

1. SUPPLY OF GOODS AND/OR SERVICES

- 1.1 In consideration of payment of the Price by HMI, the Contractor must sell and supply to HMI the Goods and/or the Services in accordance with the Purchase Order.
- 1.2 If:
- (a) prior to the issue of the Purchase Order, the Contractor has provided terms and conditions of sale and/or supply in an estimate, quotation, correspondence or other document; or
 - (b) after the issue of the Purchase Order, the Contractor provides terms and conditions of sale and supply in a delivery docket or consignment note or in correspondence or other document; or
 - (c) the Contractor has previously supplied goods and/or services to HMI on terms and conditions of sale and/or supply;
- those terms and conditions will be of no legal effect and (notwithstanding anything to the contrary in such document) will not constitute part of the Contract (even if any representative of HMI has signed a document including those terms and conditions).
- 1.3 Where the Purchase Order relates to Goods and/or Services the subject of a signed agreement between the Contractor and HMI (Goods and/or Services Agreement or GSA), the terms and conditions of the GSA prevail, to the extent of any inconsistency, over the Contract but otherwise and subject to the GSA, the terms and conditions of the Contract will be incorporated in the GSA.
- 1.4 The Contractor must, in supplying the Goods and/or the Services:
- (a) ensure that all of the Contractor's Personnel if onsite within the Port:
 - (i) first attend any induction courses reasonably required by PPA, including an occupational health and safety induction course;
 - (ii) are issued with, and wear at all times when within the Port, appropriate personal protective clothing and equipment as is equivalent to or better than PPA's "Personal Protective Clothing and Equipment (PPE) Standard" as published on PPA's website www.pitbaraports.com.au;
 - (iii) comply with all Port Standards and Procedures;
 - (iv) do not interfere with the operations of PPA or the permitted activities of PPA's tenants or licensees; and
 - (v) comply with all lawful directions and orders given by PPA's representative or any person authorised by Law to give directions to the Contractor;
 - (b) ensure that all of the Contractor's Personnel:
 - (i) do not interfere with the operations of HMI or the permitted activities of HMI's tenants or licensees; and
 - (ii) comply with all lawful directions and orders given by HMI's representative or any person authorised by Law to give directions to the Contractor;
 - (c) be aware of, comply with and ensure that the Contractor's Personnel are aware of and comply with:
 - (i) all applicable Laws; and
 - (ii) the standards and practices normally exercised by a professional in the performance of the same or similar services in the same or similar industry;
 - (d) ensure that the Contractor's Personnel:
 - (i) have the required levels of skill, experience, competence and qualifications; and
 - (ii) supply the Goods and/or the Services diligently, competently, with care and skill and in a proper and professional manner;
 - (e) provide all such information and assistance as HMI reasonably requires in connection with the supply of the Goods and/or the Services including the provision of training and supply of operating manuals; and
 - (f) keep adequate records in relation to the supplying of Goods and/or the Services and, if requested to do so by HMI, immediately provide HMI access to inspect and/or copy those records and all correspondence or other material arising from or relating to the supplying of Goods and/or Services.

2. DELIVERY

- 2.1 The Contractor must deliver the Goods to the Delivery Address by the Delivery Date. All Goods must be accompanied by a delivery docket or consignment note which the Contractor must ensure is signed by HMI's representative acknowledging delivery (but the Goods remain subject to HMI's right to return or reject them under clause 9).
- 2.2 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and are packed in environmentally friendly packaging where practicable.
- 2.3 Packages must be marked with the Purchase Order number, item number, destination, contents, quantity, date and method of dispatch and weight of each package.
- 2.4 If the Purchase Order so requires, the Contractor must install the Goods.

3. TIME FOR PERFORMANCE

The Contractor must perform the Services by the date specified in the Purchase Order at the place specified in the Purchase Order.

4. TITLE AND RISK

- 4.1 Title in the Goods passes to HMI upon payment of the Price subject to HMI's right to return or reject them under clause 9.
- 4.2 Risk in the Goods passes to HMI when the Goods are delivered to the Delivery Address.
- 4.3 When title to any Goods pass to HMI under this Contract, such title will pass to HMI free of any Encumbrances.

5. PRICE

- 5.1 HMI must pay the Contractor the Price for the Goods and/or Services.
- 5.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the goods and the cost of any items used or supplied in the performance of the Services.
- 5.3 The Price is inclusive of all taxes and duties and includes GST (unless specified as exclusive of GST in the Purchase Order).

