

## 1. SUPPLY OF GOODS AND/OR SERVICES

- 1.1 The Contractor must supply the Goods and/or provide the Services to the Company in accordance with, and as specified in, this Purchase Order (which includes these Purchase Order Terms and Conditions).
- 1.2 Unless explicitly agreed between the parties otherwise, to the extent the Contractor's terms and conditions are supplied to the Company in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order.
- 1.3 Where this Purchase Order relates to Goods and/or Services the subject of a contract between the Contractor and the Company, the terms of that contract prevail to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Contractor has read this Purchase Order and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of, the Contractor's obligations under this Purchase Order.
- 1.5 The Contractor must:
  - (a) ensure that it and the Contractor's Personnel comply with:
    - (i) all Laws, including Anti-corruption Laws and Data Privacy Laws;
    - (ii) all applicable Site Standards and Procedures; and
    - (iii) immediately, or within the period directed by the Company, all lawful directions and orders given by the Company's representative or any person authorised by Law or the applicable Site Standards and Procedures to give directions to the Contractor;
  - (b) ensure that the Contractor's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
  - (c) deliver the Goods to the Delivery Point by the Delivery Date;
  - (d) perform the Services with due skill, care and diligence, and by the date specified in this Purchase Order;
  - (e) ensure that the Goods are suitably packed to avoid damage in transit or in storage and packages are marked with this Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight;
  - (f) ensure that Goods and Services match all of the requirements in this Purchase Order, and are of the general quality which a professional contractor (supplying goods similar to the Goods and performing services similar to the Services) would reasonably infer from this Purchase Order; and
  - (g) ensure that the Company has the full benefit of any manufacturer's warranties that may apply to the Goods or Services, or both (and the Contractor must, if requested, pursue any manufacturer's warranties on the Company's behalf at the cost of the Contractor).
- 1.6 Prior to bringing any substance, including but not limited to dangerous or hazardous substances, onto the Company's premises, the Contractor must:
  - (a) give the Company a copy of the relevant Safety Data Sheet, which must comply with the SafeWork NSW Code of practice - Preparation of safety data sheets for hazardous chemicals; and
  - (b) ensure that the Company has approved the use of the on the Company's premises.

## 2. UNSAFE CONDITIONS AND SUSPENSION OF PURCHASE ORDER

- 2.1 If the Company is aware of an Unsafe condition of, or in relation to, the Goods or Services, the Company may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that Unsafe condition, and the Contractor must comply with that direction at its own cost immediately, or within the period directed by the Company.
- 2.2 The Company may suspend this Purchase Order in whole or in part in its absolute discretion at any time, without giving a reason, by giving a written notice to the Contractor.
- 2.3 The Contractor must promptly recommence the performance of the Contractor's obligations under this Purchase Order when directed.
- 2.4 Where the suspension in Clause 2.2 is not a result of any breach by the Contractor, or the Contractor's Personnel, or an Unsafe act or condition:

- (a) the Company must reimburse the Contractor for the Contractor's reasonably incurred costs for the Purchase Order execution before receiving the suspension notice, provided that those costs are demonstrated, verified by the Company, and have been incurred as a direct consequence of the suspension; and
- (b) any date specified in the Purchase Order (including the Services Completion Date and/or the Goods Delivery Date) shall be extended by the period of that suspension.

**3. TITLE AND RISK**

- 3.1 The Contractor warrants that immediately prior to delivery of the Goods to the Delivery Point, it will have good title to the Goods, free from any liens, charges or other encumbrances.
- 3.2 Unless otherwise agreed in writing between the parties, Title to the Goods will pass from the Contractor to the Company on the earlier of delivery to the Delivery Point or when the Company pays for those Goods, unless the Company rejects the Goods because of a Defect.
- 3.3 The Company bears all risk in the Goods when the Company takes delivery of those Goods at the Delivery Point, provided however that the Contractor will be responsible for acts and omissions of it and the Contractor's Personnel.

