

Purchase Order Terms and Conditions for Supply of Goods and/or Services

Mid West Ports Authority – ABN 73 384 989 178
(Hereafter referred to as ‘MWPA’)

1 Definition

In these conditions

‘**Agreement**’ means the agreement between MWPA and the Supplier for the supply of Goods and Services, comprising the relevant Purchase Order, the Specification, these Conditions, and any other documents expressly referred to in the Purchase Order.

‘**Approvals**’ means any certificates, licences, consents, permits, approvals, authorities, waivers, exemptions, registrations or requirements of any Law or government agency.

‘**Associates**’ means MWPA’s employees, agents, contractors or invitees.

‘**Business Days**’ means a day on which the banks are open for business in Western Australia but excluding a Saturday, Sunday or public holiday.

‘**Conditions**’ means these purchase conditions.

‘**Confidential Information**’ means the terms of the Agreement and in respect of a party, all information in connection with the party’s business, operations, finances or customers regardless of its form which is disclosed to, or acquired by, the other party directly or indirectly (whether before or after the date of the Agreement) and which:

- (a) is, by its nature, confidential; or
- (b) is treated or designated as confidential by the party or the receiving party knows, or ought to know, is confidential,

but does not include information which:

- (a) is or becomes public knowledge other than by a breach of the Agreement; or
- (b) has been independently developed by the receiving party or is in the possession of the receiving party without restrictions on disclosure.

‘**Date for Completion**’ means the “Due Date” set out against the description of the Services in the Purchase Order.

‘**Date for Delivery**’ means the “Due Date” set out against the description of the Goods in the Purchase Order.

‘**Date of Completion**’ means the date on which the Services meet the requirements of the Agreement,

‘**Date of Delivery**’ means the date on which the Goods are delivered to the delivery location.

‘**Defect**’ means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or the Services.

‘**Defects Liability Period**’ means a period of 24 months commencing on the:

- (a) in respect of the Goods, the Date of Delivery; and
- (b) in respect of the Services, the Date of Completion.

‘**Force Majeure**’ means circumstances that are outside a party’s control, which prevents a party from discharging an obligation under the Agreement, 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 Agreement, or Law by the Supplier, an occurrence that is a risk assumed by the Supplier under the Agreement, a shortage or delay in the supply of Goods and Services required under the Agreement, or wet or inclement weather).

‘**Goods**’ means any goods, materials, supplies, equipment or other items set out in the Purchase Order and Specification.

‘**Goods and Services**’ means the Goods or Services (or both) that the Supplier is required to provide under the Agreement, as set out in the Purchase Order and the Specification.

‘**GST**’ means goods and services tax applicable to any taxable supplies as determined under the GST Law.

‘**GST Law**’ means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

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'Intellectual Property' means all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

'Law' means any act, regulation, statute, by-law, ordinance order or proclamation whether Federal, State or local.

'Policies and Procedures' means all of the policies and procedures of MWPA available at www.midwestports.com.au, as amended and varied from time to time.

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

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

'PPS Law' means:

- (a) the PPSA; and
- (b) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

'Price' means the price for the Goods and Services payable by MWPA, including GST if applicable, and stated in the Purchase Order.

'Purchase Order' means a document described as such, provided by MWPA to the Supplier, requesting the supply of the Goods and Services to MWPA.

'Quotation' means a quotation provided by the Supplier to MWPA for the supply of Goods and Services.

'Secure Area' means the fenced area surrounding the commercial harbour as identified by signage in various locations;

'Services' means any services set out in the Purchase Order and Specification, including the delivery of any goods and performance of services ancillary to the Services.

'Site' means any registered MWPA company place of business referred to in a Purchase Order as the place for the delivery of the Goods and Services (or such other place nominated by MWPA in writing).

'Specification' means the scope of works for the Goods and Services contained in or referenced in the Purchase Order which includes any measurements, performance data, plans, drawings or other information either referred to in the Purchase Order or contained in the relevant Quotation or any catalogues, brochures or descriptive literature produced by the Supplier.

