the Supplier, then those Goods and/or Services shall be invoiced via RCTI.
- (c) All invoices issued by the Supplier must be forwarded to the dedicated contact set out below or as advised in writing by MWPA:
Email: accountspayable@midwestports.com.au
- (d) All invoices must be valid for the purposes of the GST Act and show the relevant Purchase Order number. Any amount payable to the Supplier for taxation, including GST, duty, excise or other government charges, must be stated separately on the invoice.
- (e) MWPA may return invoices that do not comply with the requirements of subclause (d) to the Supplier for correction and resubmission.
- (f) If an invoice is disputed, MWPA may at its discretion, make payment of any invoiced amounts that are not in dispute.
- (g) Neither Party is to set off payments made or credits due against one invoice for amounts owing on another invoice unless agreed in writing by both Parties prior to the set off.
- (h) All payments, prior to the final payment, made by MWPA to the Supplier are made on an "on account" only basis.
- (i) Payment by MWPA shall not be taken as evidence or admission that the Goods and/or Services (or any part thereof) have been delivered or performed to the satisfaction of MWPA.

5 PROVISION OF DATA

- (a) The Supplier is required to furnish all Documents and Data specified in accordance with or related to the Contract within the time stated.
- (b) The Supplier grants MWPA permission to hold and use all the Data in relation to the Goods and/or Services supplied and acknowledges that MWPA may rely on the Data in accordance with its specified purpose.

6 CONTRACT VARIATIONS

No amendment or variation to the Contract shall be valid or effective unless agreed to in writing by both Parties.

7 TIME AND DELAY

- (a) The Supplier is required to adhere to the specified delivery dates and shall take all reasonable and necessary steps to avoid or mitigate delays.
 - i. In the event that the Supplier does not meet the agreed delivery dates (or subsidiary milestones if forming part of a delivery program) then MWPA may issue a notice of remedy.
 - ii. Upon receipt of such notice, the Supplier must take urgent remedial action and notify MWPA within two (2) Business Days from date of issue of the remedy notice, clearly specifying the underlying issue and the remediation plan.
 - iii. MWPA shall review this notice and, acting reasonably and without prejudice to any other rights, negotiate with the Supplier with a view to agreeing revised delivery dates or a delivery program.
- (b) When the Supplier is aware of a delay or pending delay in the specified delivery dates or subsidiary milestones then, irrespective of receiving or not receiving a notice of remedy from MWPA in accordance with subclause (a) above, it must notify MWPA of such delay or pending delay and the Parties shall act as if the Supplier received a notice of remedy from MWPA in accordance with subclause (a).
- (c) Neither Party shall be liable for damages resulting from delay arising from a Force Majeure event. MWPA may cancel the Contract if it reasonably believes the issue will result in a delay to the contracted delivery date of more than thirty (30) days.

8 TRANSPORT SUPPLY SERVICES

- (a) The Supplier shall comply with all road transport laws and Chain of Responsibility Legislation.
- (b) The Supplier acknowledges that nothing in this Contract requires the Supplier or its Personnel to breach their obligations under Chain of Responsibility Legislation.
- (c) The Supplier will provide to MWPA, as soon as is reasonably practicable, all Documents and information reasonably requested by MWPA to ensure that MWPA complies with its obligations under the Chain of Responsibility Legislation.

9 TERMINATION

- (a) MWPA may immediately terminate this Contract by giving written notice to the Supplier if the Supplier fails or refuses to comply with any lawful directions given by MWPA or its representatives.
- (b) If the Supplier breaches any term, condition or warranty in the Contract and, following receipt of written notice in relation to any such breach, fails to remedy the default within the timeframe stated in that notice (or if such notice does not state a timeframe, then within a reasonable timeframe) then MWPA may terminate the Contract.
- (c) If MWPA terminates the Contract pursuant to subclause (b) above, the liability of the Supplier shall be the same as it would have been at common law had the Supplier repudiated the Contract and MWPA elected to treat the Contract as at an end and recover damages.
- (d) If the Supplier becomes insolvent or a receiver of its business or assets is appointed or makes any assignment of arrangement for the benefit of its creditors then MWPA may, to the extent permitted by law, and without prejudice to any other rights that MWPA may have, terminate the Contract.
- (e) If the engagement of the Supplier under the Contract is terminated under clauses 9(a) to 9(d), the Supplier will be liable for and indemnifies MWPA against:
 - i. any cost or expense reasonably incurred by MWPA in engaging a third party to provide the same or similar Goods and/or Services, to the extent that such cost or expense exceeds the Price; and
 - ii. any other losses suffered by MWPA as a result of the termination.
- (f) The procedure provided in this clause 9 for termination is concurrent with and in addition to and without prejudice to, and not in lieu of or in substitution for, any other rights or remedies at law or in equity which MWPA may have for the enforcement of its rights under the Contract and its remedies for any default by the Supplier of the covenants, obligations or conditions of the Contract.
- (g) On termination of the Contract, the Supplier must:
 - i. immediately cease performance of the Supplier's obligations; and
 - ii. promptly deliver to MWPA all Confidential Information, employee lists, working papers, correspondence, Documents and other