**4. INVOICING AND PAYMENT**

- 4.1 Subject to the Contractor's compliance with this Purchase Order, the Company must pay the Contractor the Price for the Goods and/or Services.
- 4.2 The Price is inclusive of:
  - (a) charges for packing, insurance and delivery of the Goods in accordance with this Purchase Order;
  - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;
  - (c) the Contractor's compliance with its obligations under this Purchase Order; and
  - (d) all Taxes.
- 4.3 Unless otherwise agreed, on delivery of the Goods and completion of the Services in accordance with this Purchase Order, the Contractor must provide to the Company a valid tax Invoice in respect of the Goods and/or Services.
- 4.4 Where progress payments are to be made as approved in writing by the Company, the Contractor must provide a valid tax invoice to the Company at the end of each calendar month for Goods delivered and Services performed by the Contractor in that month.
- 4.5 All Invoices must be sent to the email address specified in this Purchase Order, or by using an electronic invoicing system if directed to by the Company.
- 4.6 Any invoice must include the following details:
  - (a) a reference to this Purchase Order and the relevant contract (if any) including the line item numbers on the Purchase Order and the contract number;
  - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
  - (c) an individual reference number for the Company to quote with remittance of payment;
  - (d) the Price relating to the Goods and Services broken down to reflect the same Price components or per unit pricing (if any) on this Purchase Order or as directed by the Company;
  - (e) the amount of any applicable GST; and
  - (f) the Company contact name.
- 4.7 The Company must pay all Invoices that comply with Clause 4.6 and these Terms and Conditions, within 30 calendar days of receipt of the Invoice from the Contractor unless otherwise agreed in writing between the parties. If the Company disputes the Invoice, the Company may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.

4.8 The Company may set-off or deduct from any payments due to the Contractor under this Purchase Order, any amount with the Contractor must pay the Company under this Purchase Order. This does not limit the Company's right to recover those amounts in other ways.

## **5. TAXES**

5.1 The Contractor must pay all Taxes arising out of or in connection with this Purchase Order or the Goods or Services.

5.2 Unless this Purchase Order expressly provides otherwise, the Price is inclusive of all Taxes but excludes GST.

5.3 If GST is imposed on any supply made by the Contractor under or in connection with this Purchase Order, the Contractor may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.

5.4 The Contractor must first provide the Company with a tax invoice before the Company will pay the GST amount to the Contractor.

## **6. WITHHOLDING TAX**

6.1 If a party (payer) is required by any applicable Law to make a deduction or withholding from a payment to the other party (payee) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by Law to deduct or withhold, then the payer must use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant government authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause.

6.2 Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable Law, the payee must reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 10 Business Days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

## **7. TERMINATING THIS PURCHASE ORDER**

7.1 The Company may terminate this Purchase Order in whole or in part in its absolute discretion at any time, without giving a reason, by giving 5 Business Days' written notice to the Contractor.

7.2 If the Company considers that the Contractor has committed a breach of an obligation under this Purchase Order, the Company may give the Contractor:

- (a) if the breach is capable of being remedied, a written notice specifying the breach and the date (as reasonably determined by the Company) by which the Contractor must remedy the breach, to the extent that the breach is capable of being remedied; or
- (b) if the breach is incapable of being remedied, a written notice terminating this Purchase Order in whole with immediate effect.

7.3 If the Contractor fails to comply with the Company's notice under Clause 7.2(a), the Company may:

- (a) terminate this Purchase Order in whole upon 5 Business Days' further written notice to the Contractor; or
- (b) take any action to remedy the breach or overcome its effects and the Contractor must reimburse the Company for its costs in doing so.

7.4 If the Company fails to make a payment due under this Purchase Order, the Contractor may give the Company a notice to remedy the breach within a period of not less than 20 Business Days (or any other period agreed in writing by the parties) after service of the notice. If the Company fails to comply with the Contractor's notice, the Contractor may terminate this Purchase Order in whole upon 5 Business Days' further written notice to the Company.

7.5 A party may terminate this Purchase Order with immediate effect by giving written notice to the other party if an Insolvency Event occurs in relation to the other party.

