

STANDARD TERMS AND CONDITIONS

1. General

- 1.1. These Standard Terms and Conditions apply to all Purchase Orders or Work Orders (‘Contract Details’) for Goods and / or Services placed by the Sydney Harbour Federation Trust ABN 14 178 614 905 (“Harbour Trust”).
- 1.2. These Standard Terms and Conditions are to be attached to the Contract Details, along with any documents referred to in clause 32.2, which together form The Contract between parties.

2. Commencement Date

- 2.1. The Contract commences on the Commencement Date and will continue until all obligations under The Contract have been satisfied.

3. Supply of Goods

- 3.1. The Supplier shall be deemed to have accepted a purchase order on receipt, unless it gives written notice within 3 days of receipt.
- 3.2. The Supplier agrees to supply Goods in accordance with The Contract and with the skill, care, prudence and foresight of a diligent supplier of such Goods.
- 3.3. The Goods must:
 - a. be new, unused and fit for the purpose for which they are required by the Harbour Trust;
 - b. be supplied as specified and in accordance with the Harbour Trust’s drawings and instructions;
 - c. be free from defects in materials and workmanship;
 - d. comply with all applicable Australian or international standards; and
 - e. comply with all representations made by the Supplier, or on behalf of the Supplier, to the Harbour Trust in relation to standards, quality and timing (including representations made before The Contract was entered into).
- 3.4. The Supplier agrees to carry out, or arrange the carrying out of any calculations, analysis, testing or examination to ensure the Goods are fit for purpose and without risk to health and safety of persons.

4. Supply of Services

- 4.1. The Supplier agrees to perform the Services:
 - a. to a high professional industry standard and in accordance with all applicable Australian or international standards; and
 - b. to meet or exceed the timeframe and any other specific requirements set out in The Contract.
- 4.2. The Supplier agrees to liaise with the Harbour Trust as reasonably required and to comply with any directions of the Harbour Trust that are consistent with The Contract.
- 4.3. The Supplier agrees that the Specified Personnel will perform work in relation to the Services in accordance with The Contract.
- 4.4. The Harbour Trust agrees to provide material and assistance to the Supplier as specified in the Contract Details.

5. Subcontracting

- 5.1. The Supplier agrees not to subcontract the performance of any part of the Services or supply of the Goods without the prior written consent of the Harbour Trust.

6. Delivery of Goods

- 6.1. The Goods must be delivered at the time(s), date(s) and at the place(s) specified or as advised by the Harbour Trust in writing.
- 6.2. The Goods must be packaged to ensure their safe delivery.
- 6.3. The Harbour Trust will give the Supplier access to the Harbour Trust’s premises (or to another location specified) on such terms and at such times as the Harbour Trust considers reasonably necessary for the supply of the Goods under The Contract.

- 6.4. The Supplier agrees to obtain the appropriate security clearances, at its own costs, as required by the Harbour Trust for the purpose of clause 6.3.

7. Acceptance of Goods and Services

- 7.1. The Harbour Trust may inspect the Goods and / or Services at any time prior to delivery.
- 7.2. The Supplier agrees to provide reasonable access to its premises and all other necessary assistance for the Harbour Trust to inspect the manufacture of the Goods.
- 7.3. Where the Harbour Trust requires the Supplier to submit samples of the Goods, the Supplier must not proceed to bulk manufacture, until the Harbour Trust has accepted the samples. Notwithstanding the acceptance of any samples, clause 7 (other than this clause 7.3) applies to any Goods produced as a result of the bulk manufacture process.
- 7.4. The Harbour Trust will, within 30 calendar days of delivery, notify the Supplier in writing if the Harbour Trust does not accept the Goods and / or Services. The Goods and / or Services will be deemed to have been accepted where the Harbour Trust has not notified the Supplier of their rejection within this time period.
- 7.5. The Harbour Trust may reject the Goods and / or Services at any time after acceptance where it becomes apparent that the Goods and / or Services do not conform with The Contract, and this non-conformity could not have been discovered by reasonable inspection of the Goods and / or Services before acceptance.
- 7.6. If the Goods and / or Services are rejected, the Harbour Trust may in its absolute discretion require the Supplier to, at no cost to the Harbour Trust:
- a. replace the Goods in all respects in accordance with The Contract;
 - b. rectify any defect in the Services;
 - c. refund any payment for the rejected Goods and / or Services;
 - d. require the Supplier to remove the rejected Goods; or
 - e. repair the Goods at the place of delivery or otherwise to the Harbour Trust's satisfaction.
- 7.7. The Supplier agrees to comply with the Harbour Trust's requirement under clause 7.6.
- 7.8. The title to and risk in the Goods and / or Services passes to the Harbour Trust only on acceptance.