property belonging to MWPA that may be in the Supplier's possession or under its control.

- (h) MWPA may terminate the Contract or suspend the performance of the Works at its convenience at any time by notice in writing to the Supplier. In the event of termination pursuant to this clause 9(h), MWPA shall provide fourteen (14) days' notice.
- (i) Where MWPA terminates or suspends the Contract in accordance with clause (h), MWPA will pay to the Supplier all reasonable costs necessarily and reasonably incurred by the Supplier in performing its obligations under the Contract which the Supplier is legally liable to pay up to the date of termination or suspension, provided however that MWPA is not liable to compensate the Supplier for any loss of profit or any other consequential losses resulting from such termination or suspension.

10 CANCELLATION AND SUSPENSION

- (a) In addition to the remedies under clause 9 above, MWPA may at any time cancel or suspend in part or whole MWPA's requirement for the Goods and/or Services to be supplied pursuant to the Purchase Order.
 - i. If the Contract is for Goods, then MWPA will only be required to pay for Goods shipped prior to cancellation or suspension.
 - ii. In the case of a cancellation under this clause for Goods and/or Services, the Supplier shall cease supply and/or manufacture and do everything possible to prevent incurring further costs.
 - iii. Provided the Supplier is not in default of the Contract and has mitigated the costs incurred then it may issue an invoice for Goods and/or Services supplied and demonstrable costs properly incurred prior to receipt of MWPA cancellation notice and MWPA shall make payment in accordance with clause 4 above, and, upon payment, title and property to any Goods and/or Services will pass to MWPA.
- (b) In the case of a suspension under this clause which is subsequently waived then MWPA will notify the Supplier and both Parties, in good faith, will negotiate a revised delivery timeframe.

11 WARRANTIES

- (a) The Supplier warrants that the Goods and/or Services shall:
 - i. match the description and specification in the Purchase Order;
 - ii. conform with the requirements of the Contract;
 - iii. be of good merchantable/professional quality and fit for the intended purpose;
 - iv. be new (unless otherwise specified); and
 - v. be free from all security interests, liens, encumbrances and other interests (whether arising by operation of law or otherwise) and the Supplier has good marketable title thereto.
- (b) The Supplier warrants to MWPA in relation to the Works as follows:
 - i. the Supplier will perform the Works, in a proper and workmanlike manner and to a standard of professional care, skill, judgment and diligence expected of a Supplier experienced in carrying out such work of a nature similar to the Works;
 - ii. the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, have all necessary qualifications, licenses, skill and experience;
 - iii. the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, will comply with all applicable laws, regulations, standards and codes, and any direction given by MWPA;
 - iv. the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Contract, do not interfere with MWPA's activities or the activities of any other person at the Site;
 - v. any supplies and materials incorporated in the Works will comprise the best available material suitable for purpose and will be of good and merchantable quality free from latent defects;
 - vi. the Works are of merchantable quality and are free from defects in design, materials and workmanship; and
 - vii. the Works are fit for the purpose communicated by MWPA to the Supplier prior to the date of the Purchase Order or, if no such purpose is communicated, for the purpose of which Works of that type are usually acquired and otherwise correspond to the description given in the specification.
- (c) The Supplier warrants that no conflict of interests exists and that it will notify MWPA immediately if a conflict of interest arises.
- (d) These warranties are in addition to any other warranty specified in the Purchase Order or implied by law including, but not limited to, standard trade or manufacturer's warranties, supplier assigned warranties or those specified by MWPA.