- 7.6 If notice of termination is given by the Company under Clause 7.1, the Contractor may, within 20 Business Days after the date of termination, send the Company a written claim which is the Contractor's sole and exclusive remedy arising out of or in connection with such termination.
- 7.7 A claim must only include (to the extent not already paid for by the Company):
- (a) the Price for any part of the Goods delivered or Services performed prior to the termination;
  - (b) the reasonably incurred and verified costs of materials ordered prior to termination as an input for the Goods, provided that title to the materials passes to the Company upon payment;
  - (c) the reasonable and verified third party costs the Contractor incurred prior to termination in the expectation of providing the Goods or performing the Services (excluding holding or break costs associated with Contractor plant and equipment used in the supply of Goods and performance of the Services or redundancy payments); and
  - (d) any amount expressly and specifically allocated for demobilisation under this Purchase Order (if any).
- 7.8 A written claim under Clause 7.7 must not include any amount for unperformed work or Consequential Loss.

## **8. CONFIDENTIAL INFORMATION AND PUBLICITY**

- 8.1 The Contractor must, and must ensure that the Contractor's Personnel, keep all Confidential Information confidential and may only:
- (a) use Confidential Information for the purpose of performing its obligations under this Purchase Order; and
  - (b) disclose Confidential Information:
    - (i) on a confidential basis consistent with this Clause 8, to those Contractor's Personnel who need that Confidential Information for the purpose referred to in Clause 8.1(a); or
    - (ii) to the extent required by Law.
- 8.2 The Purchase Order or any confidential information obtained by the Contractor in the negotiation or fulfilment of the Purchase Order may not be used for advertisement, display or publication unless expressly agreed otherwise in writing by the Company.
- 8.3 The rights and obligations under this Clause 8 continue after the termination of this Purchase Order.

## **9. INTELLECTUAL PROPERTY**

- 9.1 The Contractor hereby assigns, and must procure that the Contractor's Related Body Corporates and the Contractor's Personnel assign, to the Company all Project IP, taking effect upon the later of the creation of that Project IP and the date of this Purchase Order.
- 9.2 In the event that the assignment in Clause 9.1 above is held to be ineffective, the Contractor must, if required by the Company, do all further things and execute all further documents necessary to assign all Project IP to the Company.
- 9.3 The Company grants the Contractor a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP and, to the extent the Company is entitled to do so, any of the Company's other Intellectual Property which is made available by the Company to the Contractor solely to the extent required to perform the Contractor's obligations under this Purchase Order.
- 9.4 The Contractor grants the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferrable licence (with the right to assign and sub-licence) to use the Background IP in connection with the use of the Project IP and otherwise to enjoy the full benefit of the Goods and/or Services (including the use of the Goods and Services).
- 9.5 The Contractor must indemnify and keep indemnified the Company from and against all Losses arising from or in connection with any claim for infringement or breach of any intellectual property rights relating to any Project IP or any Background IP.
- 9.6 In the context of a licence granted under this Clause 9, a reference to 'use' in the context of a licence granted under this Clause 9 is a reference to 'use, disclose, copy, adapt, communicate, modify, exercise, test, install, operate, maintain, manage, support and repair' within the scope of the licence which is granted. Any such use by the Contractor is also subject to Clause 9.

## 10. DEFECTS

- 10.1 If, during the Defect Correction Period, the Company finds any Defects in the Goods or Services (other than a Defect caused by the negligence of the Company), the Company may:
- (a) reject the Goods with the Defect and return them to the Contractor, in which case the Contractor must replace the Goods free of charge and reimburse the Company for any expenses incurred;
  - (b) reject the Services with the Defect, in which case the Contractor must re-perform the Services free of charge; or
  - (c) make good or engage another contractor to make good the Defect; in which case the Contractor must reimburse the Company for any expenses incurred, and all reasonable costs and expenses incurred by the Company in connection with making good a Defect are a debt due and payable by the Contractor to the Company.
- 10.2 If the Contractor does not replace the Goods pursuant to Clause 10.1(a) or re-perform the Services pursuant to Clause 10.1(b) and:
- (a) the Company has already paid the Contractor for the Goods or Services with the Defect, the Contractor must repay the Company the Price for those Goods or Services; or
  - (b) the Company has not already paid the Contractor for the Goods or Services with the Defect, the Company is not liable to pay the Contractor for those Goods or Services.
- 10.3 The acceptance of any Goods or Services with a Defect by the Company will not bind the Company to accept any other Goods or Services with a Defect and does not affect any of the Company's other rights under this Purchase Order or at Law.
- 10.4 Where the Contractor has made good any Defect under this Clause 10, those Goods or Services will be subject to the same Defect Correction Period as the original Goods or Services, from the date the Contractor made good the Defect.