'Supplier' means the party that must supply the Goods and Services to MWPA and named as Supplier in a Purchase Order.

'Supplier IP' means any Intellectual Property of the Supplier (or Intellectual Property licensed to the Supplier by a third party) which:

- (a) is in existence before the date of the Purchase Order or comes into existence after the date of the Purchase Order other than in connection with the Agreement or the Goods and Services; and
- (b) which the Supplier makes available, contributes, brings to or uses in connection with the Agreement.

'Supplier's Personnel' means the Supplier's officers, employees, agents and subcontractors and their respective employees and agents.

'Variation' means an increase, decrease, omission or any change to any part of the Goods and Services to be supplied or performed under the Agreement.

'Variation Notice' means a notice entitled 'Variation Notice' issued by MWPA under clause 17.3 directing the Supplier to carry out a Variation.

'Variation Quotation' means a quotation from the Supplier which sets out the Supplier's additional costs or savings and the effect on the Date for Delivery or the Date for Completion for performing a Variation requested under clause 17.2.

'Warranties' means the Supplier's warranties set out in clause 13.

2 HEALTH SAFETY AND ENVIRONMENT

- 2.1 This clause 2 applies to the extent the Supplier or any of the Supplier's Personnel are required to be on, or near the vicinity of, the Site for the purpose of the Agreement.
- 2.2 The Supplier is not entitled to access the Site until it has submitted all necessary documentation as referred to in the RFQ or otherwise in the Agreement (including necessary Approvals) to MWPA (unless otherwise agreed by MWPA in writing).

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- 2.3 The Supplier shall, at its own cost, comply with the MWPA Health Safety and Environment standards in force at the relevant time. Without limiting the generality of its other obligations under the Agreement the Supplier shall and agrees to ensure the Supplier's Personnel shall:
- (a) comply with all reasonable instructions from a representative of MWPA in relation to health, safety and the environment;
 - (b) familiarise itself and comply with the MWPA site induction material provided, and the MWPA contractor requirements (reference; "Contractor & Worker Requirements (Contractors Handbook)" available at www.midwestports.com.au);
 - (c) hold a maritime security identification card at all times when working in the Secure Area;
 - (d) participate in the MWPA induction and carry current induction card at all times;
 - (e) wear the personal protective equipment required within the designated work areas for certain tasks;
 - (f) keep themselves informed as to the requirements of, comply with and not do anything which may place MWPA in breach of any relevant workplace health, safety and environmental Laws; and
 - (g) comply with the MWPA Permit to Work system (available at www.midwestports.com.au).
- 2.4 The Supplier must ensure that the Supplier's Personnel entering a Site maintain the Site in a safe, secure, clean and orderly manner having regard to the condition of the Site immediately before such entry.
- 2.5 If the Supplier or any of the Supplier's Personnel fail to comply with any obligation under this clause 2, then MWPA may in its discretion deny that person access to the Site or require the relevant Supplier's Personnel to leave the Site immediately.
- 2.6 Nothing in this clause 2 affects any obligation or duty imposed on the Supplier or the Supplier's Personnel to secure and have proper regard to the health and safety of any of the Supplier's Personnel.

3 FORMATION OF AGREEMENT

- 3.1 In consideration of the payment of the Price by MWPA, the Supplier must supply, deliver and complete the Goods and Services in accordance with the Agreement.
- 3.2 Unless expressly agreed to in writing by MWPA and referenced in the Purchase Order, to the extent permitted by Law, no other terms or conditions, including the Supplier's own terms and conditions even where they have been provided to MWPA, will apply or have any legal effect in connection with the supply of the Goods and Services or the Agreement.
- 3.3 To the extent of any inconsistency between the several parts of the Agreement, the following parts are listed in order of precedence:
- (a) the Purchase Order;
 - (b) this document;
 - (c) the Specification;
 - (d) the Quotation; and
 - (e) any other schedules, attachments or annexures to this document.