12 PERSONAL PROPERTY SECURITIES ACT (PPSA)

- (a) Words and phrases used in the Contract that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- (b) If MWPA determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the

PPSA, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which MWPA asks and considers necessary for the purposes of:

- i. ensuring that the security interest is enforceable, perfected and otherwise effective;
 - ii. enabling MWPA to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that MWPA has the priority required by it; or
 - iii. enabling MWPA to exercise rights in connection with the security interest.
- (c) If the Supplier holds any security interests for the purposes of the PPSA and if failure by the Supplier to perfect such security interests would materially adversely affect the security interests MWPA holds or affect its business, the Supplier agrees to perfect that security interest and to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. The Supplier must take all steps under the PPSA to continuously perfect any such security interests including (without limitation) all steps necessary:
- i. for it to obtain the highest-ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and
 - ii. to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (d) Neither MWPA nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- (e) Subclause (d) above does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

13 PORT AUTHORITIES ACT

- (a) Nothing in this Contract:
- i. affects the operation of the Port Authorities Act or the regulations made under the Port Authorities Act;
 - ii. fetters any discretions that the MWPA has under the Port Authorities Act;
 - iii. requires the MWPA or the Supplier to breach any provision of the Port Authorities Act or the regulations made under the Port Authorities Act; or
 - iv. diminishes any of the powers, defences, immunities or limitations of liability available to the MWPA or any of MWPA's associates or representatives under the Port Authorities Act or the regulations made under the Port Authorities Act.
- (b) If there is any inconsistency between any term, condition or covenant in this Contract and the Port Authorities Act or the regulations made under the Port Authorities Act, then the Port Authorities Act or the regulations made under the Port Authorities Act, as the case may be, will prevail to the extent of the inconsistency.

14 LICENCES, PATENTS, TRADEMARKS AND COPYRIGHTS

- (a) The Supplier shall at its cost obtain all requisite licences, permits and authorities required in performance of the Contract and shall comply with all applicable laws and regulations in relation to the Goods and/or Services.
- (b) The Supplier warrants to MWPA that the manufacture, sale or use of the Goods and/or Services will not infringe or contribute to the infringement of any patents, trademarks, designs or copyrights and irrevocably licences to MWPA all rights of use royalty free. The Supplier shall indemnify and keep indemnified MWPA in title 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.

15 INTELLECTUAL PROPERTY

- (a) Each Party will retain the rights to any of its own background Intellectual Property that was in existence prior to the Contract.
- (b) To the extent it relates to the Contract, each Party grants to the other royalty free, non-transferable, non-exclusive right to use the background Intellectual Property.
- (c) Any Intellectual Property created during the performance of or in relation to this Contract shall become MWPA property.
- (d) Any new Intellectual Property that has been jointly created during the performance and in relation to this Contract shall become the property of MWPA and the Supplier will have revocable, non-exclusive and royalty free right to use it for the purposes of the Contract.
- (e) Neither Party will do anything, whether by act or omission and whether directly or indirectly, which may prejudice or infringe the other Party's background Intellectual Property.

16 CONFIDENTIALITY AND PRIVACY

- (a) Each Party warrants that it will comply with the *Privacy Act 1988* (Cth) as amended from time to time in relation to the collection, use or disclosure of personal information.

- (b) Each Party warrants that any information provided under this Contract which is noted as confidential, or which that Party ought reasonably to know to be confidential, will be treated as Confidential Information and each Party agrees that neither the Contract nor any Confidential Information will be disclosed to any third party without the prior written consent of the other Party (such consent to not be unreasonably withheld) except:
- i. by either Party to any person in connection with an exercise of rights or dealing with rights or obligations under the Contract (including in connection with preparatory steps such as negotiating with any potential assignee or other person who is considering contracting with that Party in connection with the Contract);
 - ii. where it is necessary for MWPA to make disclosure to any party providing financial accommodation (by virtue of a disclosure obligation owed to a party providing financial accommodation, or in order to procure financial accommodation);
 - iii. to officers, employees, legal or other advisers, related entities, shareholders or auditors;
 - iv. to any ratings agency;
 - v. where disclosure is required by any stock exchange, law, judicial or parliamentary body or governmental agency (except that this paragraph does not permit a secured party to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
 - vi. where necessary for the purpose of supplying the Goods and/or Services; or
 - vii. where the Confidential Information is public knowledge (other than by breach of this clause by the disclosing Party).
- (c) Each Party warrants that the Confidential Information revealed in relation to this Contract will be used solely for the performance of the Contract and no other purpose, and that it will safeguard all Confidential Information.
- (d) Each Party will retain ownership of their Confidential Information and each Party must return all Confidential Information immediately on completion of the Contract.
- (e) Each party must immediately provide notice to the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any of the other party's Confidential Information.
- (f) The Supplier acknowledges that MWPA is subject to the *Freedom of Information Act 1992* (WA) and that the Contract or Documents relating to the Contract may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. MWPA has no liability to the Supplier whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).
- (g) The Parties agree that these obligations shall survive termination or expiration of the Contract.