## 11. INSURANCE

- 11.1 This clause 11 does not operate in conjunction with, and is not limited by, any other clause in the Purchase Order.
- 11.2 Unless expressly agreed otherwise in writing, the Contractor must take out and maintain the following insurances:
- (a) Public and Products Liability insurance which covers liability of the Contractor in respect of bodily injury to any third party and third party property damage for an amount not less than \$20 million for any one occurrence;
  - (b) Workers Compensation insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by you in connection with this Purchase Order, and you must ensure that all subcontractors are similarly insured in respect of their employees;
  - (c) Motor Vehicle insurance covering all vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with the Purchase Order;
  - (d) if your performance of the services involves the provision of professional services, Professional Indemnity insurance for an amount not less than \$2 million per claim, for a period of six years from the date of the Purchase Order; and
  - (e) other insurances required by law.
- 11.3 The Contractor must notify the Company as soon as reasonably possible of any cancellation of a relevant insurance policy and of any change to the policy which materially affects our interests.
- 11.4 If any event occurs which may give rise to a claim involving us under any policy of insurance to be taken out by you under this clause, then you must:
- (a) notify us within 14 days of that event; and
  - (b) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 11.5 At our request, you must produce evidence that you are maintaining the insurances required by this clause.

## 12. LIABILITY AND INDEMNITIES

- 12.1 The Contractor shall indemnify the Company against:

- (a) loss of or damage to the Company's property;
  - (b) claims in respect of personal injury or death or loss of, or damage to, any other property, or breach of any Anti-corruption Laws, and any claims of third party encumbrances on the Goods and/or Services including ownership or Liens or Intellectual Property rights; and
  - (c) any wilful misconduct by it (including, in the case of the Contractor, by any of the Contractor's Personnel),
- 12.2 arising out of or as a consequence of the Contractor's supply of the Goods and/or performance of the Service, but the indemnity shall be reduced proportionally to the extent that an act or omission of the Company contributed to the injury, death, loss or damage.

### **13. BOOKS AND RECORDS**

13.1 The Contractor agrees that it will:

- (a) keep and maintain accurate and reasonably detailed books and financial records of expenses and receipts in connection with its performance under, and payments made or received in connection with, this Purchase Order; and
- (b) upon request, promptly but no later than 7 calendar days after such request, provide all such information (including Company Data, accounting books and financial records), assistance and co-operation as the Company requires to audit, investigate or report on any matter in connection with, or related to the Contractor's performance under, this Purchase Order, excluding any information which is confidential or proprietary to the Contractor or any third party.

### **14. HUMAN RIGHTS COMPLIANCE**

14.1 The Contractor (including the Contractor's Personnel) must:

- (a) not engage in any conduct which is inconsistent with recognised international human rights, including as outlined in the United Nations' Guiding Principles on Business and Human Rights, and the Voluntary Principles on Security and Human Rights (and in the event of any ambiguity, discrepancy or inconsistency in or between these documents, the highest standard applies);
- (b) not engage in Modern Slavery; and
- (c) ensure that it has reasonable policies and/or reasonable processes in place to comply with clauses 14.1 and 14.2 in any of its operations and supply chains.

14.2 Upon entering into this Purchase Order, and at any time during the term of this Purchase Order when requested to do so in writing by the Company, the Contractor must:

- (a) co-operate with any due diligence process being conducted by the Company (or any third-party contractor appointed by the Company) of the Contractor's operations and/or supply chains; and
- (b) provide any information reasonably requested by the Company for this purpose.

14.3 The Contractor must notify the Company promptly, and in any event no later than 4 calendar days, upon becoming aware of any actual, suspected or imminent breach of clauses 14.1 or 14.2.

### **15. PRIVACY AND DATA SECURITY**

15.1 Each party agrees to comply with their obligations under the Privacy Act 1988 (Cth) in respect of Personal Information obtained by or disclosed to them pursuant to this Purchase Order.

15.2 Each party warrants to the other that it has complied with the Privacy Act 1988 (Cth) in obtaining any Personal Information disclosed by it pursuant to this Purchase Order.