4 TERM

- 4.1 The Agreement:
- (a) commences on the earlier of the date on which the Supplier confirms its acceptance of the Agreement or commences performance of the Supplier's obligations under the Agreement; and
 - (b) will continue until the date the Supplier completes all of its obligations under the Agreement.

5 SPECIFICATION OF GOODS AND SERVICES

- 5.1 The Supplier will ensure that the Goods and Services provided to MWPA:
- (a) strictly comply with the Agreement, Specification and the Warranties; and
 - (b) are in accordance with any and all relevant Laws, standards and codes in force at the date of delivery.

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6 PRICE

- 6.1 The Price is fixed and not subject to rise and fall or any other adjustment unless the Purchase Order expressly provides that the Price is an “estimate only”, based on agreed hourly rates or that the Price is to be negotiated and accepted by both parties prior to the supply of the Goods and Services.
- 6.2 The Price is the maximum amount payable by MWPA to the Supplier for the Goods and Services and includes:
- (a) all necessary insurance, packaging and delivery cost;
 - (b) all duty, excise, sales or other taxes (excluding income tax); and
 - (c) all unloading and installation cost (where stipulated in the Purchase Order).

7 PROVISION AND COMPLETION OF GOODS AND SERVICES

- 7.1 The Supplier must supply the Goods and Services at the place nominated in the Purchase Order by the Date for Delivery and Date for Completion (as applicable). All Goods and Services must be provided within the hours approved by MWPA as notified by MWPA to the Supplier.
- 7.2 Where the Supplier has delivered the Goods (where the Agreement relates to delivery of Goods only) or completed the Services (where the Agreement includes Services) in accordance with the Agreement, full documentation which demonstrates that the Goods and Services comply with all applicable quality standards and Policies and Procedures and documentation identifying the relevant Purchase Order and a description of the Goods and Services must be provided for approval and signature of an authorised MWPA employee.
- 7.3 If MWPA determines that the Goods and Services do not meet the requirements of the Agreement, MWPA may issue a notice to the Supplier within 20 Business Days of delivery of the Goods or completion of the Services (as the case may be) stating the reasons why the Goods or Services (as the case may be) do not meet the requirements of the Agreement (**Failure Notice**).
- 7.4 If the Supplier receives a Failure Notice, the Supplier must, at its cost (including costs of collection and redelivery if applicable), promptly rectify or replace the Goods or re-perform the relevant Services (as the case may be), until the relevant requirements of the Agreement are met. MWPA has no liability to pay for Goods or Services that are subject to a Failure Notice.
- 7.5 Acceptance of the Goods and Services by MWPA does not constitute approval of the Goods and Services (or prejudice any claim MWPA may have in connection with the Goods and Services).

8 PERFORMANCE OF SERVICES

- 8.1 This clause 8 applies to the extent that Services form part of the Agreement.
- 8.2 The Supplier must supply all plant, resources and equipment necessary to perform the Services unless otherwise set out in the Specification.
- 8.3 The Supplier must allow MWPA or a representative of MWPA, at all reasonable times, to inspect, examine, review and witness tests of the Services, or the performance of the Services and to carry out site inspections at the Supplier's premises.
- 8.4 The Supplier must, where it is required to perform (or re-perform) any Services under the Agreement, give notice to MWPA when, in its opinion, the Services are complete and meet the requirements of the Agreement.

9 TITLE AND RISK

- 9.1 This clause 9 applies to the extent that Goods form part of the Agreement.
- 9.2 Title in the Goods will pass from the Supplier to MWPA upon payment of the Price. The Supplier warrants that title in the Goods will be transferred to MWPA without any encumbrances or liens.
- 9.3 Subject to clause 9.4, risk in the Goods will pass to MWPA on MWPA taking delivery of the Goods.
- 9.4 If MWPA issues a Failure Notice in respect of Goods under clause 7.3, then risk does not pass to MWPA until the Supplier rectifies or replaces the Goods in accordance with clause 7.4.