17 INSURANCES

- (a) The Supplier must have and maintain for the term of the Contract with a reputable insurer:
- i. public and product liability insurance policy covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) for an amount of not less than twenty million dollars (A\$20 million) or such higher amount as MWPA may reasonably request in respect of each and every claim, and for public liability, unlimited as to the number of claims;
 - ii. workers compensation insurance in accordance with the provisions of the *Workers Compensation and Injury Management Act 2023* (WA), including cover for common law liability for an amount of not less than fifty million dollars (A\$50 million) for any one occurrence in respect of in respect of any person employed or engaged by the Supplier;
 - iii. motor vehicle insurance for all vehicles used in the provision of the Goods and/or Services with at least twenty million dollars (A\$20 million) third party property and injury cover for any one occurrence and unlimited as to the number of occurrences.
- (b) In addition to the insurances required under subclause (a) above, where the Supplier is providing professional services, the Supplier must effect and maintain with a reputable insurer professional indemnity insurance of not less than ten million dollars (A\$10 million) for each claim and in the aggregate and for all claims arising in the same insurance period, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least seven (7) years after the end of the Contract.
- (c) The Supplier must provide to MWPA, within three (3) Business Days of a written request, certificates of currency for each of the insurance policies required under this clause 17.
- (d) The insurances referred to in the Contract are primary and not secondary to the indemnities in the Contract.
- (e) The Supplier shall ensure that every subcontractor it engages in relation to the Contract carries similar policies of insurance or is covered under the Supplier's own policies.
- (f) All goods supplied or products hired, leased or financed in any way will be covered for market value or insured value for those goods only.

18 LIABILITY AND INDEMNITY

- (a) The Supplier is liable and shall indemnify, keep indemnified and make good MWPA, its officers, employees, agents, and contractors (each an **Indemnified Party**), from and against any and all losses (including legal costs on a full indemnity basis), damage, liability, cost expense, demand, action, proceeding of any nature (including any claim by third parties against the Indemnified Party) whether actual or threatened, suffered or incurred by any Indemnified Party arising out of or in connection with:
- i. any loss of or damage (whether total or partial) to the Indemnified Party's property or the property of a third party;
 - ii. personal injury or death;
 - iii. any negligent or unlawful acts or omissions;
 - iv. any wrongful, intentional or reckless acts or omissions committed with a reckless indifference to the consequences or with the intent to cause harm;
 - v. any criminal or fraudulent acts or omissions;
 - vi. any breach of statutory duty;
 - vii. any breach of any law, regulation, standards or codes;
 - viii. any breach of an equitable duty;
 - ix. any breach of Intellectual Property rights;
 - x. any breach of Confidentiality;
 - xi. any act or omission by the Supplier, its employees, agents or subcontractors in connection with the performance or non-performance of this Contract;
 - xii. any willful default, abandonment or repudiation of the Contract by the Supplier; and
 - xiii. any breach of this Contract.
- (b) Any limit on the Supplier's liability expressly stated in clauses 35 (for the supply of Goods) or 41 (for the supply of Services) does not apply to:
- i. any loss arising from the matters set out clauses 18(a)i to 18(a)x above and clause 18(e) below;
 - ii. the extent that the supply of Services is for professional services;
 - iii. the extent the Supplier recovers or is entitled to recover under the policies of insurance required by the Contract, or for amounts the Supplier would have been entitled to recover but for the Supplier's breach of the policies of insurance required by the Contract or breach of the Contract, with no deduction made for any deductible or excess applicable under such insurance paid or payable to the insurer;
 - iv. the extent the liability is one that the Supplier, by law, is not able to contract out of or limit.
- (c) MWPA need not make any payment before enforcing any indemnities under this Contract.
- (d) The Supplier's liability to indemnify the Indemnified Party shall be reduced proportionally to the extent that an act or omission by MWPA caused the loss or damage.
- (e) The Supplier shall be solely responsible for and indemnify MWPA against the payment of all taxes, levies and charges imposed on the Supplier in relation to the Goods and/or Services or in respect of Personnel used by the Supplier to perform its obligations under the Contract.
- (f) Neither Party will be liable to the other with respect to consequential losses arising from this Contract.
- (g) For the purpose of Item (f) above consequential loss means loss of profit, loss of production, loss of use of plant or facility, business interruption, loss of business opportunity or any indirect, consequential, special, contingent or penal damages suffered or incurred by the other Party.

