

Clause 0.1 Conditions of Contract for the provision of Supply Items

This clause is subject to clause 24.0 of these Conditions of Contract.

Contract means the contract between the Sydney Harbour Foreshore Authority (“the Authority”) and a tenderer (“the Supplier”) for the provision of goods, works or services (“Supply Items”). These Conditions of Contract apply to and form part of the Contract.

Subject to clause 26.0, these Conditions of Contract prevail any conditions the Supplier may seek to impose.

The Contract is formed at the time the Supplier receives a completed PO issued by the Authority

Clause 1.0 Applicable Law

This PO shall be governed by and construed in accordance with the laws applicable in the State of New South Wales.

Clause 2.0 Assignment / Subcontracting

The Supplier must obtain the prior written approval of the Authority to assign or subcontract the PO or any part thereof.

Approval to assign or subcontract shall not relieve the Supplier from any of its obligations under the PO or any of the Supplier’s obligations under the Contract, or impose any liability or obligation upon the Authority to an assignee or subcontractor.

Clause 3.0 Contract Price

The Contract price set out in the PO is firm. The Contract price shall include any customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, taxes (including withholding tax, goods and services tax or other consumption tax) and any other applicable costs and charges. Unless otherwise specified, the Contract price is not subject to change for the duration of the Contract covered by this PO.

Clause 4.0 Damage to Property or Injury to Persons

Whilst performing any work or services on site as part of the Supply Items of this PO, the Supplier is responsible for any damage to any property or surfaces and injury to or death of a person caused by its employees, subcontractors or agents and must ensure that due care is taken to protect and avoid damage to that property and surfaces and injury to or death of a person.

Clause 5.0 Delivery of Goods

Deliveries of goods as part of the Supply Items under this PO will only be accepted between the hours of 8.30 am and 4.30 pm – Monday to Friday (unless otherwise stated or requested) and only in accordance with the Authority’s’ procedures. Time for delivery must be confirmed in advance and prior notice of a delivery may be required.

Any goods delivered without the Authority’s PO Number will not be accepted.

Clause 6.0 Drawings, Manuals and Manufacturers’ Warranties

As part of the Supply Items supplied under this PO, the Supplier shall provide any relevant documentation, drawings and manuals that are needed for the use and reference with regard to the operation or use of the goods supplied.

If applicable, the Supplier will obtain in the name of the Authority, and deliver to the Authority, all available suppliers’ and manufacturers’ warranties and other warranties for work, goods, plant and equipment or hold all such warranties for the benefit of the Authority and ensure that claims are promptly made under such warranties. This provision survives termination of the Contract.

Clause 7.0 Existing Agreements

Where this PO is issued under the terms of an existing agreement between the Authority and the Supplier, then, the Contract with the Supplier will comprise of first, the existing agreement, second these Conditions of Contract and third this PO. Subject to clause 26.0, in the event of any inconsistency between the terms of any of these documents, the terms in the document listed first in this clause will govern to the extent of the inconsistency.

Clause 8.0 Force Majeure

Neither party to this Contract will be held liable where a circumstance beyond its reasonable control occurs and results in that party being unable to carry out its obligations under this Contract.

Clause 9.0 Supply Items

The Supplier warrants that all Supply Items supplied under this PO shall be free from defects in workmanship and materials and will conform to the nominated specifications; shall be new, fit for purpose and comply with the highest relevant commercially accepted standards; shall comply with all applicable codes, laws, rules and regulations.

The Authority may reject, within a reasonable time, Supply Items that are faulty or do not fully comply with this PO. The Supplier shall make good or replace these Supply Items at no additional cost, including removal and incidental costs, within the time specified by the Authority.

Clause 10.0 Hazardous Substances

Where this PO calls for the supply of a product classified as a Hazardous Substance under the *Occupation Health and Safety Act 2000* or “Guidance Note for Determining and Classifying a Hazardous Substance” issued by Worksafe Australia, a MSDS (Material Safety Data Sheet) in the prescribed form must accompany delivery of the product.

Clause 11.0 Indemnity

The Supplier shall on demand indemnify and hold harmless the Authority, its officers, employees, and agents (“those indemnified”) against all claims, losses, costs or expenses including legal expenses reasonably incurred or suffered by those indemnified, caused by a breach of the Contract by or any act or omission of the Supplier, its officers, employees, agents, or subcontractors in connection with this PO. The Supplier’s liability to the Authority under this clause shall be reduced proportionately to the extent that any wilful, unlawful, or negligent act or omission of the Authority, its officers, employees or agents contributed to the loss or liability.

For the purpose of this clause 11.0, the Authority acts as an agent of its officers and employees.

This clause shall survive termination of the Contract.

Clause 12.0 Inspection and Testing

Supply Items supplied under this PO may be subject to inspection and testing.

The Authority’s representatives shall be granted free entry at all times into the Supplier’s workshop or premises in which works or services in connection with this PO are being performed, and are to be supplied with any information the Authority’s representatives may desire regarding materials or process of manufacture.

