

## CONDITIONS OF QUOTING

**1. COMPLIANCE** - Any Quotation which does not fully comply with State Transit's Conditions of Quoting or Conditions of Order may be rejected.

**2. LODGEMENT OF QUOTATIONS** - Completed Quotation Forms with attachments (if any) shall be sealed in an envelope or other appropriate sealed cover endorsed with the Quotation Number and Closing Date and be lodged at the address on page 1 of the Quotation form on or before the closing date specified, or be posted so as to reach State Transit no later than the Closing Date. Facsimile and/or email quotations may only be accepted if details are specified on page 1 of the Quotation form.

**3. ACCEPTANCE OF QUOTATION** - State Transit is not bound to accept the lowest or any Quotation for the Works and will not, in any circumstances, be responsible for any costs incurred by the Tenderer in preparing and submitting the Quotation. The Quotation will be accepted by issuing a Purchase Order to the Contractor. State Transit reserves the right to accept a Quotation on an item-by-item basis where applicable.

**4. ALTERNATIVE QUOTATIONS** - Tenderers are in the first instance required to tender strictly in accordance with the requirements of the Quotation, including the Conditions of Quoting, the Conditions of Order and any documents referred to under the column heading "Particulars of Works". Where a Tenderer offers an alternative option, which may benefit State Transit, it should be fully described and all foreseen advantages detailed. All such alternatives will be considered on their merits and, except in the respects so described, the alternative offer shall be deemed to comply with the aforementioned documents.

**5. DEPARTURES FROM CONDITIONS** - Any statement on the face of the Quotation or in any other document issued by State Transit with the Quotation form, which is inconsistent with the Conditions of Quoting or Conditions of Order, shall prevail over such provision.

**6. QUOTED PRICES** - All offers must be in English, be legible, and the prices tendered in Australian dollars **exclusive of GST**. The price tendered shall be inclusive of all costs associated with the Works including delivery, equipment, travel, overheads, overtime, disbursements, taxes, duties or other imposts and charges payable at the rate in force at the Base Date.

**7. BASE DATE** - The Quotation is to be based on the costs and/or prices ruling on the fifth Reserve Bank trading day prior to the Closing Date.

**8. VALIDITY PERIOD** - The Quotation shall remain valid for acceptance for a period of at least ninety days from the Closing Date. Tenderers shall state any longer period for which the Quotation remains valid.

**9. SITE INSPECTION** - State Transit reserves the right to inspect a Tenderer's premises for the purpose of determining the capacity of a Tenderer to meet the requirements of the Order.

**10. GOODS AND SERVICES TAX** - Pursuant to this Contract, the Contractor may, in accordance with "A New Tax System (Goods and Services Tax) Act 1999 (Cth.)" recover from State Transit the GST payable in respect of the Works less any savings resulting from the removal of indirect taxes.

In the event that the Contractor's costs may increase or decrease as a result of or a variation to the GST, the Contractor and/or State Transit shall be entitled to adjust the amounts payable by State Transit by any amount proportionate to the increase or decrease in GST.

### 11. NSW GOVERNMENT PROCUREMENT POLICY

All Tenderers must comply with the New South Wales Government Procurement Policy ("the Policy"). Lodgement of a Quotation will be evidence of the Tenderer's agreement to comply with the Policy for the duration of any Agreement that may be awarded.

If any Tenderer fails, or has been shown to have failed, to comply with the Policy, the failure may be taken into account by State Transit when considering this or any subsequent Quotation and may result in the Quotation being passed over. Quotations will be evaluated in accordance with the Policy.

Tenderers are also referred to, and must take account of, State Transit's 'Statement of Business Ethics' published on the State Transit website <http://www.sta.nsw.gov.au/>.

**12. EVALUATION** - Quotations will be evaluated in accordance with technical suitability, commercial compliance, OH&S, environmental, industrial relations, quality, pricing (including industry price preference schemes where applicable) and any other evaluation criteria as identified in Schedule A, Item 17, to ascertain the offer which represents the best value for money offer to State Transit.