19 DISPUTES

- (a) The Parties agree to work together to quickly settle disputes that may arise. In the event that any such disputes cannot be negotiated quickly and amicably at first instance by the escalation process, then the matter must be escalated to the respective Chief Executive Officers or their nominated representatives. If the Chief Executive Officers or their nominated representatives fail to resolve the dispute within ten (10) Business Days, then the matter may be referred to an independent expert by either Party, where the cost will be equally shared and the decision binding.
- (b) Either Party may commence court proceedings in relation to any dispute at any time where that Party seeks urgent interlocutory relief.
- (c) Despite the existence of any dispute, both Parties will continue to fulfil their obligations in relation to the Contract, unless a notice has been issued requesting the other Party to do otherwise.

20 ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier must not subcontract the whole or any part of the supply of the Works without the prior written consent of MWPA. If such consent is granted by MWPA it shall not relieve the Supplier from any liability or obligations under the Contract and the Supplier shall be responsible for the acts, omissions, defaults or negligence of any subcontractor, its agents or workmen as fully as if they were the acts, omissions, defaults or negligence of the Supplier.
- (b) The Supplier must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of MWPA.

21 GOVERNING AND APPLICABLE LAWS

The Parties shall submit to the jurisdiction, law and courts of Western Australia.

22 NOTICES AND REPRESENTATIVES

- (a) The nominated representatives from both Parties shall be identified as such on the Contract.
- (b) Any notice required or permitted to be given or delivered under this Contract shall be delivered and addressed to the nominated representatives. Notice shall be deemed to have been received by any Party, and shall be effective on:
 - i. the day given (if personally delivered, sent by confirmed facsimile, electronic mail transmission including any attached scanned documents, receipt verified, to a facsimile number or electronic mail address provided by the receiving Party to the sending Party for the purpose of receiving such notices); or
 - ii. on the third Business Day after which such notice is deposited, if mailed by certified or prepaid post.

23 RELATIONSHIP

The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Contract. The Supplier is not an agent of MWPA in any way. The Supplier's Personnel will not under any circumstances be considered MWPA employees for any purpose.

24 WAIVER

Subject to the express terms of the Contract, a right may only be waived in writing, signed by MWPA, and;

- (a) no other conduct by MWPA (including but not limited to a failure to exercise, or delay in exercising the right) operates as a waiver of that right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if that occasion arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

25 CONFLICT OF INTEREST

- (a) The Supplier and its Personnel must not hold any office, possess any property, engage in any business have any obligations by virtue of any contract whereby directly or indirectly, duties or interests are created in conflict with or might appear to be created in conflict with the Supplier's duties or interests under the Contract (**Conflict**).
- (b) The Supplier must inform MWPA of any matter which may give rise to a Conflict at any time during the Term.

26 MWPA POLICIES AND RULES

- (a) The Supplier shall, at its own cost, comply with the MWPA Work Health Safety and Environment standards in force at the relevant time. This includes, but is not limited to:
 - i. attending site inductions;
 - ii. adhering to security processes and occupational health and safety requirements;
 - iii. complying with all reasonable instructions and directions from a representative of MWPA;
 - iv. wearing appropriate personal protective equipment within designated work areas; and
 - v. maintaining the Site in a safe, secure, clean and orderly manner.
- (b) The Supplier shall, at its own cost, comply with all government laws and directions in force from time to time.
- (c) If the Supplier or any of the Supplier's Personnel fail to comply with any obligation under this clause 26, then MWPA may in its discretion deny that person access to the Site or direct that person to leave the Site immediately.
- (d) Where MWPA is unable to comply fully with its obligations under this Contract as a result of a government law or direction, that failure shall not constitute a breach of this Contract by MWPA.

27 DEFECTS

- (a) At any time prior to the expiry of the Defects Liability Period, the Supplier must, at its own cost and at MWPA's discretion, promptly

rectify all defects in the Goods and/or Services other than a defect caused by the negligence of MWPA.

- (b) If MWPA directs the Supplier to rectify a defect and the Supplier fails to rectify that defect within a reasonable time specified by MWPA, MWPA may have the work of rectification carried out at the Supplier's expense, but without prejudice to any other rights that MWPA may have against the Supplier with respect to such omission or defect, and the cost of the work of rectification incurred by MWPA shall be a debt due from the Supplier payable on demand.
- (c) Where any defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

28 ANTI-BRIBERY AND ANTI-CORRUPTION

(a) Compliance with law

The Supplier must comply with all applicable anti-bribery and corruption laws, including without limitation any laws applicable in Australia. If there are any differences between applicable anti-bribery and corruption laws, then the Supplier must comply with the law that imposes the higher standard.