Clause 13.0 Insurances

The Supplier, before commencing works or services on site as part of the Supply Items under this PO, must hold or effect policies of insurance covering:

- a) Workers’ Compensation;

- b) Public Liability to an amount of not less than \$10,000,000 for any single occurrence;
- c) Loss or damage to the works; any temporary works; or to any materials, property, plant or equipment that are brought on to the site by or on behalf of the Supplier or are entrusted to the Supplier by the Authority.

The policy details in (b) and (c) above shall cover the Authority, the Supplier, their respective employees and all subcontractors employed from time to time in relation to the works or services of the Supply Items.

The Supplier shall also ensure that every subcontractor must hold or effect a Policy of Insurance covering Workers' Compensation and shall also ensure that insurance covering liability for death of or injury to self employed persons employed by the Supplier or subcontractors is effected.

The Supplier must, on request, promptly produce to the Authority evidence of the Supplier's compliance with this clause, including certificates of currencies and policies required under this clause.

Clause 14.0 Confidentiality

The Supplier acknowledges that in the course of working with the Authority, it may come into the possession of information which the Authority regards as confidential or sensitive and the Supplier undertakes to ensure that such information is kept confidential by all of the Supplier's personnel, sub-contractors and others engaged by the Supplier under this PO. This does not apply to any information that is within the public domain.

Clause 15.0 Intellectual Property Warranty and Licence

The Supplier warrants that the deliverables supplied under this PO do not infringe the intellectual property (including trademarks and patents) or moral rights of a third party.

All intellectual property rights in the deliverables supplied under this PO shall vest in the Authority. In the event the intellectual property rights do not vest in the Authority, the Supplier grants a perpetual royalty-free, non-exclusive and non-transferable licence to the Authority to use, reproduce and adapt such deliverables to support the Authority's business as the Authority thinks fit.

Clause 16.0 Notices

All notices, requests, variations, and other communications by both parties are to be in writing and delivered promptly to the appropriate addresses named in the PO.

Clause 17.0 Occupational Health and Safety and Environment

The Supplier, must comply and ensure that all subcontractors and agents engaged under by this PO comply with the provision of the relevant safety laws including but not limited to the *Occupational Health and Safety Act 2000*, *Occupation Health and Safety Regulation 2001* and the *Protection of Environmental Operations Act 1997 (NSW)* and with all safety and environment related policies and procedures of the Authority.

Clause 18.0 Payment of Accounts

The Authority's standard terms of payment are 30 days from acceptance of the Supply Items and receipt of a correctly rendered Tax Invoice (as defined in the *A New Tax System (Goods and Services Tax) Act (C'th) 1999*). This may be varied where the Authority accepts a discount offered by the Supplier for earlier payment or where alternative payments terms have been stated in the PO. Invoices will not be recognised or paid by the Authority unless the official Authority's PO Number is quoted on the invoice.

All Tax Invoices must be addressed to PO Box N408, Grosvenor Place, NSW 1220 or faxed to 02 9271 5000 or by email to accounts.payable@shfa.nsw.gov.au.

The Supplier warrants that it will pay all employees and subcontractors of the Supplier engaged on the work or service under the Contract in full all amounts due to them as wages and allowances of every kind required to be paid under an industrial award or industrial agreement or an award of a Court or certified by a Court or an agreement approved by the Authority and to the latest date at which such wages and allowances are due. If the Authority becomes liable to pay such wages and allowances the Authority shall deduct such amount from amounts otherwise payable to the Supplier and the Supplier must reimburse the Authority if such amounts are insufficient.

Clause 19.0 Performance of the Contract

The Supplier shall deliver the Supply Items of goods at the time and place or provision of works or services specified in the PO. The Supplier shall ensure that the Supply Items comply with all of the Conditions of Contract..

The Supplier must comply with all laws in respect of this PO, including (but not limited to) the requirements of all acts of parliament, ordinances, regulations, by-laws and of all Authorities, the Building Code of Australia and all relevant Australian Standards.

Clause 20.0 Services or Works

The Supplier warrants that the Supply Items of services or works shall be provided with due skill and care, and that all services or works and materials supplied in connection with the services or works are fit for purpose.

If there is a defect in performance of the Supply Items or they are incomplete, the Authority may, by notice, require the Supplier to remedy the defect in performance, complete the services or works, or redo the services or works at no additional cost to the Authority. The Supplier has 30 days from the date of the notice to comply. If the Supplier does not remedy the defect or urgent services or works are required, the Authority may remedy the defect and the Supplier must meet such costs upon request from the Authority.

Clause 21.0 Defects Liability

The Supplier warrants that the Supply Items of goods are free from defects in materials and workmanship for a period of 12 months or the period provided by the manufacturer, whichever is the greater.

The Supplier warrants that the Supply Items of services or works are free from defects for a period of 12 months from completion of the services or works.

Clause 22.0 Site Access

The Supplier shall ensure that its personnel, subcontractors or agents engaged in respect of the PO comply with the Authority's' conditions and regulations pertaining to site access.