8. Fees

- 8.1. The Harbour Trust agrees to pay the Supplier the fees in the amounts and in the manner specified in the Contract Details (which the Supplier acknowledges are an all-inclusive price for all matters relating to The Contract), provided that the Supplier has fully and properly complied with its obligations under The Contract and the invoicing requirements specified in the Contract Details.
- 8.2. The Supplier must provide an invoice:
- a. without charge, expressed in plain language, legible and clear;
 - b. identifying the applicable purchase order and / or work order number(s);
 - c. specifying how the price of the Services were calculated;
 - d. including the number of hours of labour that relates to the Services and the hourly rate for that labour (if applicable); and
 - e. including a list of the materials used to supply the Services and the amount charged for those materials (if applicable).
- 8.3. All invoices payable by the Harbour Trust are to be emailed to: finance@harbourtrust.gov.au
- 8.4. An invoice is not correctly rendered where it includes amounts that are not properly payable under The Contract, are incorrectly calculated, the invoice is not in the correct tax invoice format, or the invoice does not include the order number as specified in the Contract Details.
- 8.5. The due date for payment by the Harbour Trust is 30 calendar days from receipt of a correctly rendered invoice. If this period ends on a day that is not a business day, the due date for payment is the next business day.
- 8.6. Except as expressly provided in The Contract, where the Supplier is required to do something under The Contract, the Supplier agrees to do so at no additional cost to the Harbour Trust and the only consideration the Supplier is entitled to is the fee specified in the Contract Details.

9. Taxes and charges

- 9.1. Any taxes or charges imposed in connection with The Contract must be borne by the Supplier.
- 9.2. Unless otherwise indicated, all consideration for a supply under The Contract is exclusive of any GST. The recipient of a supply under The Contract on receipt of a tax invoice must pay the supplier any GST imposed.
- 9.3. No party may claim from the other an amount for which an input tax credit or decreasing adjustment

can be obtained.

10. Intellectual Property

- 10.1. Intellectual Property in all Contract Material vests or will vest in the Harbour Trust.
- 10.2. Clause 10.1 does not affect the ownership of Intellectual Property in any material in existence on the date The Contract is made.
- 10.3. The Supplier grants to (or will procure for) the Harbour Trust a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing material referred to in clause 10.2, in conjunction with the Contract Material for any purpose, to use any Intellectual Property in the Goods for any purpose and a right to licence the existing material in conjunction with the Contract Material to the public under an open access licence (including a Creative Commons Attribution licence).
- 10.4. The Supplier must deliver all Contract Material to the Harbour Trust when The Contract ends for any reason.
- 10.5. The Supplier will ensure that the Contract Material is used, copied, supplied or reproduced solely for the purposes of performing The Contract.
- 10.6. The Supplier must deal with all material provided by the Harbour Trust when The Contract ends for any reason as directed by the Harbour Trust.

11. Confidentiality and other security obligations

- 11.1. The Harbour Trust will not, without the prior written authorisation of the Supplier, disclose any Confidential Information of the Supplier to a third party except where the Confidential Information:
 - a. is disclosed by the Harbour Trust to its personnel solely in order to comply with its obligations, or to exercise its rights, under The Contract;
 - b. is disclosed to the responsible Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - c. is disclosed to the Harbour Trust's internal management personnel, solely to enable effective management or auditing of the Harbour Trust's activities;
 - d. is shared by the Harbour Trust within the Harbour Trust's organisation or with another agency (including a state or territory government agency), where this serves the Commonwealth's legitimate interest;
 - e. is authorised or required by law to be disclosed; or
 - f. is in the public domain otherwise than due to a breach of this clause 11.
- 11.2. The Supplier will not, without prior written authorisation from the Harbour Trust, disclose any Official Information to any person other than those Supplier personnel who require access for the purposes of The Contract (unless required to do so by law).
- 11.3. The Supplier agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure. The Supplier must notify the Harbour Trust as soon as possible after it becomes aware of any security incident involving Official Information, at which point the Supplier must comply with all directions of the Harbour Trust to resolve the incident.
- 11.4. The Supplier must ensure that all Official Information is not accessed from, or stored outside Australia, unless expressly permitted by the Harbour Trust in writing.
- 11.5. The Supplier agrees to comply with any other security requirements notified by the Harbour Trust from time to time.