10 INTELLECTUAL PROPERTY

- 10.1 Subject to clause 10.3, the Supplier IP remains vested in the Supplier and the MWPA IP remains vested in MWPA.
- 10.2 MWPA will own all Intellectual Property that the Supplier creates in the performance of the Services and the supply of the Goods.

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10.3 The Supplier grants to MWPA a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-licence) to use the Supplier IP to the extent necessary to use the Goods and Services.

11 INSURANCE

11.1 The Supplier must have and maintain for the term of the Agreement with a reputable insurer:

- (a) public 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 ten million dollars (A\$10 million) or such higher amount as MWPA may reasonably request in respect of each and every claim, unlimited as to the number of claims;
- (b) workers compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (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. The insurance policy must, to the extent permitted by Law, extend to indemnify MWPA as principal or owner or occupier against any liability which it may incur to such employees or persons engaged in connection with the Agreement both statutory and at common law; and
- (c) motor vehicle insurance for all vehicles used in the provision of the Goods and Services with at least ten million dollars (A\$10 million) third party property and injury cover for any one occurrence and unlimited as to the number of occurrences.

11.2 In addition to the insurances required under clause 11.1, 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 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 Agreement. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the end of the Agreement.

11.3 The Supplier must provide to MWPA, within 3 Business Days of a written request, certificates of currency for each of the insurance policies required under clauses 11.1 and 11.2.

11.4 The insurances referred to in the Agreement are primary and not secondary to the indemnities in the Agreement.

12 TERMS OF PAYMENT

12.1 On or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services, the Supplier must submit a tax invoice to MWPA for the amount due to the Supplier.

12.2 MWPA will not be liable to pay the Price unless:

- (a) the requirements under clause 7.2 have been satisfied;
- (b) the Supplier has provided to MWPA a fully detailed tax invoice containing:
 - i. a valid MWPA Purchase Order number;
 - ii. an adequate description of the Goods (including the quantity and Date of Delivery) and Services;
 - iii. the words "tax invoice" and an invoice number;
 - iv. the amount being claimed;
 - v. full details of the Supplier including address and ABN;
 - vi. date the document was issued; and
 - vii. the amount of GST (if any) payable; and
- (c) all documentation and other material required by the Agreement or any Law to be provided by the Supplier has been provided.

12.3 Subject to clause 7, MWPA will pay the Price to the Supplier no later than thirty (30) days after the tax invoice and documentation referred to in clause 12.2(a) and (c) is received by MWPA unless otherwise agreed or stipulated in the relevant Purchase Order.

12.4 Payment will not be taken as proof or admission that, or any part of, the Goods and Services have been delivered or performed to the satisfaction of MWPA.

13 WARRANTIES

13.1 The Supplier warrants that prior to supplying, delivering and completing the Goods and Services under the Agreement, the Supplier has:

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- (a) had access to the Site;
- (b) carried out its own inspections of the Site; and
- (c) conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of the Site and all risks and contingencies associated with the Site.

13.2 The Supplier warrants to MWPA in relation to the Goods and Services as follows:

- (a) the Goods and Services match the description of the Goods and Services referred to in the Purchase Order and comply with the requirements in the Specification;
- (b) the Goods and Services incorporate only proven and reliable technology which complies with all Law and any relevant Australian Standards;
- (c) the Supplier has good title to and the right to use free of interference or claim all of the Intellectual Property comprised in the Goods and Services;
- (d) the Supplier will provide the Goods and Services, 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;
- (e) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Agreement, have all necessary qualifications, licences, skill and experience;
- (f) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Agreement, will comply with all applicable Laws, standards and codes, and any reasonable instructions given by MWPA;
- (g) the Supplier will ensure that it and the Supplier's Personnel, in performing its obligations under the Agreement, do not interfere with MWPA's activities or the activities of any other person at the delivery location or the Site;
- (h) any supplies and materials incorporated in the Goods and Services will comprise the best available material suitable for purpose and will be of good and merchantable quality free from latent defects;
- (i) the Goods and Services are of merchantable quality and are free from defects in design, materials and workmanship; and
- (j) the Goods and Services 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 Goods and Services of that type are usually acquired and otherwise correspond to the description given in the relevant Quotation and the Specification.