(b) Compliance with Code of Conduct

The Supplier must comply with MWPA's Code of Ethics and Conduct which is available at: <https://www.midwestports.com.au> as amended from time to time at the discretion of MWPA.

(c) Warranties

The Supplier warrants that:

- i. it has not contravened or engaged in any conduct which would be likely to contravene any applicable anti-bribery or corruption laws;
- ii. it is not the subject of any investigation or proceedings in relation to actual or alleged breach of any applicable anti-bribery or corruption laws;
- iii. it will not make or provide any payment or gift of money or any other benefit, or make any offer, promise or authorisation of money or any other benefit, whether directly or indirectly, to or for the benefit of:
 - A) any official, employee, agent or other representative of any governmental agency (whether in the exercise of their official capacity or otherwise);
 - B) any political party or official thereof;
 - C) any candidate of a political party, or candidate for political or public office; or
 - D) any official, employee, agent or other representative of a public international organisation,
 for the purpose of intending to influence or induce any act or decisions of such a governmental agency or person, or in order to obtain or retain a business advantage (whether for the Supplier, MWPA or someone else) or improperly influence a governmental agency or person relating to either MWPA or this Contract.
- iv. neither the Supplier nor its Personnel or subcontractors will make or provide any payment or gift of money or any other benefit, or make any offer, promise or authorisation of money or any other benefit, whether directly or indirectly, to any of MWPA's Personnel to obtain a benefit in relation to this Contract.

(d) Audit

The Supplier must keep and maintain books and records that demonstrate its compliance with this clause. The Supplier must, upon request, permit MWPA to audit any books and records necessary for MWPA to verify that the Supplier is complying with its obligations under this clause.

(e) Termination

If the Supplier breaches this clause 28 then MWPA may, by giving notice to the Supplier, immediately terminate this Contract.

29 MODERN SLAVERY

- (a) MWPA works to comply with the requirements of the *Modern Slavery Act 2018* (Cth), respecting Human Rights, and works to align its business with the UNGPs and the VPI, and expects the same of its suppliers.
- (b) The Supplier warrants that:
 - i. it does not engage in conduct that is inconsistent with Human Rights, nor engages in Modern Slavery;
 - ii. it investigates, assesses, and addresses risks regarding Human Rights and Modern Slavery in its operations and supply chain, including implementing appropriate due diligence and remediation programs;
 - iii. it will notify MWPA as soon as possible of any confirmed instances of Modern Slavery or conduct inconsistent with Human Rights within the Supplier's operations and supply chain, and the actions undertaken by the Supplier to remedy the issue;

- iv. it has all the necessary processes, procedures, investigations and compliances systems in place to undertake the actions in clauses 29(b)(i)-(iii);
 - v. upon request, the Supplier will promptly provide evidence to the satisfaction of MWPA which validates the Supplier's compliance with this clause;
 - vi. upon request, the Supplier will promptly permit MWPA's Personnel or its nominated representatives to undertake verification activities to validate the Supplier's compliance with this clause, including access to the Supplier's premises and records as required; and
 - vii. it will include a clause similar to this clause 29(b) in all contracts it enters into with its suppliers and subcontractors.
- (c) In the event that the Supplier does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery or conduct inconsistent with Human Rights within the time frame specified by MWPA, MWPA reserves the right to terminate any or all Purchase Orders in accordance with clause 9 of these Terms and Conditions.