15.3 Where the Contractor:

- (a) has custody or control over any of the Protected Data, or
- (b) is required to access, transmit or store the Protected Data

on or via the Contractor's information systems or equipment, the Contractor must put in place and maintain appropriate technical and organisational measures to secure the Protected Data in its possession or under its control in order to prevent accidental, unauthorised or unlawful access, loss, destruction, misuse, interference, modification, disclosure or damage to or of the Protected Data.

15.4 The Contractor must notify the Company promptly of any suspected or actual Data Breaches.

## **16. MINIMUM SUPPLIER REQUIREMENTS**

16.1 We expect our suppliers to share our commitment to ethical, safe and responsible business practices and support our Values of care, togetherness, trust and excellence. We value our relationships with our suppliers. This means that:

- (a) we're careful to ensure we only work with suppliers that share our commitment to ethical business practices and conduct;
- (b) we treat our suppliers with respect;
- (c) we work with our suppliers to help them understand our expectations and we're fair, open and transparent (while still protecting the nature of commercially sensitive information) in our dealings with them;
- (d) we don't ask our suppliers to operate in a manner that puts them, or their workforce, at risk; and
- (e) we never ask our suppliers to act in a way that breaches the law, our Values or standards regarding business conduct.

16.2 Workplace Health and safety

16.3 Suppliers must ensure that the safety of their workforce and the people they are working with at PKCT is their first priority.

16.4 Suppliers must support PKCT in continuously improving its safety performance by stopping work they feel is unsafe, ensuring hazard and event reporting, and fostering the sharing of information that may improve safety outcomes whilst working with PKCT.

16.5 The Supplier must provide:

- (a) safe and healthy working facilities and appropriate controls to protect employees from work-related health and safety hazards and anticipated dangers in the workplace; and
- (b) workers with appropriate and effective personal protective equipment and training.

16.6 Our suppliers must use and transport hazardous materials safely and responsibly. Our suppliers' products must meet all applicable product safety specifications.

### **Compliance with Laws**

16.7 Our suppliers must comply with all applicable laws, including but not limited to laws concerning labour rights, workplace health and safety, environmental protection, product safety, bribery and corruption, sanctions and trade controls, money laundering, competition, data protection and privacy and the facilitation of criminal tax evasion.

### **Respecting Human Rights**

16.8 Our supplier must create and maintain a work environment that respects human rights and is without discrimination and harassment. We expect our suppliers to respect their workforce's internationally recognised human rights as set out in the United Nations (UN) Universal Declaration of Human Rights and in a manner consistent with the UN Guiding Principles on Business and Human Rights.

16.9 Suppliers must have zero tolerance for any form of modern slavery, forced labour or child labour in their operations and supply chains.

16.10 We expect our suppliers to understand and address human rights risks that may arise from their business activities and supply chain.

16.11 If suppliers cause or contribute to an adverse impact on human rights in their business activities and supply chain, we expect that they provide for, or cooperate in, processes to enable an appropriate remedy.

### **Expected Behaviours**

16.12 PKCT does not tolerate bullying, harassment, discrimination, victimisation, or intimidation of any kind towards others. This includes all forms of sexual harassment or assault. All those that partner with PKCT, must align with a zero-tolerance approach.

16.13 We expect our suppliers to treat their workers fairly and with respect and to offer fair and transparent terms and conditions of employment including fair remuneration, working hours and working conditions.



16.14 We expect our suppliers to not unfairly or illegally discriminate based on race, nationality, religion, gender, age, sexual orientation, disability, ancestry, social origin or trade union membership.

**Being Environmentally Responsible**

16.15 At all times, the supplier must comply with PKCT's environmental requirements and applicable environmental laws and regulations.

16.16 The supplier must ensure an understanding of potential environmental risks and impacts of work, with effort made to minimise footprint by applying the mitigation hierarchy (avoid, minimise, restore/mitigate, offset).

**Acting with Integrity**

16.17 Suppliers must not tolerate bribery of any kind, whether to a public official or a private individual. They must never offer, provide or authorise bribes of any kind, including facilitation payments, either directly or indirectly, to a public official or a private individual. They must never request or accept bribes of any kind, either directly or indirectly.

16.18 Suppliers must avoid conflict of interests with their obligations to PKCT and take steps to declare and manage any conflicts, including in respect of their workers.

**Investigations and Corrective Actions**

16.19 Where we find instances of noncompliance by our suppliers with the requirements of Clause 16, we will investigate these incidents to understand causes and contributing factors, and we will take appropriate action accordingly.