12. Privacy

- 12.1. The Supplier must not do any act or engage in any practice which, if done by the Harbour Trust, would be a breach of the requirements of an Australian Privacy Principle of the *Privacy Act 1988* (Cth).

13. Access to Documents

- 13.1. In this clause 13, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 13.2. The Supplier acknowledges that The Contract is a Commonwealth contract.
- 13.3. Where the Harbour Trust has received a request for access to a document created by, or in the possession of, the Supplier or any subcontractor that relates to the performance of The Contract (and not to the entry into The Contract), the Harbour Trust may at any time by written notice require the Supplier to provide the document to the Harbour Trust and the Supplier must, at no additional cost to the Harbour Trust, promptly comply with the notice.
- 13.4. The Supplier must include in any subcontract relating to the performance of The Contract, provisions that will enable the Supplier to comply with its obligations under this clause 13.

14. Warranty of Goods

- 14.1. The warranty period commences on the day of delivery or acceptance of the Goods, whichever occurs later.
- 14.2. The warranty for the Goods will continue for the period specified in the Contract Details or if none is specified then for the Supplier or manufacturer standard warranty period whichever is the longer.
- 14.3. Where the Harbour Trust notifies the Supplier of any defect or omission discovered in the Goods during the warranty period, the Supplier agrees to correct that defect or omission without delay and at no cost to the Harbour Trust.
- 14.4. The Supplier agrees to meet all costs of, and incidental to, the discharge of the warranty, including without limitation any packing, freight, disassembly and reassembly costs.
- 14.5. Where the Supplier fails to rectify a defect covered by warranty within 30 days after notification by the Harbour Trust, the Harbour Trust may perform, or have performed, the necessary remedial work, and the Supplier will reimburse the Harbour Trust for all costs and outgoings incurred.
- 14.6. The rights and remedies provided in this clause 14 are in addition to, and do not limit, any other rights that the Harbour Trust has under The Contract or otherwise.

15. Indemnity

- 15.1. The Supplier indemnifies the Harbour Trust from and against any:
 - a. cost or liability incurred by the Harbour Trust;
 - b. loss of or damage to property of the Harbour Trust; and
 - c. loss or expense incurred by the Harbour Trust in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, and disbursements paid by the Harbour Trust, arising from either: a breach by the Supplier of The Contract; or an act or omission involving fault on the part of the Supplier or its personnel in connection with The Contract.
- 15.2. The Supplier's liability to indemnify the Harbour Trust under clause 15.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Harbour Trust, or its personnel contributed to the relevant cost, liability, loss, damage or expense.

16. Disputes

- 16.1. If either party to The Contract wishes to dispute anything arising out of or in connection with The Contract, that party must give the other party notice in writing of the dispute providing a specified time, being not less than 14 days, to resolve the problem.
- 16.2. The parties must attempt to settle by negotiation or alternative dispute resolution techniques any dispute in relation to The Contract before resorting to legal proceedings.
- 16.3. If the dispute is not resolved after the nominated time in accordance with clauses 16.1 and 16.2, then either party may commence legal proceedings. Except that nothing in The Contract shall prevent a party from commencing proceedings, if the party would be prevented from doing so due to a legal limitation period expiring during the dispute resolution periods specified above.