**13. DISCLOSURE** - In accordance with NSW Government Policy to disclose details of its Contracts, State Transit may release details of the Contract, including particulars of the Works, identity of Contractor, price payable, evaluation criteria and provisions for re-negotiations (where applicable), as set out in the Premier's Memorandum Number 2007-01 and the Government Information (Public Access) Act 2009. State Transit will not release details of unsuccessful Tenders or Quotations save for the identity of the Quoting party.

Provided Tenderers have identified and marked information in their Tender or Quote 'commercial in confidence', and that information is genuinely commercial in confidence, they may request that State Transit not disclose that information but must give reasons for such request. Such notation, request and reasons will assist State Transit in deciding which, if any, information should be disclosed but does not necessarily prevent disclosure. State Transit's decision in relation to disclosure of information is at its absolute discretion and is binding. The Tenderer or Contractor will not bring an action against State Transit as a result of any disclosure under this clause 11 and it does not fall within any dispute resolution procedures specified in the Contract.

**14. WASTE REDUCTION AND PURCHASING POLICY** - State Transit is committed to the objectives of the NSW Government Waste Reduction and Purchasing Policy and tenderers to State Transit must detail in their quotation the recycled content of any tendered products in the following areas

- Paper products;
- Office equipment and consumables;
- Vegetation material and
- Construction and demolition materials.

## CONDITIONS OF ORDER

**1. INTERPRETATION** - In these terms and conditions:-

- (i) "Contract" means the Purchase Order, Conditions of Order and the Quotation.
- (ii) "Contractor" means the person or company so described on the Purchase Order, including sub-contractors, consultants and consigns allowed under the Contract.
- (iii) "Date of Practical Completion" means the date when, in the opinion of State Transit, Practical Completion occurs.
- (iv) "Practical Completion" is that stage in the execution of the work under the Contract when the Works are substantially complete.  
For the purpose of these Conditions of Order, the Works shall not be deemed to be completed until the Contractor has fulfilled all obligations under the Contract except those in relation to Defects Liability Period.
- (v) "Purchase Order" means an order in writing issued by State Transit and received by the Contractor to provide Works in accordance with these terms and conditions.
- (vi) "Works" means the whole of the work and/or services to be executed in accordance with the Contract, including variations approved by the Principal, which is to be handed over to the Principal on Practical Completion.

**2. LEGAL CONSTRUCTION** - The Contract established by the issue of State Transit's Purchase Order shall be deemed to be made in the state of New South Wales. The Contractor must perform the Works and all things necessary to complete the Works by the Date for Practical Completion.

**3. TERMS AND CONDITIONS** - The provision of the Works is subject to these terms and conditions. Any conditions or terms on delivery documents or other documentation of the Contractor are hereby specifically excluded. Such exclusion includes any retention of title (Romalpa) provisions set out in any of the Contractor's documentation or delivery dockets.

**4. FIXED PRICE** - The price for the Works as specified in the Order may not be increased except with the consent in writing of State Transit.

**5. NATURE OF CONTRACT** - State Transit shall pay the Contractor:

- (i) for Works where State Transit accepts a lump sum, the lump sum;
- (ii) for a Schedule of Rates Contract State Transit will be liable to pay the Contractor only for the measured quantity of each respective type of Works done whether such measured quantity shall be less or more than the quantity, if any, stated in the Schedule of rates attached to this Request for Quotation. Note: State Transit does not guarantee the accuracy of such quantities.

**6. SITE CONDITIONS** - The Contractor shall at all times comply with State Transit's "Site Requirements for Contractors" as contained in the Quotation Specification.