16.20 Our suppliers are required to cooperate in the investigation and assessment of potential or actual adverse impacts and provide PKCT access to relevant information on reasonable request.

**17. COMPLIANCE REQUIREMENTS**

17.1 The Contractor:

(a) must, in performing this Purchase Order, comply with Trade Control Laws; must not source and provide to the Company any Goods or Services, or any component thereof, from any person, entity or country, which is the target of Trade Control Laws; and

(b) represents and warrants that it is not a Sanctioned Party, and will not during the course of this Purchase Order take any actions that cause it to become a Sanctioned Party. If the Contractor becomes a Sanctioned Party, it must notify the Company as soon as possible.

17.2 The Contractor must not have authorised, offered, promised, paid or otherwise given, and will not authorise, offer, promise, pay or otherwise give, whether directly or indirectly, any Bribes to or for the use or benefit of any public official or any private individual:

(a) for the purpose of inducing or rewarding that person's improper performance of their relevant function; or

(b) that would be a breach of any applicable law.

**18. GOVERNING LAW**

18.1 This Purchase Order is governed by the laws of New South Wales, Australia.

**19. AMENDMENTS AND WAIVERS**

19.1 This Purchase Order may only be amended, or its provisions waived, in writing by the parties.

**20. ENTIRE AGREEMENT**

20.1 This Purchase Order (including representations, warranties, promises, statements and documents provided by the Contractor as part of the Company's vendor pre-qualification and/or business partner pre-clearance process (as applicable)) constitutes the entire agreement between the parties in respect of its subject matter and supersedes all other prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Purchase Order.

**21. DEFINITIONS**

In this Purchase Order (unless the context otherwise requires):



**Anti-corruption Laws** means any anti-bribery and anti-corruption Laws that are applicable to either party or this Purchase Order.

**Background IP** means all intellectual property of the Contractor (or licensed to the Contractor by a third party) which is in existence before the issue of this Purchase Order, but excludes Project IP.

**Bribe** means any offer of, provision of, or request for, any monetary or other thing of value to influence a Government Official or any other person to act improperly in performing his/her duties. This includes the giving of a facilitation payment (which is a payment or gift, even if small) given to a Government Official to induce him/her to perform a routine and nondiscretionary service.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday at the Site.

**Company** means Port Kembla Coal Terminal Limited – ABN 72 003 942 774.

**Company Data** means all data, information, text, drawings or other materials embodied in any electronic or tangible medium and which are supplied or made available by or on behalf of the Company to the Contractor under this Purchase Order (including the Company's Confidential Information).

**Confidential Information** means:

- (a) the terms of this Purchase Order;
- (b) any information that concerns the business, operations, finances, plans, customers or other affairs of the Company;
- (c) any information made available to, or acquired by, the Contractor at any time in connection with this Purchase Order (including Project IP and other intellectual property of the Company); and
- (d) any information that is derived from any information referred to in any of subparagraphs (a) to (c) above, but does not include information which:
  - (e) is or becomes public knowledge (other than by a breach of this Purchase Order);
  - (f) has been independently developed by the Contractor and is not subject to any restriction with respect to its disclosure or use; or
  - (g) has been independently acquired by the Contractor from a source which was not subject to a duty of confidentiality with respect to that information and is not subject to any restriction with respect to its disclosure or use.

**Consequential Loss** means any special, exemplary or punitive damages (if applicable under the Governing Law), indirect damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads.

**Contractor** means the party or parties named as such in this Purchase Order.

**Contractor's Personnel** means the Contractor's directors, officers, employees, agents, invitees, subcontractors (of any tier under the Contractor) and Related Bodies Corporate, and any director, officer, employee, agent or invitee of any agent, invitee, subcontractor (of any tier under the Contractor) or Related Body Corporate of the Contractor.

**Data Breach** means any actual or suspected: misuse, interference or loss or unauthorised access, modification or disclosure of Protected Data by any person; breach of the Contractor's obligations in relation to Protected Data; or, event that results in an actual or potential adverse effect on any information systems or equipment used to Process Protected Data, or the Company's ability to access, modify or use any Protected Data.