14 DOCUMENTS

14.1 The Supplier shall provide as constructed drawings (if relevant, as determined by MWPA) prior to the Date of Delivery or Date of Completion.

14.2 The Supplier must ensure that:

- (a) from transfer of the title in the Goods to MWPA, MWPA has the benefit of all usual manufacturers' warranties applicable to the Goods and Services and any warranties specifically requested by MWPA and will, where requested by MWPA, pursue any manufacturer warranties on MWPA's behalf; and
- (b) it provides MWPA with copies of all manufacturers' warranties applicable to the Goods and Services and any other usual documentation including instruction manuals, technical specifications or drawings when the Goods are delivered or the Services are performed (as applicable) or when MWPA otherwise reasonably requests.

15 DEFECTS

15.1 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 Services other than a Defect caused by the negligence of MWPA.

15.2 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.

15.3 Where any Defect has been rectified under the Agreement, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

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16 INDEMNITIES

- 16.1 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 Services or in respect of personnel used by the Supplier to perform its obligations under the Agreement.
- 16.2 The Supplier must indemnify and at all times keep indemnified MWPA and its personnel at all time against all claims, demands, actions, costs (including legal costs), charges, expenses, damages, loss or other liability (including without limitation in tort, under any Law, in respect of compensation for death of or injury to any person or in defending claims) arising out of or in connection with:
- (a) the performance or non-performance of the Supplier's obligations under the Agreement;
 - (b) any act or omission by the Supplier;
 - (c) any claims made by third parties; and
 - (d) any claim in respect of injury or sickness, disease or death of any person or loss of or damage to any property arising out of performance of the Agreement.
- 16.3 The Supplier shall, at its own cost and at the request of MWPA, defend MWPA in any proceedings where the events in clause 16.2(d) arise.
- 16.4 The indemnities in clause 16.1 and 16.2 shall be reduced proportionally to the extent that the loss is caused or contributed to, by MWPA's negligence.

17 VARIATIONS

- 17.1 The Supplier must not vary the Goods and Services or any part of the Goods and Services without the prior written consent of MWPA.
- 17.2 If at any time MWPA notifies the Supplier that it requires a Variation, the Supplier must promptly provide a Variation Quotation.
- 17.3 If MWPA accepts a Variation Quotation, MWPA will issue a Variation Notice to the Supplier and:
- (a) the Supplier must then carry out the Variation;
 - (b) the Price will be adjusted by the amount set out in the relevant Variation Quotation;
 - (c) if the Variation is in respect of the Services, the Date for Completion will be adjusted as set out in the Variation Quotation; and
 - (d) if the Variation is in respect of the Goods, the Date for Delivery will be adjusted as set out in the Variation Quotation.
- 17.4 The Supplier will not be entitled, in any circumstances to an adjustment in Price or any extension of time except as set out in the Variation Notice issued under this clause 17.

18 CONFIDENTIALITY

- 18.1 Each party must:
- (a) keep confidential, and not use or disclose, any of the other party's Confidential Information, except:
 - i. to the extent necessary for the performance of their obligations under the Agreement;
 - ii. that a party may disclose to its legal advisers who are under a duty of confidence; and
 - iii. that a party may disclose if required by Law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty; and
 - (b) 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.
- 18.2 The Supplier acknowledges that MWPA is subject to the *Freedom of Information Act 1992 (WA)* and that the Agreement or documents relating to the Agreement 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)*.