Directions regarding internal access routes, including lifts, will be indicated by the Authority.

The Supplier shall ensure that all Supplier personnel, subcontractor personnel and agents restrict themselves to work areas, amenities areas and access routes indicated and do not obstruct or cause nuisance to the Authority staff, customers, visitors or other suppliers.

Clause 23.0 Site Conditions

The Supplier acknowledges that the Authority is subject to the directions of the NSW Government, planning and State Heritage laws and policies.

The Supplier will co-operate with the Authority in meeting its obligations and will comply with any directions given by the Authority in this regard.

The Supplier must take all due care to prevent any interruption to the Authority's business or quiet enjoyment of any of the Authority's tenants and must follow all directions given by the Authority in relation to noise, dust, fumes control and other nuisances.

Clause 24.0 Standing Orders

Any PO expressed to be a Standing Order is issued for an estimated PO price and a set period of time. The estimated PO price should not be construed as a firm commitment by the Authority for expenditure. The Authority will only be liable for selected supplies that are specifically requisitioned during the period of the PO.

The Authority reserves the right to terminate any Standing Order by cancelling the PO at any point within the set period of time nominated on the PO.

Clause 25.0 Termination

Either party may terminate the PO in whole or in part if the other party:

- a) has not remedied a material breach within the reasonable time specified in the notice of breach; or
- b) becomes bankrupt or insolvent.

The Authority may terminate the PO if the Supplier is unable to complete the Contract or unable to complete the Contract within the timeframe specified in the PO.

Termination does not prejudice any other right of action or remedy which has accrued or might accrue to either party.

Clause 26.0 Termination for Convenience

- a) The Authority may at any time give written notice to the Supplier to terminate the Contract, or any part of the Contract, by cancelling the PO without cause.
- b) On receipt of the notice, the Supplier must cease or reduce the provision of Supply Items as required by the notice and take all steps possible to mitigate losses.
- c) On termination of the Contract or any part under this clause, the Supplier may submit a claim for compensation.
- d) The Authority may pay to the Supplier a fair and reasonable amount for any loss or damage sustained by the Supplier because of the termination.
- e) The Supplier is not entitled to claim compensation for any provision of Supply Items or expenditure incurred contrary to the Contract or for loss of anticipated profits.
- f) The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the Contract price payable under the Contract.
- g) If this clause is invoked, it will prevail over other inconsistent provisions.

Clause 27.0 Title, Acceptance and Risk

Title of the Supply Items vests in the Authority on acceptance by the Authority. The risk of any loss or damage to the Supply Items remains with the Supplier until delivery to and acceptance by the Authority.

Clause 28.0 Use of the Authority in Supplier's Marketing

The Supplier will not, without the prior written consent of the Authority:

- a) use any of the Authority's intellectual property (including the design, image, likeness, logo or name of Sydney Harbour Foreshore Authority in any form, design, style or representation) in any manner whatsoever, including

in connection with any advertising or promotion of its goods or services;

- b) engage in any activity that suggests a connection or association with the Authority.

Clause 29.0 Variations

Any variations to the PO must be submitted to the Authority in writing and approved by the Authority prior to variation to the Supply Items are being undertaken.

Clause 30.0 Heritage Buildings

- a) The Supplier acknowledges that many of the Authority's buildings and public domain areas are of historical importance. Whilst performing any works or services on site as part of the Supply Items of this PO, the works or services must be conducted in careful, sympathetic and detailed manner.
- b) The Supplier shall comply with all requirements in relation to the heritage protection, including, without limitations, the requirements of the *Heritage Act (NSW) 1977*.
- c) The Supplier acknowledges that pursuant to the *Heritage Act (NSW) 1977*, archaeological artefacts are protected. The Supplier must ensure that all those engaged by the Supplier are aware of the obligations of the Supplier in relation to archaeological artefacts, notify the Authority immediately on discovery and take precautions to ensure that such artefacts and relics are not removed or damaged.

Clause 31.0 Sustainability

- a) The Supplier including all personnel and subcontractors acknowledges and commits to the Authority's sustainability policy that seeks to maximise resource and energy efficiency and minimise carbon emissions through all operations, products and processes.
Goods and materials supplied shall have the least impact on the environment through all stages of their lifecycle.
- b) The Supplier shall maintain business practices that optimise sustainable use of energy, water and materials, and minimise waste, travel and emissions, through avoidance, minimisation, reuse and responsible sourcing.
- c) The contractor shall operate at all times in accordance to the *Environmental Planning and Assessment Act, 1979*, and the *Protection of the Environment Operations Act 1997*, and the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

The Authority's Sustainability information is available from the Authority's website at www.shfa.nsw.gov.au.

Clause 32.0 Waiver

Failure by either party to enforce a provision of this PO shall not be construed as in any way affecting the enforceability in any other instance of the PO as a whole.

For further information, contact: Chief Procurement Officer Sydney Harbour Foreshore Authority, Level 6, 66 Harrington Street, The Rocks, Sydney. NSW 2000. Phone: (02) 9240 8884; Fax: (02) 9271 5331.