30 UNAUTHORISED TRANSFER, DISCLOSURE OR CYBER SECURITY BREACH OF PERSONAL DATA

- (a) Unless MWPA has provided prior written consent, the Supplier must not subcontract the processing of any Personal Data to a third party, or transfer (including by remote access) any Personal Data to another country from which it was originally collected.
- (b) If any of the following occurs in connection with these Terms and Conditions:
 - i. a breach or possible breach of applicable Data Privacy Laws;
 - ii. accidental loss or destruction of, or unauthorized disclosure of or access to Personal Data; or
 - iii. a cyber security or data security breach on any system (including those of a subcontractor), which has or may impact Personal Data,
 the Contractor must:
 - iv. promptly (and in any event within 24 hours) notify MWPA;
 - v. mitigate, to the extent practicable, any harmful effects of such disclosure or access;
 - vi. cooperate with MWPA in providing any notices to individuals or regulators regarding the incident, as directed by MWPA; and
 - vii. cooperate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with MWPA.
- (c) If any of the Personal Data in MWPA's possession or control, including through its provision of software or associated support services, is corrupted, lost or degraded, the Supplier must, at its own cost, remediate and restore such Personal Data, to the extent that the Supplier is capable.
- (d) Where the Supplier is considered by MWPA to be a Tier 1 supplier or otherwise poses a substantial information security risk to MWPA, the Supplier must maintain an information security management system certified to ISO/IEC 27001 (or an equivalent recognised standard) for the duration of the Contract, including all applicable surveillance and recertification audit requirements. Evidence of current certification must be provided to MWPA upon request.
- (e) The Supplier must implement and maintain appropriate technical and organisational measures to protect all data, systems and Confidential Information under this Contract, in accordance with the *Privacy Act 1988* (Cth), the Australian Privacy Principles, and applicable Australian cyber security guidelines (including the ACSC Essential Eight or equivalent).
- (f) On expiry or termination of this Contract, the Supplier must securely return, transfer or dispose of all MWPA's information (both physical and digital), including Personal Data and Confidential Information, in accordance with MWPA's instructions. Disposal of information includes:
 - i. secure destruction of physical records; and
 - ii. secure deletion of digital data in a manner that ensures it cannot be reconstructed or recovered.
- (g) Evidence of disposal of information in accordance with clause 30(f) must be provided to MWPA upon request.
- (h) The Supplier must ensure that any subcontractors or third parties engaged under this Contract are bound by the information security and privacy obligations set out in this clause 30.
- (i) Failure by the Supplier to comply with this clause 30 constitutes a material breach of the Contract.

PART B – CONDITIONS RELATING TO GOODS

APPLICATION OF THIS PART

Part B conditions apply to all Contracts for the supply of Goods, in conjunction with the supply of Services or otherwise.

31 QUALITY AND QUANTITY

Unless agreed to in writing by MWPA, the specification, quality and quantity of Goods delivered shall not differ from that specified in the Contract.

32 DELIVERY, RISK AND TITLE

Where it is agreed that the Supplier will be responsible for delivery:

- (a) The Supplier shall supply the Goods to the delivery point that is specified in the Contract. All Goods shall be packed, marked and transported as specified in the Contract but, if not specified, then packed, marked and transported in a proper and suitable manner in accordance with relevant industry standards and in all cases in accordance with the proper requirements of the manufacturer and transportation carriers.
- (b) Unless otherwise agreed, the Supplier shall be liable for any incremental or additional freight charges arising from its failure to follow any transport instruction in the Contract or properly describe the Goods being transported.
- (c) The risk of the Goods passes to MWPA upon completion of delivery of the Goods to MWPA specified delivery point and the title for the Goods passes upon payment following receipt of the Goods. This transference of risk to MWPA pertains specifically to loss or damage to the Goods but, for the avoidance of doubt, the Supplier's product warranty and defects liability obligations still apply.

33 INSPECTION AND TESTING

- (a) MWPA will inspect the Goods as soon as practical following delivery. If MWPA find that the Goods are defective or fail to meet the specifications at any time following delivery and prior to the end of the Defects Liability Period, then MWPA will issue a notice to the Supplier. The Supplier, at its cost, must repair or replace the Goods as soon as possible.
- (b) If test certificates for Goods are specified in the Purchase Order the Supplier must forward these to MWPA upon completion of testing.

34 INSTALLATION

If the Contract specifies an installation component in the supply of Goods, then the installation shall be treated as Services and will be subject to the conditions set out in Part C of this document.

35 LIABILITY

- (a) MWPA's liability under this Contract shall be limited to the Price. For the avoidance of any doubt, this is the sum of the total Price for each of the individual supplied Goods line items in the Purchase Order.
- (b) Subject to clause 18(b) above, the Supplier's liability in respect of breaches of express or implied terms, conditions and warranties, is limited to any one of the following (at MWPA's election and absolute discretion):
 - i. refund of both the Price of the Goods and any additional costs such as freight and delivery;
 - ii. the replacement of the Goods;
 - iii. the supply of equivalent Goods;
 - iv. the repair of the Goods;
 - v. the payment of the cost of replacing the Goods;
 - vi. paying the cost of acquiring equivalent Goods;
 - vii. the payment of the cost of having the Goods repaired; or
 - viii. remedies available under the Australian Consumer Law.