19 CLEANING UP

- 19.1 The Supplier must at all times keep the Site clean and tidy, including prior to vacating the Site.
- 19.2 The Supplier must regularly remove rubbish, refuse and surplus material from the Site.

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20 CANCELLATION AND SUSPENSION

- 20.1 MWPA may terminate the Agreement or suspend the delivery of the Goods and Services at its convenience at any time by notice in writing to the Supplier.
- 20.2 Where MWPA terminates or suspends the Agreement in accordance with clause 20.1, MWPA will pay to the Supplier all reasonable costs necessarily and reasonably incurred by the Supplier in performing its obligations under the Agreement which the Supplier is legally liable to pay up to the date of cancellation 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.

21 FORCE MAJEURE

- 21.1 Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligation under the Agreement and that party:
- (a) gives the other party prompt notice and reasonable particulars of that Force Majeure;
 - (b) uses all possible diligence to remove and mitigate the effects of Force Majeure; and
 - (c) has not caused or contributed to the Force Majeure,
- then that obligation is suspended so far as it is affected by Force Majeure during the continuance thereof.
- 21.2 Any cost, losses or savings due to Force Majeure including any cost, losses or savings suffered due to the Force Majeure will be borne, incurred or retained as the case may be by the party incurring or receiving the same.
- 21.3 Where the event of Force Majeure continues for a period exceeding thirty (30) days, MWPA may, in its sole discretion, terminate the Agreement without any liability to the Supplier.

22 TERMINATION

- 22.1 MWPA may terminate the Agreement and withhold any amounts due under the Agreement if:
- (a) the Supplier becomes insolvent or unable to meet its debts as and when they fall due or is made a bankrupt, or has liquidator, a receiver, receiver and manager or similar official appointed over any of its assets, or makes an assignment for benefit of creditors, or files a petition for an arrangement, composition or compromise with its creditors under any applicable Law, or becomes externally administered, or has a trustee or other officer appointed to take charge of its assets; or
 - (b) the Supplier has committed a fundamental breach of the Agreement (which, subject to clause 21.1, includes a failure by the Supplier to provide the Goods and Services by the date and time stipulated on the relevant Purchase Order or in accordance with the requirements of the Agreement) or fails to substantially perform any of its obligations under it.
- 22.2 If the engagement of the Supplier under the Agreement is terminated under clause 22.1 the Supplier will be liable for and indemnifies MWPA against:
- (a) any cost or expenses incurred by MWPA in engaging others to provide the same or similar Goods and Services to the extent that such cost or expenses exceed the Price; and
 - (b) any other losses suffered by MWPA as a result of the termination.
- 22.3 The procedure provided in this clause 22 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 Agreement and its remedies for any default by the Supplier of the covenants, obligations or conditions of the Agreement.
- 22.4 On termination of the Agreement, the Supplier must:
- (a) immediately cease performance of the Supplier's obligations; and
 - (b) 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.

23 QUALITY ASSURANCE

- 23.1 The Supplier must comply with any of MWPA's quality assurance requirements notified to the Supplier from time to time.

24 PPSA

- 24.1 Words and phrases used in the Agreement that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

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- 24.2 If MWPA determines that the Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, 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:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) 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
 - (c) enabling MWPA to exercise rights in connection with the security interest.
- 24.3 If the Supplier holds any security interests for the purposes of the PPS Law 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 PPS Law to continuously perfect any such security interests including (without limitation) all steps necessary:
- (a) 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
 - (b) 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).
- 24.4 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.
- 24.5 Clause 24.4 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.

25 ASSIGNMENT AND SUB-CONTRACTING

- 25.1 Unless expressly stated otherwise in the Quotation, the Supplier shall not sub-contract the whole or any part of the supply of the Goods and Services 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 Agreement and the Supplier shall be responsible for the acts, omissions, defaults or negligence of any sub-contractor, its agents or workmen as fully as if they were the acts, omissions, defaults or negligence of the Supplier.
- 25.2 The Supplier must not assign or novate the Agreement or assign any other right, benefit or interest under the Agreement to any person or entity without the prior written consent of MWPA.