17. Termination for convenience

- 17.1. The Harbour Trust may by notice, at any time and in its absolute discretion, terminate The Contract or reduce the scope of the Services or reduce the quantity or type of the Goods immediately.
- 17.2. In the event of termination under clause 17.1, the Harbour Trust will be liable only:
 - a. to pay any fees due under clause 8 relating to Services and/or supply of Goods completed before the time of notice of termination; and
 - b. to reimburse any expenses the Supplier unavoidably incurs relating entirely to Services and/or Goods not covered under clause 17.2.abut, the Supplier will not be entitled to compensation for loss of prospective profits; and the Harbour Trust will not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the Supplier under The Contract, would together exceed the fees set out in the Contract Details.
- 17.3. In the event of a reduction in the scope of the Goods and / or Services under clause 17.1, the Harbour Trust's liability to pay fees under clause 8 will reduce in accordance with the reduction in the Goods and / or Services.

18. Termination for fault

- 18.1. If the Supplier fails to satisfy any of its obligations under The Contract, then the Harbour Trust may, by notice, terminate The Contract immediately.
- 18.2. The Harbour Trust may also by written notice terminate The Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Supplier:
 - a. being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth) or has an order made against it for the purpose of placing the Supplier under external administration, or
 - b. being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

19. Work health and safety

- 19.1. The Supplier acknowledges that it has responsibilities and obligations under the *Work Health and Safety Act 2011* (Cth) and agrees, in carrying out The Contract, to comply with:
 - a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to work health and safety including those that apply to the Harbour Trust's premises when using those premises.

20. Audit and access

- 20.1. The Supplier agrees to give the Harbour Trust, or any persons authorised in writing by the Harbour Trust, access to premises occupied by the Supplier where records may be kept relating to The Contract and the Supplier agrees to permit those persons to inspect and take copies of any material relevant to The Contract.

21. Insurance

- 21.1. The Supplier will effect and maintain insurance policies of the types and with the amounts of cover that a prudent operator in the Supplier's industry would consider normal and adequate including when performing contracts of this kind or those that are specified in the Contract Details.
- 21.2. The Supplier agrees to provide acceptable proof of this insurance if requested by the Harbour Trust.

22. Conflict of interest

- 22.1. The Supplier warrants that, at the date of entering into The Contract, no conflict of interest exists or is likely to arise in the performance of the Services and/or the supply of Goods.
- 22.2. If, during the period of The Contract a conflict arises, or appears likely to arise, the Supplier agrees:
 - a. to notify the Harbour Trust immediately; and
 - b. to take any steps the Harbour Trust reasonably requires, to resolve or otherwise deal with the conflict.

23. Relationship of parties

- 23.1. The Supplier is not by virtue of The Contract an officer, employee, partner or agent of the Harbour Trust, nor does the Supplier have any power or authority to bind or represent the Harbour Trust.
- 23.2. The Supplier agrees:
 - a. not to misrepresent its relationship with the Harbour Trust; and
 - b. not to engage in any misleading or deceptive conduct in relation to The Contract.

24. Variation

- 24.1. A variation of The Contract is binding only if agreed in writing and signed by the parties.

25. Assignment

- 25.1. The Supplier cannot assign its obligations, and agrees not to assign its rights, under The Contract without the Harbour Trust's prior written approval.

26. Compliance with laws

- 26.1. The Supplier agrees, in carrying out The Contract, to comply with all applicable laws of the Commonwealth, or of a State, Territory or local authority in particular:
 - a. the *Crimes Act 1914* (Cth)
 - b. the *Privacy Act 1988* (Cth)
 - c. the *Racial Discrimination Act 1975* (Cth)
 - d. the *Sex Discrimination Act 1984* (Cth)

- e. the *Disability Discrimination Act 1992* (Cth)
- f. the *Workplace Gender Equality Act 2012* (Cth)
- g. the *Modern Slavery Act 2018*, and
- h. all legislation relating to industrial relations and security.

26.2. The Supplier agrees, in carrying out The Contract, it must comply with the Harbour Trust Supplier Code of Conduct: <https://www.harbourtrust.gov.au/media/4473/supplier-code-of-conduct.pdf>; and the Commonwealth Supplier Code of Conduct: <https://www.finance.gov.au/government/procurement/commonwealth-supplier-code-conduct/commonwealth-supplier-code-conduct>.

