

Supply of Goods (With Installation) – Terms and Conditions of Contract

1 Structure of Contract

- (a) The Supplier, by submitting a Proposal to TfNSW, offers to supply and install the Goods in accordance with these Conditions of Contract.
- (b) By issuing a Purchase Order, TfNSW accepts the Supplier's Proposal, and this Contract is formed.
- (c) This Contract constitutes the entire agreement between the parties to the exclusion of all other terms and conditions. Any amendment to this Contract has no effect unless expressly agreed in writing by TfNSW.
- (d) In the case of any conflict or ambiguity, the following order of precedence applies (from top to bottom):
 - (i) these Conditions of Contract;
 - (ii) the Purchase Order
 - (iii) the RFx; and
 - (iv) the Proposal.

2 Business ethics

- (a) The Supplier must comply with Statement of Business Ethics.
- (b) For the purposes of this clause, the Supplier shall include the Supplier's officers, employees, consultants and agents.
- (c) This clause 2 is a fundamental term of this Contract.

3 Supply and installation

- (a) The Supplier agrees to:
 - (i) undertake the Works exercising the standard of care that would be expected of a contractor experienced and skilled in works of the nature of those to be undertaken by the Supplier under this Contract
 - (ii) complete the Works by the Installation Date;
 - (iii) undertake the Works in accordance with this Contract and all applicable laws, NSW government policies, guidelines, codes of conduct and all relevant Australian and ISO Standards, the Purchase Order and these Conditions;
 - (iv) package all Goods to ensure maximum protection against theft or damage during transit, delivery, loading and unloading;
 - (v) provide all information (including test results, manuals, guides, instructions, procedures and drawings) necessary for the proper and safe handling, transport, storage, use, operation, maintenance, repair and disposal of the Goods;
 - (vi) obtain for the benefit of TfNSW the benefit of any manufacturer's warranties provided for the Goods; and
 - (vii) provide all equipment, installation materials, labour and other things necessary to undertake the tasks and activities required to carry out the Works.
- (b) Without in any way limiting subclause (a), the Supplier agrees to undertake the Works in conformity with TfNSW's Code of Conduct and NSW Government Procurement Policy Framework, as well as any applicable government direction with respect to any act done in connection with the Works.

4 Completion of Works

- (a) The Supplier must complete the Works by the Installation Date.
- (b) The Supplier must promptly notify TfNSW when it has formed the opinion that it has completed the Works.
- (c) TfNSW must inspect the Work and notify the Supplier whether it considers the Works have been completed.
- (d) If TfNSW notifies the Supplier that the Works have been completed ("**Acceptance Date**"), then the Defects Liability Period commences.
- (e) If TfNSW (acting reasonably) considers that the Works have not been completed, it will notify the Supplier of those reasons and the action the Supplier must take to complete the Works.

The Supplier must then complete the notified action, at no additional cost to TfNSW.

- (f) If the Supplier is or will be delayed in completing the Works by the Installation Date, including a delay being due to an event or circumstance beyond the Supplier's reasonable control, the Supplier must notify TfNSW as soon as practicable, the cause of such delay and when it anticipates that it will be able to resume the Works.

5 Title and risk

- (a) Title in the Goods will pass to TfNSW upon delivery of the Goods to the site of installation.
- (b) Risk in the Goods will pass to TfNSW when the Works are notified as complete by TfNSW under subclause 4(b).

6 Payment

- (a) TfNSW will only pay the Purchase Price following receipt by TfNSW of a valid tax invoice, issued by the Supplier, together with such other information as TfNSW may reasonably require. The tax invoice must be sent to the Invoice Address specified in the Purchase Order.
- (b) TfNSW will pay the Purchase Price to the Supplier within 30 days following receipt of a tax invoice that conforms with subclause (a).
- (c) The Supplier acknowledges that any payment made to it by TfNSW is payment on account only and does not imply or constitute a waiver or release of the Supplier's obligations under this Contract.

7 Defective Works

- (a) If, during the Defects Liability Period, TfNSW identifies a defect in the Works ("**Defective Works**"), TfNSW may direct the Supplier to rectify these Defective Works, by way of repairing, replacing, modifying, performing or taking other actions acceptable to TfNSW (acting reasonably).
- (b) The Supplier must, at its own cost, repair, replace or otherwise make good any Defective Works notified by TfNSW to the Supplier.
- (c) The timing of the rectification work described in subclause (a) must be agreed with TfNSW, or failing agreement, may be specified by TfNSW (acting reasonably), before commencing the work.
- (d) If the Supplier fails to rectify the Defective Works within the time agreed or specified by TfNSW under subclause (c), TfNSW may do so or engage another party to do so at the Supplier's risk and expense. Any cost incurred by TfNSW under this subclause will be a debt due from the Supplier to TfNSW.
- (e) The Defects Liability Period will restart from the date of the repair, replacement or making good, but only in respect of that part of the Works repaired, replaced or made good.

8 Set-off

TfNSW may withhold, retain or set off from any payment due to the Supplier under this Contract any amounts due from the Supplier to TfNSW under this Contract.

The right to withhold, retain or set off does not limit TfNSW's right to recover those amounts in any other way.

9 Warranties

- (a) The Supplier warrants to TfNSW that:
 - (i) (**Goods**) the Goods:
 - (A) are new and fit for the purpose disclosed by TfNSW (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
 - (B) conform in all respects with the specification (if stated);
 - (C) are free from defects; and
 - (D) are of merchantable quality and comply with all laws.

- (ii) **(Supplier)** at all times, the Supplier shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of the Works;
 - (iii) **(Conflict)** it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Contract;
 - (iv) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with Works.
- (b) The Supplier must notify TfNSW, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest. Where, in TfNSW's reasonable view the conflict of interest cannot be appropriately managed, TfNSW may terminate this Contract.