6. GST

- 6.1 If the Price is specified as exclusive of GST in the Purchase Order and GST is imposed on any supply made by the Contractor under or in connection with the Purchase Order, the Contractor may recover from HMI, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 6.2 The Contractor must first provide HMI with a valid tax invoice before HMI will pay the GST amount to the Contractor.

7. INVOICING

- 7.1 Upon delivery of the Goods and/or completion of the Services, the Contractor must provide to HMI a valid tax invoice which must include the information set out in clause 7.2.
- 7.2 The invoice must include the following details:
- (a) a reference to the Purchase Order number and be addressed to HMI;
 - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
 - (c) the Contractor's reference number for HMI to quote with remittance of payment;
 - (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components as on the Purchase Order; and
 - (e) the amount of any applicable GST.
- 7.3 If HMI requests, the Contractor must provide HMI with all relevant records to calculate and verify the amount set out in any invoice.
- 7.4 HMI is not obliged to approve any invoice submitted in accordance with clause 7.1, and may withhold approval and/or money due to the Contractor under the Contract if the Goods and/or Services (or any part of them) are Defective.
- 7.5 Subject to clause 7.4, HMI will pay all invoices that comply with clause 7.2 within 30 days of their receipt, except where HMI disputes the invoice, in which case:
- (a) HMI may withhold payment pending resolution of the dispute; and
 - (b) if the resolution of the dispute determines that HMI must pay an amount to the Contractor, HMI must pay that amount upon resolution of that dispute.
- 7.6 HMI may reduce any payment due to the Contractor under the Contractor by any amount which the Contractor must pay HMI, including costs, charges, damages and expenses and any debts owed by the Contractor to HMI on any account whatsoever. This does not limit HMI's right to recover those amounts in other ways.

8. QUALITY

- 8.1 The Goods and/or Services must match the description referred to in the Purchase Order.
- 8.2 If the Contractor gave HMI a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 8.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose HMI reasonably specifies.
- 8.4 The Goods must be of merchantable quality, meet all relevant Australian standards and, unless otherwise specified in the Purchase Order, must be new.

9. DEFECTIVE GOODS AND/OR SERVICES

- 9.1 If, during the Warranty Period, any of the Goods and/or Services are found to be Defective, HMI may:
- (a) reject the Defective Goods; and/or
 - (b) reject the Defective Services.
- 9.2 The Contractor must then, at the Contractor's cost but at HMI's election:
- (a) collect and then repair or replace the Defective Goods;
 - (b) re-perform or make good the Defective Services; and/or
 - (c) pay compensation to HMI for any financial loss incurred as a result of the Goods and/or Services being Defective.

10. INSURANCE

- 10.1 While the Contractor is supplying Goods and/or Services to HMI, the Contractor must effect (or cause to be effected) and maintain (or cause to be maintained) the following insurances:
- (a) if the Goods and/or Services involve the installation of Goods, contract works insurance in the joint names of HMI and the Contractor covering physical loss of or damage to the Goods and their installation and/or any work done in the course of the Services and materials or items supplied in connection with or forming part of the Services for an amount not less than their replacement value (including escalation/inflation costs). The insurance policy must be extended to include:
 - (i) the cost of removal of material and debris from the site including demolition costs;
 - (ii) storage off site and in transit to the site;
 - (iii) professional consultants' fees and expediting expenses;
 - (iv) planning and design; and
 - (v) defects liability period for not less than 12 months;
 - (b) public and products liability insurance covering liability for loss of or damage to and loss of use of any property (other than property insured under paragraph (a) above) and personal injury, death or illness of any person (other than liability under workers compensation law) arising out of or in connection with the Goods and/or Services for an amount not less than \$20,000,000 for any one occurrence, unlimited as to the number of occurrences happening during any one period of insurance except for products liability which can be limited in the annual aggregate to not less than \$20,000,000. The insurance policy must be extended to include:
 - (i) a principal's indemnity clause indemnifying a principal such as HMI under the Contract for both statutory benefits and common law;

- (ii) the use of unregistered motor vehicles, plant and equipment;
- (iii) sudden and accidental pollution; and
- (iv) defects liability period for not less than 12 months;