26.3. The Supplier agrees to ensure that any subcontract entered into by the Supplier for the purpose of fulfilling its obligations under The Contract, imposes the same obligations on the subcontractor that the Supplier has under this clause 26 (including this requirement in relation to subcontracts).

27. Applicable law

27.1. The Contract is to be governed by the law of New South Wales but nothing in The Contract is to be construed as binding the Harbour Trust to comply with laws or requirements of that jurisdiction which do not apply to it of their own force.

27.2. The parties submit to the jurisdiction of the courts of New South Wales.

28. Severability and Inconsistencies

28.1. Should any provision of these Standard Terms and Conditions be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of the Standard Terms and Conditions shall be unaffected thereby and shall continue to be valid and enforceable.

28.2. If any conflict arises between the terms and condition contained in The Contract, the order of priority will be, as set out in clause 32.2.

28.3. In the event of any conflict or inconsistency between these General Terms and Conditions and any Supplier's general terms and conditions (attached to this Contract if applicable), the Harbour Trust's General Terms and Conditions shall prevail.

29. Electronic / Digital Signing

29.1. The parties agree that the Contract and any other documents to be delivered in connection herewith may be electronically or digitally signed, and that any electronic or digital signatures appearing within the Contract or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

30. Updated Terms and Conditions

30.1. The Harbour Trust may modify these Standard Terms and Conditions at any time by posting a revised version on its website (<https://www.harbourtrust.gov.au/media/xkcfvti/harbour-trust-terms-and-conditions.pdf>), or otherwise providing notice to the Supplier. Such terms shall become effective and binding between the parties upon commencement of any renewed supply of Goods or Services.

31. Public Interest Disclosures

31.1. If the Supplier suspects that a current or former Harbour Trust official (employee, contractor, subcontractor or office holder) has engaged in a serious wrongdoing (disclosable under the *Public Interest Disclosure Act 2013*); the Supplier should report the conduct immediately to a Harbour Trust authorised officer. Authorised officers and additional information can be found via the following link: <https://www.harbourtrust.gov.au/media/usqjkuug/corp-pro-001-public-interest-disclosure-procedures.pdf>.

32. Definitions and Interpretation

32.1. In addition to the terms described in the Contract Details:

Australian Privacy Principle has the meaning that it has in the *Privacy Act 1988* (Cth).

Commencement Date means the date on which The Contract is made, unless otherwise specified in the Contract Details.

Contract Details means the relevant document headed 'Purchase Order or Work Order'.

Contract Material means any material:

- a. created for the purposes of The Contract;

- b. provided or required to be provided to the Harbour Trust as part of the Services; or
- c. derived at any time from the material referred to in paragraphs a or b;

Date, as specified in the Work Order has the same meaning as the General Terms and Conditions Commencement Date.

Date Due, as specified in the Work Order identifies the due date by which the Goods must be received and / or Services completed.

Address, as specified in the Work Order identifies the location to which Goods and/or Services are to be supplied.

Goods means the goods and any related services and documentation specified in the Contract Details.

GST has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property includes all copyright (including rights in relation to phonograms and broadcasts); all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: moral rights; the non-proprietary rights of performers; or rights in relation to Confidential Information.

Make Safe Date, as specified in the Work Order identifies the date by which any immediate agreed rectification works must be completed to prevent further damage and make premises / location safe.

Official Information means any information developed, received or collected by or on behalf of the Harbour Trust to which the Supplier gains access under or in connection with The Contract, and includes the Contract Material and the terms of the contract.

Services means the services, work, activities, functions, and responsibilities (for the purposes of this definition collectively referred to as "services") performed or provided, or to be performed or provided, by the Supplier under this Contract, including:

- a. any services specified in the Contract Details; and
- b. any services not specifically identified in the Contract Details but which are reasonably related to the services to be provided by the Supplier.

Specified Personnel means any person(s) / Technician(s) specifically named in The Contract, as agreed by the Harbour Trust, to perform the Services.

Supplier means the supplier / contractor providing the Goods and / or Services.

32.2. **The Contract** means and comprises the following documents, placed in order of descending priority:

- a. these Standard Terms and Conditions;
- b. the Contract Details;
- c. any attachments to these Standard Terms and Conditions; and
- d. any other document incorporated by reference.