**Data Privacy Laws** means all Laws now or in future relating to data protection, privacy and information security that apply to either the Company or the Contractor in connection with this Purchase Order.

**Defect** means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.

**Defect Correction Period** means, unless otherwise agreed between you and us, the period of 24 months from the date of delivery or 12 months from the date of installation or initial use of the goods, whichever is the sooner and/or 12 months from the date on which the service is performed.

**Delivery Date** means the delivery date specified as such in this Purchase Order.

**Delivery Point** means the place for delivery of the Goods specified on this Purchase Order.

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

**Goods** means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified).

**Government Official** includes:

- (a) an officer, employee or agent of a government or public international organisation or any department or agency thereof or any government-owned or controlled entity (including state owned or controlled enterprises);
- (b) a political party or party official, or political office candidate;
- (c) persons acting on behalf of such government or public international organization, or any agency, department, or instrumentality thereof, as well as leaders of indigenous and tribal peoples or native title organisations and/or royal families; and
- (d) in some cases, close relatives of any of the above.

**Insolvency Event** means a party is unable to pay its debts as and when they fall due and payable.

**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**Invoice** means a valid tax invoice submitted by the Contractor in accordance with Clause 4.3 for payment of all or a relevant portion (as applicable) of the Price for Goods delivered or Services performed by the Contractor in accordance with this Purchase Order.

**Laws** means:

- (a) legislation as well as regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity (if applicable): and
- (c) authority requirements, guidelines, consents, certificates, licences, permits and approvals (including their conditions) with which a party is legally required to comply or obtain.

**Loss** includes any claim, proceeding, loss, damage, cost (including legal costs on a full indemnity basis), charge, expense, fine, penalty and other liability.

**Modern Slavery** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, child labour, forced marriage, involuntary servitude, debt bondage, human trafficking or other slavery-like exploitation under anti-slavery and human trafficking laws, statutes, codes and international conventions from time to time in force.

**Personal Information** means any information (including an opinion) about an identified or identifiable natural person.

**Price** means the price or rates specified as such in this Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.

**Process or Processing** means any operation or set of operations which is performed upon Personal Information whether or not by automatic means, including collecting, recording, organising, adapting or altering, retrieving, consulting, using, disclosing, making available, aligning, combining, blocking, erasing and destroying such Personal Information.

**Project IP** means all intellectual property (present or future), together with all associated Intellectual Property Rights created, discovered or coming into existence as a result or, for the purpose of, or in connection with the performance of this Purchase Order (including all intellectual property developed by the Contractor or any of the Contractor's Personnel in performing this Purchase Order).

**Protected Data** means the Company Personal Information and the Company Data.

**Purchase Order** means this purchase order for Goods and/or Services issued by the Company to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

**Safety Data Sheet** means a document that provides health and safety information about products, substances or chemicals that are classified as hazardous substances or dangerous goods.

**Sanctioned Party** means:

- (a) any person or entity that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including, but not limited to, any applicable designation under the United States List of Specially Designated Nations and Blocked Persons, the Sectoral Sanctions Identification List, the US Bureau of Industry and Security Entity List, the United Kingdom Consolidated list, the EU Consolidated List and Australia's Consolidated List; and/or
- (b) any entity 50% or more owned, or controlled, directly or indirectly, by one or more of the foregoing persons or entities.

**Services Completion Date** means the service completion date specified as such in this Purchase Order.

**Services** means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

**Site** means the place described as such in this Purchase Order as the place for the use or storage of the Goods by the Company or for the performance of the Services.

**Site Standards and Procedures** means all the Company's standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations, technology and personal conduct.

**Tax or Taxes** means any and all taxes, fees, levies, duties, imposts, tariffs and charges imposed or assessed in respect of this Purchase Order by any government authority and any interest, penalties and additions but does not include Consumption Tax.

**Trade Control Laws** means any economic sanctions, export control, customs or import laws, or other regulations, orders, directives, designations, licences or decisions applicable to either party or this Purchase Order and relating to the trade or transfer of goods, technology, software and/or services which are imposed, administered or enforced from time to time, including but not limited to those established by Australia, the United States, the United Kingdom, Singapore, the European Union (EU), EU Member States or the United Nations.

**Unsafe** includes unacceptable actual or potential hazards and incidents relating to safety, health or the environment.