**7. PAYMENT OF WAGES AND ALLOWANCES -**

- (i) Before payment of moneys to the Contractor by State Transit under the Contract, State Transit may require from the Contractor reasonable evidence that all employees of the Contractor engaged in the work under the Contract have been paid 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 State Transit and to the latest date at which such wages and allowances are due. If any wages or allowances remain unpaid and State Transit is given reasonable evidence of the details and amounts of such unpaid wages or allowances, payment shall be made to the Contractor, but sufficient money to satisfy such unpaid wages and allowances may be withheld from that payment or any other payment then or thereafter due to be made to the Contractor until reasonable evidence is supplied that all wages and allowances have been paid.
- (ii) If the Contractor fails or omits to pay the wages or allowances of an employee, and upon reasonable evidence of a judgement of a Court of competent jurisdiction in favour of the employee in relation thereto State Transit may pay the amount of such judgement to the employee concerned and the amount so paid may be recovered as a debt due to State Transit by the Contractor.

**8. TERMS OF PAYMENT -**

- (iii) The Contractor must within 3 days of the Date of Practical Completion, submit to State Transit a tax invoice showing:
  - (a) the amount due to the Contractor for the Works provided;
  - (b) the Purchase Order number against which the Works have been provided;
  - (c) the Site, and the contact name (i.e. person responsible for generating the Order).
 Payment will only be made after the Date of Practical Completion in accordance with State Transit's requirements.
- (iv) Except where advantage is taken of the discount, State Transit must pay to the Contractor the price of the Works within thirty (30) days of receipt of the tax invoice subject to:
  - (a) the purchase price specified on the tax invoice being in accordance with the Purchase Order; and
  - (b) the Contractor not being in default of these terms and conditions.
- (v) If payment is not made within the time specified in this Clause 8:
  - (a) the Contractor shall contact the Accounts Payable Supervisor of State Transit; and
  - (b) the Chief Executive of State Transit (or delegate) may award penalty interest on the delayed payment.

**9. REJECTION -**

- (i) State Transit may at any time reject any materials, equipment or work which, in its reasonable opinion, is not in accordance with the Purchase Order and may direct their replacement or correction, whether or not they have been the subject of payment. If State Transit directs the Contractor to replace any materials or equipment or correct any Works which are not in accordance with the Contract, the Contractor will do so promptly and at its own cost;
  - (ii) If the Contractor fails to properly rectify or replace any materials or equipment or correct any Works, State Transit may have the replacement, correction or removal carried out by State Transit or a contractor.
- Any cost or expense incurred by State Transit in having the

rectification or replacement so carried out will be a debt due and payable by the Contractor to State Transit, which may be recovered by State Transit or set-off by State Transit against any payment claimed by the Contractor.

**10. CANCELLATION** - Without prejudice to State Transit's rights of cancellation under any other provision of the Contract, express or implied or by virtue of common law, State Transit may terminate the Contract for convenience, or if the Contractor fails to comply with obligations under the Contract including the date for Practical Completion of the Works, then State Transit shall be at liberty to cancel the Contract and such cancellation shall be without prejudice to State Transit's rights arising out of any antecedent breach of the Contract including the right to be reimbursed by the Contractor any additional costs incurred in obtaining State Transit's requirements from another source of supply.

State Transit shall not exercise its right of cancellation without giving consideration to the causes of the Contractor's failure to comply with obligations under the Contract provided the Contractor forthwith, after the occurrence of such failure, requests State Transit to give consideration to causes and furnishes to State Transit particulars thereof.

**11. PERSONAL INJURY AND PROPERTY DAMAGE** - The Contractor indemnifies and keeps indemnified State Transit against any action, claim, suit, or demand in respect of personal injury to or the death of any person, or loss of or damage to any property arising out of or as a consequence of faulty Goods and/or any Works or Services provided by the Contractor and also from any costs and expense that may be incurred in connection with any such event. The Contractor's liability to indemnify is reduced proportionally to the extent that an act or omission of State Transit or employees or agents (other than the Contractor) of State Transit may have contributed to the injury, damage or loss.