10 Indemnities

The Supplier must indemnify, and keep indemnified, TfNSW and each of its officers, employees, contractors and agents against any losses which any of them incurs or suffers in respect of:

- (a) a negligent or wilful act or omission of the Supplier;
- (b) loss or damage to any property;
- (c) personal injury (including death or illness of any person); and
- (d) claims that the Works breach the Intellectual Property Rights of any third party or any breach of confidence,

arising out of or in connection with the performance of the Supplier's obligations under this Contract, including failure by the Supplier to deliver the Goods.

For the avoidance of doubt, any proportional liability legislation does not apply to any dispute between TfNSW and the Supplier (*Civil Liability Act 2002* (NSW)).

This clause 10 survives expiry or termination of this Contract

11 Intellectual Property Rights

The Supplier grants to TfNSW a non-exclusive, perpetual, royalty-free licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow TfNSW the full use and enjoyment of those Goods and the Supplier must, upon request by TfNSW, do all things as may be necessary (including executing any documents) to give full effect to such rights.

12 Insurance

- (a) The Supplier must obtain and maintain insurance coverage specified in the RFx at all relevant times sufficient to cover any loss or damage that the Supplier may be liable in connection with the Works, and if not specified in the RFx, the Supplier must effect public liability insurance of a minimum of \$10 million for each and every occurrence and products liability insurance with a minimum value of \$10 million for each and every occurrence and in the annual aggregate.
- (b) Any policy obtained by the Supplier under with subclause (a) must not contain any exemptions or exclusions of insurance coverage.
- (c) Upon request by TfNSW, the Supplier agrees to provide TfNSW with the certificates of currency for any insurance it is required to obtain under the RFx.
- (d) The Supplier agrees to maintain the insurances required under subclause (a) for a period of 7 years from the date of delivery.
- (e) The Supplier's obligations under this clause 12 survive expiry or termination of this Contract.

13 Confidentiality

- (a) The Supplier must:
 - (i) keep confidential, disclose to only those of its employees and subcontractors who have a need to know and use only for the purpose of performing its obligations under this Contract all data, drawings, samples, specifications

and other information, items or things, regardless of form, given or disclosed to the Supplier by TfNSW;

- (ii) not issue any information, publication, document or article or make any statement to or advertise in any media about any matters relating to this Contract, unless otherwise approved in writing by TfNSW; and
 - (iii) if requested by TfNSW, on completion of the Services or termination of the Contract, return all information referred to in subclause (a)(i) to TfNSW or provide evidence, to the reasonable satisfaction of TfNSW, that such information has been destroyed.
- (b) The Supplier consents to TfNSW publishing or otherwise making available information in relation to the Supplier (and the Works) as may be required:
- (i) by law including, as required under the *Government Information (Public Access) Act 2009* (NSW), *Ombudsman Act 1974* (NSW) or *Independent Commission Against Corruption Act 1988* (NSW);
 - (ii) to satisfy the disclosure requirements of the NSW Auditor General or Parliamentary accountability;
 - (iii) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
 - (iv) to external consultants and advisers of TfNSW engaged to assist with any tendering process; or
 - (v) to be disclosed by government policy.
- (c) The Supplier's obligations under subclause (a) shall survive expiry or termination of this Contract.

14 Subcontracting & assignment

- (a) The Supplier must not subcontract to any third person any of its obligations in relation to the Works without the prior written consent of TfNSW (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under this Contract and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.

15 GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

16 No exclusivity

No provision of this Contract creates an exclusive agreement between the parties and TfNSW will always be entitled to invite tenders from and contract with any other party it deems fit, for the provision of like works.

17 Governing law

This Contract is governed by and is to be construed in accordance with the laws applicable in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

18 Interpretation

In these Terms and Conditions, unless the context otherwise

requires:

Business Days means any day other than a Saturday, Sunday, a NSW public holiday, or the NSW Government Christmas/New Year shutdown period (if declared).

Code of Conduct means TfNSW's Code of Conduct which can be obtained from TfNSW and is located at:

<http://www.transport.nsw.gov.au/about-us>

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, TfNSW, including any information designated by TfNSW as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of this Contract;
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract means the agreement between TfNSW and the Supplier for the supply and installation of the Goods as evidenced by these Conditions, the RFx the Purchase Order and the Proposal.

Defects Liability Period means the 12 month period commencing from the Acceptance Date referred to in subclause 4(d).

Goods means the items (or any of them) to be supplied as described in the RFx including installation materials, and confirmed in the Purchase Order.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Installation Date means the date that the Works are to be completed, as set out in the Purchase Order.

Installation Works means all works necessary to install and commission the Goods on site.

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

NSW Government Procurement Policy Framework can be downloaded from [procurepoint](#).

Proposal means the proposal submitted by the Supplier in response to the RFx, including any subsequent amendments of the Proposal accepted by TfNSW.

Purchase Order means the record generated by TfNSW in physical or electronic form which references the unique identifying number allocated by TfNSW to the provision of the Works under this Contract ("PO Number").

Purchase Price means a fixed amount payable for the Works (excl GST), as set out in the Purchase Order.

RFx means the sourcing strategy adopted by TfNSW for the procurement of the Works

Statement of Business Ethics means TfNSW's Statement of Business Ethics, which can be obtained from TfNSW and is located at: <http://www.transport.nsw.gov.au/about-us>

Supplier means the entity undertaking the Works under these Conditions and named in the Purchase Order.

TfNSW means Transport for New South Wales a NSW government agency constituted under the *Transport Administration Act 1988* (NSW) (ABN 18 804 239 602).

Works means the supply of Goods and Installation Works.

----- END OF CONDITIONS -----