PART C – CONDITIONS RELATING TO SERVICES

APPLICATION OF THIS PART

Part C conditions apply to all Contracts for the supply of Services, in conjunction with the supply of Goods, or otherwise.

36 EXECUTION AND RISK

- (a) The Supplier shall commence provision of the Services at the agreed commencement date and in accordance with the Contract.
- (b) Risk remains with the Supplier until the Services have been fully delivered, inspected and approved.
- (c) The Supplier, at its own cost, shall provide all Supplier's Equipment.

37 QUALITY OF SERVICE DELIVERY

Unless agreed to in writing by MWPA, the specification, quality and scope of the Services shall not differ from that specified in the Contract. The work shall be carried out by suitably qualified, skilled and experienced personnel. Workmanship shall be of a high quality and standard and conform to good professional practice and all applicable industry codes, laws, regulations and standards.

38 INSPECTION AND ACCEPTANCE

- (a) As soon as practicable following notification from the Supplier of completion of the Services, MWPA will assess the final outcome against the deliverables and specifications in the Contract.
- (b) If the Services have not met the agreed performance or quality outcomes, MWPA will issue a notice to this effect to the Supplier.
- (c) The Supplier, at its cost, must remedy or resupply the Services to the specified standard as soon as possible and in any event within 20 Business Days of the date of notice (unless otherwise agreed to in writing by MWPA).

39 PERSONNEL

- (a) The Supplier shall ensure that its Personnel adhere to acceptable levels of behaviour and all MWPA policies and rules. MWPA reserves the right to issue a notice for the removal of any offending Supplier Personnel from the Site and/or performance of Services where it is deemed those Personnel pose an unacceptable risk to the Contract or others on the Site.
- (b) For a period of twelve months following the completion of the Contract, neither Party shall approach, either directly or indirectly, any of the Personnel of the other Party who were involved in providing or receiving the Services, with offers of subcontract or employment unless the offer results from a publicly advertised subcontract or position which the Personnel of the other Party has directly applied for.

40 ACCESS

- (a) The Supplier's access to the secure area (being the fenced area surrounding the commercial harbour, as identified by signage in various locations) is limited to the Supplier holding either a maritime security identification card (**MSIC**) or an approved visitor pass and escorted access by a current MSIC holder.
- (b) Subject to subclause (a) above, MWPA will:
 - i. ensure the Supplier has appropriate access to the Site; and
 - ii. provide agreed and specified support services.

41 LIABILITY

- (a) MWPA's liability for breaches of service under this Contract shall be limited to the total Price. For avoidance of any doubt, this is the sum of the total Price for each of the individual Services line items in the Purchase Order.
- (b) Subject to clause 18(b) above, the Supplier's liability in respect of breaches of express or implied terms, conditions and warranties for delivery of Services, shall be limited to the total Price.

42 GENERAL

- (a) Clauses 9 (Termination), 10 (Cancellation and Suspension), 15 (Intellectual Property), 16 (Confidentiality and Privacy), 17 (Insurance) and 18 (Liability and Indemnity) survive termination or expiry of the Contract.
- (b) If any provision or part of any provision of the Contract is void, invalid or unenforceable for any reason, that provision or that part of that provision may be severed from the Contract and does not affect the validity, operation or enforceability of any other provision of the Contract.
- (c) Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of the Contract, and all other matters and agreements referred to in the Contract.
- (d) The parties consent to this Contract being executed through the use of an electronic signature in accordance with the *Electronic Transactions Act 1999* (Cth) and any applicable corresponding state or territory law. The parties acknowledge and agree that this will include execution by way of electronic signature, DocuSign or other similar method of electronic signature.
- (e) Any document accepted, executed or agreed to in conformity with subparagraph (d) will be binding on all parties the same as if it were physically executed, and each party agrees to not contest the proper execution of such electronically signed copy of this Contract

in any proceeding.

- (f) The Contract is a non-exclusive contract for the supply of the Goods and/or Services, and it does not prevent or restrict MWPA from entering into other contracts for the supply of, or performance of, the same or similar Goods and/or Services with other suppliers.
- (g) In these Terms and Conditions:
 - i. The singular includes the plural and the plural includes the singular.
 - ii. Other parts of speech and grammatical forms of a word or phrase defined in the Contract have a corresponding meaning.
 - iii. An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
 - iv. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
 - v. A reference to a party to a document includes that party's successors and permitted assignees.
 - vi. A promise on the part of two or more persons binds them jointly and severally.
Specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included.
 - vii. Part 1F of the *Civil Liability Act 2002* (WA) does not apply to the Contract.