**12. WARRANTY AS TO GOODS AND MATERIALS** - The Contractor warrants that goods or materials supplied as part of the Works:

- (i) conform to the particulars of any applicable specifications and operating conditions as to both quantity and quality specified in the Order;
- (ii) are of merchantable quality and fit for the purpose for which they are required by State Transit;
- (iii) are new (unless otherwise specified); and
- (iv) are subject to the Intellectual Property warranties contained in Clause 19.

These warranties are in addition to any warranty or service guarantee specified in the Order or implied by mandatory operation of law.

Where any goods or materials under the Contract are subject to a manufacturer's warranty, the Contractor must provide the details of these warranties to State Transit and ensure that State Transit has the benefit of these warranties.

**13. WARRANTY AS TO TITLE** - The Contractor warrants that, upon Practical Completion, State Transit obtains title to all goods and materials, supplied as part of the Works, free from all liens and encumbrances.

**14. COMPLIANCE WITH STATUTORY REQUIREMENTS** - Throughout the execution of the Works under the Contract, the Contractor shall conform, at its own expense, with all relevant Acts of Parliament, Proclamations, Ordinances, Regulations and By-Laws, and with the orders, directions or requirements of Local and other Authorities which shall be applicable to the Works and shall pay all fees involved. Particular attention is drawn to the need to comply with all requirements of the Work Cover Authority of New South Wales.

The Contractor shall, if so requested by State Transit and within a reasonable time after such request, demonstrate at its own expense that compliance with the requirements of this clause has been met.

**15. INSURANCE** - The Contractor shall, prior to commencing Works under the Contract, take out and hold current insurance policies covering: the Works; Public Liability; and the employees of the Contractor (i.e. Workers=Compensation).

- (i) An insurance policy covering the Works shall include remedial work done or performed by the Contractor pursuant to Clause 18 "Defects Liability Period" and plant, materials, tools, tackle and other things brought to or delivered to the Site by the Contractor or a subcontractor or entrusted or delivered by State Transit to the Contractor or a subcontractor for the purposes of the Works against any loss or damage resulting from any cause whatsoever until the Contractor ceases to be

responsible for their care. Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under the Contract and things in storage off Site and in transit to the Site.

- (ii) The Public Liability Policy of Insurance shall be in the joint names of State Transit and the Contractor and shall cover the respective rights, interests and liabilities of State Transit, the Contractor and Subcontractors employed from time to time in relation to work under the Contract.  
The policy must cover State Transit's and the Contractor's liability to each other for loss or damage to property (other than the property required to be insured under sub clause (i) above) and the death or injury to any person (other than liability which is required by law to be insured under a Workers=Compensation Policy of Insurance).  
The Public Liability Policy shall be on an occurrence basis against liability for personal injury and property damage including loss of use whether such property be damaged or not include a cross-liability clause and shall be for an amount in respect of any one occurrence not less than \$20,000,000 and shall be maintained until all obligations of the Contractor under this Contract cease.
- (iii) Without limiting the generality of sub-clause (ii) above, the Contractor shall insure its liability (including Common Law liability) as required under the Workers=Compensation Act 1987 as amended, to its employees engaged in doing anything for the purpose of executing the Contractor's rights or obligations under the Contract.  
Such insurance shall be endorsed as far as permitted by statute to indemnify State Transit against any liability which State Transit may incur under any applicable Workers=Compensation Statute or Regulation thereunder in relation to any persons engaged in Works under the Contract.  
The Contractor shall also ensure that subcontractors insure their Workers Compensation liability, such policies similarly being endorsed to indemnify the Contractor and State Transit.
- (iv) The Contractor shall ensure that all insurances required are effected prior to the commencement of any risks and that policies are available for inspection by State Transit if required from time to time.  
State Transit may refuse payment of moneys due to the Contractor or withhold possession of the Site should the Contractor fail to keep in force any of the insurances required by the Contract.
- (v) The effecting and keeping in force of insurance required by the above clauses shall not in any way limit the responsibilities and obligations of the Contractor under any other provisions of the Contract.