26 RELATIONSHIP

The relationship between MWPA and the Supplier is a relationship of principal and independent contractor and nothing in the Agreement shall be construed so as to create a relationship of employment, agency or partnership. The Supplier does not have any authority to contract with third parties on behalf of MWPA or to otherwise bind MWPA without prior written Agreement from MWPA.

27 PORT AUTHORITIES ACT

- 27.1 Nothing in this Agreement:
- (a) affects the operation of the Port Authorities Act or the regulations made under the Port Authorities Act;
 - (b) fetters any discretions that the MWPA has under the Port Authorities Act;
 - (c) 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
 - (d) 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.
- 27.2 If there is any inconsistency between any term, condition or covenant in this Agreement 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.

28 GENERAL

- 28.1 Clauses 1, 10, 11, 16, 18, 22 and 28 survive termination or expiry of the Agreement.

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- 28.2 The Agreement binds and benefits each party and their respective successors, assigns and legal personal representatives.
- 28.3 No variation to the Agreement shall be binding on MWPA unless agreed in writing.
- 28.4 Each part must at its own cost do all things reasonably to give effect to the Agreement.
- 28.5 The Agreement supersedes any and all prior (written or oral) agreements, arrangements, negotiations, discussions or understandings between the parties.
- 28.6 No oral explanation or information provided by any party to another party is to:
- (a) affect the meaning or interpretation of the Agreement; or
 - (b) constitute any collateral agreement, warranty or understanding between any of the parties.
- 28.7 A notice or other communication given under the Agreement must be in writing and either hand delivered, sent by postage prepaid or sent by facsimile to the address or facsimile number of the parties specified therein.
- 28.8 A notice that is hand delivered is deemed to have been received on delivery. A notice that is sent by postage prepaid is deemed to have been received after three Business Days from posting. A notice sent by facsimile is deemed to be received on completion of the transmission.
- 28.9 Time is of the essence of the Agreement.
- 28.10 A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- 28.11 The failure of a party at any time to require full or partial performance of any provision of the Agreement does not affect in any way the full right of that party to require that performance subsequently.
- 28.12 No waiver of a breach of any term of the Agreement or of a default under the Agreement will be effective unless in writing, signed by, or on behalf of, the parties and expressed to be such a waiver.
- 28.13 The rights and remedies contained in the Agreement are cumulative and not exclusive of any rights or remedies provided by Law.
- 28.14 If any provision of part of any provision of the Agreement is void, invalid or unenforceable for any reason, that provision or that part of that provision may be severed from the Agreement and does not affect the validity, operation or enforceability of any other provision of the Agreement.
- 28.15 The Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 28.16 Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of the Agreement, and all other matters and Agreements referred to in the Agreement.
- 28.17 The Law of the Agreement is the Law of Western Australia. The parties irrevocable and unconditionally submit themselves to the exclusive jurisdiction of the courts of Western Australia.
- 28.18 If requested to do so by MWPA the Supplier will respond to a survey seeking details of response time, quality of work including rework, quality of people, adherence to site policies and housekeeping.
- 28.19 The Agreement is a non-exclusive contract for the supply of Goods and 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 Services with other suppliers.
- 28.20 The Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understandings and agreements in respect of its subject matter.
- 28.21 In the Agreement:
- (a) The singular includes the plural and the plural includes the singular.
 - (b) Other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning.
 - (c) 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.
 - (d) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
 - (e) A reference to a party to a document includes that party's successors and permitted assignees.

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- (f) A promise on the part of 2 or more persons binds them jointly and severally.
- (g) Specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (h) Part 1F of the *Civil Liability Act 2002* (WA) does not apply to the Agreement.