- (c) property insurance for physical loss of or damage to the Contractor's property for an amount not less than its replacement value covering risks normally covered in an industrial special risk policy. The policy must insure against loss or damage by fire, fusion, explosion, lightning, flood, storm, tempest, rainwater, cyclone, earthquake, riot, civil commotion, malicious damage, impact by vehicles or animals, sprinkler leakage, water damage, aircraft or other aerial devices and/or articles dropped therefrom. If an industrial special risk policy is not available to the Contractor an alternative commercial policy will be accepted by HMI provided that such policy must insure against the same risks as stated above;
- (d) 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 not less than \$50,000,000 for any one event in respect of workers of the Contractor. The insurance policy must be extended to indemnify HMI for claims and liability under section 175 of the *Workers' Compensation and Injury Management Act 1981* (WA);
- (e) motor vehicle third party liability insurance covering legal liability against property damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used by the Contractor and the Contractor's Personnel for an amount not less than \$20,000,000 for any one occurrence or accident; and
- (f) compulsory third party motor vehicle insurance as required under any statute relating to motor vehicles used by the Contractor and the Contractor's Personnel.

- 10.2 If the Contractor is providing professional advice or services such as design, the Contractor must effect (or cause to be effected) and maintain (or cause to be maintained) professional indemnity insurance covering the breach of duty owed in a professional capacity by the Contractor or its personnel in respect of the Services provided in connection with the Contract and must be maintained for a period of at least 6 years after termination or expiration of the Contractor alternatively 6 years run-off cover to be obtained by the Contractor for an amount not less than \$2 million for any one claim and \$2 million for all claims in the aggregate during any one 12 month period of insurance. The insurance policy must be extended to include:
- (a) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property, and trade mark;
 - (b) loss of or damage to documents, data, software and computer programs;
 - (c) claims made under Schedule 2 (The Australian Consumer Law) section 18 of the *Competition and Consumer Act 2010* (Cth), the corresponding section of the *Fair Trading Act 2010* (WA) and any similar legislation in any other State or Territory in so far as they relate to the provision of Services provided in connection with the Purchase Order.

10.3 The Contractor must give to HMI sufficient evidence of the insurances required under Clause 10.1 and 10.2 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by HMI at any time.

11. INDEMNITY

The Contractor indemnifies HMI (and agrees to keep HMI indemnified) from and against and releases HMI in respect of, any claim, loss, expense or damage of any nature, suffered or incurred by HMI arising out of or in connection with the Contractor's supply of Goods or Services for:

- (a) any fitness or injury to or death of any person;
- (b) damage to or destruction of any property belonging to any person;
- (c) any act, default or omission;
- (d) a breach of any term of this Contract;
- (e) any damage to the environment;

but the indemnity shall be reduced proportionally to the extent that an act or omission of HMI or a breach of this Contract by HMI contributed to the claim, loss, expense or damage.

12. NO ASSIGNMENT OR SUBCONTRACTING

- (a) Unless otherwise specified in the Purchase Order, the benefit of the Contract is not assignable by the Contractor.
- (b) The Contractor must not subcontract any of the supply of the Goods and/or Services under this Contract without the prior written consent of HMI.

13. TERMINATION

- 13.1 HMI may terminate the engagement of the Contractor in relation to the Purchase Order by notice to the Contractor if:
- (a) the Contractor does not deliver the Goods or perform the Services within the time, or at the standard, required or otherwise breaches a provision of the Contract and that failure or breach:
 - (i) is incapable of remedy; or
 - (ii) if capable of remedy, continues for 7 days after HMI gives the Contractor a notice requiring the breach to be remedied; or
 - (b) an Insolvency Event occurs in relation to the Contractor.
- 13.2 HMI's rights under this clause 13 are without prejudice to any right of action or remedy which has accrued or may accrue in favour of HMI.

14. CONFIDENTIALITY

The Contractor covenants and undertakes:

- (a) to keep confidential all Confidential Information; and
- (b) not to disclose any Confidential Information to any person except to the Contractor's Personnel in the proper performance of the Services (and procure such persons keep the information confidential as if they were a party to this Contract), or as required by law, or otherwise with the prior written consent of the HMI.

15. INTELLECTUAL PROPERTY

- (a) The Contractor warrants that the provision of the Goods and/or Services by the Contractor will not infringe any Intellectual Property rights of any third party.
- (b) The Intellectual Property enhanced, procured, developed, or created by the Contractor, HMI or the parties jointly in the course of the Contractor carrying out of the Services is and at all times remains, the property of HMI.