**16. EXTENSION OF TIME** - State Transit may grant to the Contractor an extension of time to the Date for Practical Completion only in the event of the following:

- (i) Inclement Weather;
- (ii) Industrial action not caused by the contractor;
- (i) State Transit prevents the Contractor from accessing the Site.

**17. DEFECTS LIABILITY PERIOD** - The Defects Liability Period shall commence on the Date of Practical Completion and in the absence of any statement to the contrary shall expire 12 months afterwards.

At any time prior to the expiration of the Defects Liability Period, State Transit may direct the Contractor to rectify any omission or defect in the Works under the Contract existing at Practical Completion or becoming apparent prior to the expiration of the Defects Liability Period.

Such rectification shall be at the Contractor's own cost and shall be conducted with all due diligence so as to remedy the damage or defect by repairing, replacing or renewing the damaged or defective portions of the Works so that they will comply with the requirements of the Contract.

If the Contractor fails to do anything which by this Clause the Contractor is required to do, State Transit may proceed to do the thing at the Contractor's risk and expense but without prejudice to any other rights which State Transit may have against the Contractor arising out of such failure on the part of the Contractor.

The Contractor shall not be responsible for any defects or damage arising out of faulty materials, workmanship or design provided by State Transit or arising out of improper usage by State Transit.

If it becomes necessary for the Contractor to replace, renew, repair, modify or otherwise make good any damaged or defective Works, the provisions of this clause shall apply to the Works as if it had been the subject matter of the Contract in the first place.

**18. INTELLECTUAL AND INDUSTRIAL PROPERTY** - All of State Transit's rights in respect of copyright, patent, trademark and registered design protection are reserved in connection with designs, drawings, software and samples and any substantial portion or description thereof must not be produced or reproduced in any material form, except for the internal purposes of the Contractor, without the authority in writing of State Transit.

**19. CONTRACTOR TO INDEMNIFY STATE TRANSIT** - To the extent permissible by law the Contractor indemnifies State Transit for any loss or damage arising from the use of any goods or caused by goods or Works that were not supplied or performed in accordance with the Contract or otherwise not being fit for their intended use and purpose including but not limited to:

- (i) damage to property of State Transit;
- (ii) the cost of repair to any State Transit property damaged;
- (iii) losses of operating revenue for State Transit arising from damaged property;
- (iv) claims by any person in respect of loss of or damage to any property of those persons;
- (v) claims by any person including the Personnel of the Contractor or its Sub-Contractors in respect of personal injury, disease, illness or death; and
- (vi) any other liability, loss or damage and any claims, actions, suits, demands, expenses or proceedings of whatever nature in respect of breach of contract, breach of any warranties or representations, breach of a statutory duty, professional negligence or other error or omission arising out of or in connection with the Contractor's performance of the Contract.

The Contractor warrants that the Contractor's materials do not infringe the Intellectual Property rights of any person. The Contractor shall fully indemnify and keep indemnified State Transit against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against State Transit alleging that the Contractor's materials infringe any such Intellectual Property rights.

The indemnity referred to above shall be granted by the Contractor irrespective of whether legal proceedings have been instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

State Transit shall notify the Contractor as soon as practicable of any infringement or suspected or alleged infringement by the Contractor's materials of the Intellectual Property rights of any person.

**20. PAYMENT OF LONG SERVICE LEVY** - For building and construction work valued at \$25,000 or greater the Contractor before commencing the Works must:

- (i) Pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the long service levy of 0.35% of the contract amount (inclusive of GST).
- (ii) Provide State Transit with documentary evidence of payment of the levy. This evidence can be a receipt of payment of the levy.

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