16. GENERAL

- 16.1 If any provision or part of any provision of the Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Contract.
- 16.2 Any waiver by the HMI of strict compliance with any provision of the Contract shall not be effective unless in writing and signed by an authorised officer of the HMI.
- 16.3 The Contract is governed by the laws of the State of Western Australia and HMI and the Contractor submit irrevocably to the exclusive jurisdiction of the courts of the State of Western Australia and where applicable the courts of the Commonwealth of Australia.
- 16.4 No provision of the Contract shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.
- 16.5 Any indemnity or any obligation of confidence under this Contract is independent and survives termination of this Contract.

17. PORT ACT PREVAILS

To the extent that the Port Act is applicable to HMI, all of HMI's rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act augment HMI's rights and powers under this Contract and nothing in or arising out of this Contract in any way:

- (a) diminishes HMI's rights, powers, defences, immunities, indemnities or limitations of liability under the Port Act;
- (b) fetters any discretions that HMI has under the Port Act; or
- (c) precludes HMI from accessing, relying upon or using each and every right, power, defence, immunity, indemnity or limitation of liability under the Port Act in relation to any matter concerning the Port, the Licensee, any vessel or any matter arising out of or relating to this Contract, and if there is any inconsistency between anything in this Contract and anything in the Port Act, then the Port Act shall always prevail.

18. DEFINITIONS

Confidential Information means all information disclosed or provided to, or received or used by, or discovered by, or created by, the Contractor in any form, in relation to the provision of Goods and/or Services by the Contractor.

Contract means the contract formed by the Contractor's acceptance of the Purchase Order and the Contractor's undertaking of the sale and supply of the Goods and/or the Services.

Contractor means the party identified as such in the Purchase Order.

Contractor's Personnel means Contractor's employees, agents and contractors.

Defective means Goods and/or Services (or any aspect of them) are not in accordance with the Purchase Order or are damaged, deficient, faulty, inadequate, incomplete or not performed as required by this Contract.

Delivery Address means the place for delivery specified on the Purchase Order.

Delivery Date means the delivery date specified on the Purchase Order.

Encumbrance means any interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property, including a mortgage, caveat, charge, lien, pledge, security, interest, title retention arrangement, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favour of any person or any security arrangement which is deemed to be a security interest, including pursuant to the *Personal Property Securities Act 2009* (Cth).

Goods means the goods, if any, described on the Purchase Order.

Goods and/or Services Agreement or **GSA** means the agreement referred to in clause 1.3 as supplemented, varied or amended from time to time.

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HMI means the Hedland Maritime Initiative Pty Ltd (ABN 70 645 630 468).

Insolvency Event in relation to the Contractor means that it:

- (a) is unable to pay its debts as and when they become due and payable;
- (b) has an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction appointed or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (c) enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the Contractor's creditors or members or a moratorium involving any of them, is the subject of an application for winding up or dissolution;
- (d) has a receiver or receiver/manager appointed over all or substantial part of its assets; or
- (e) passes a resolution for its winding up or dissolution.

Intellectual Property means any intellectual or industrial property whether protected by statute, at common law or in equity, including without limitation any patent, invention, copyright, design (whether or not registrable), trade secret, moral right, right to Confidential Information, technical information, processes, techniques and know-how.

Law means:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;

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- (b) common law and equity;
- (c) authority (government or statutory) requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Contractor is legally required to comply.

PPA means the Pilbara Ports Authority (ABN 94 987 448 870).

Port means the Port of Port Hedland, for the administration of which PPA has been established under the *Port Authorities Act 1999 (WA)*.

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

Port Standards and Procedures means all obligations, standards, rules, powers, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, personal protective equipment requirements, welfare or other matters concerning the Port, or services that are put in place by PPA and communicated to the Contractor by HMI and/or published on PPA's website www.pilbarports.com.au, as they may be varied by PPA from time to time.

POTC means these Purchase Order Terms and Conditions as may be varied by HMI from time to time and published on HMI's website www.hedlandmaritime.com.au.

Price means the price set out in the Purchase Order.

Purchase Order means the purchase order for Goods and/or Services issued by HMI to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services, the Price, the Delivery Address and the Delivery Date and which is subject to the Contract.

Services means the services, if any, described on the Purchase Order.

Warranty Period means the period of 24 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Service is performed.