

HUNTER WATER CORPORATION PURCHASE ORDER TERMS AND CONDITIONS

1. APPLICATION

- 1.1 This Contract contains the entire Contract between the parties in respect of the subject matter except where the parties have executed a separate contract in regards to the supply of the Goods and Services (as applicable) in which case that contract overrides this Contract to the extent of any inconsistency. No other terms and conditions, including any terms provided by the Supplier with any quotation, order confirmation or with particular Goods and/or Services upon delivery or performance, form part of this Contract.
- 1.2 This Contract represents a written offer which will be deemed to be accepted by the Supplier on the earliest of the Supplier:
- returning a signed copy of the Purchase Order to HWC;
 - indicating to HWC in writing its intention to supply the Goods and/or Services; or
 - commencing the supply of the Goods and/or Services after receipt of the Purchase Order.

2. WORK HEALTH AND SAFETY

- 2.1 The Supplier must:
- supply the Goods and Services in a safe manner;
 - at all times whilst on the Site, the Supplier must identify all risks and hazards, exercise all necessary precautions and take all reasonably practicable steps to eliminate or reduce hazards or risks to health and safety of any person arising from the provision of the Goods and Services;
 - comply with, and must ensure that its Personnel and subcontractors engaged on any Site comply with, any applicable Legislation, all reasonable directions of HWC or its Personnel in regards to conduct, behaviour, work health and safety and security;
 - at all times, comply with HWC's Fatal Risk Standards;
 - at all times, comply with HWC's Supplier User Guide – Work Health and Safety Requirements, available at: <https://www.hunterwater.com.au/About-Us/Tenders.aspx>
 - promptly report all accidents, injuries and incidents, including near miss incidents, to HWC and must fully cooperate with HWC in connection with any investigation following an accident, injury or incident;
 - cause all of its Personnel and subcontractors to complete such safety or other training or induction requirements as HWC directs;
 - if directed by HWC, ensure that each of its Personnel and subcontractors engaged on any Site are registered on HWC's contractor management system (which the Supplier is responsible for at its own expense); and
 - prior to bringing any hazardous substance onto a Site, the Supplier must ensure that HWC has approved the entry and use of the hazardous substance, and must:
 - full details of the authorised substances incorporated into the Goods, including the location and protective measures adopted, are provided to Hunter Water in the format of a material safety data sheet in accordance with NOHSC 2011 (2003) "National Code of Practice for the Preparation of Material Safety Data Sheets 2nd Edition";
 - all documentation supporting the Goods clearly identifies the nature of the hazard; and
 - all Goods containing the authorised substance are labelled to clearly identify the nature of the substance and its associated hazards.
 - provide to HWC evidence of a safe system of work in accordance with any applicable Legislation.
- 2.2 Where the Supplier, or the manufacturer or distributor of a Good, issues a hazard or safety alert or notice ("Safety Notice") or orders a product recall in respect of any Good (or part thereof) specified in this Contract or supplied to HWC in connection with this Contract, the Supplier must:
- promptly notify HWC in writing of the Safety Notice or recall together with the circumstances giving rise to the Safety Notice or recall;
 - comply with all laws relating to the Safety Notice or recall;
 - promptly comply with any direction by HWC in regards to the removal of the Goods from any locations nominated by HWC, in which case the Supplier shall either:
 - provide HWC with a complete refund for those recalled Goods; or
 - replace the Goods at no additional cost to HWC with Goods that are not subject to a Safety Notice or recall; and
 - indemnify and keep HWC indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by HWC as a result of the Safety Notice or recall.
- 2.3 Clause 2.2 survives the expiry or termination of this Contract for any reason whatsoever.

3. ENVIRONMENTAL PROTECTION

- 3.1 The environmental requirements set out in this clause 3 and the work health and safety requirements under clause 2:
- are in addition to, but are not in substitution for, any other requirements of any Legislation or other conditions of Contract; and
 - are not to be taken to limit the powers of HWC nor the Supplier's obligations and responsibilities under this Contract.
- 3.2 The Supplier must, at all times, exercise any necessary and reasonable precautions appropriate to the nature of the Goods and/or Services to be provided to protect people, property and the environment, including the prevention of any contamination or pollution, at the Site, or in the vicinity of the Site.

- 3.3 The Supplier must comply, where directed by HWC, with any reasonable request made by HWC or its nominated representative(s) to stop work or to take urgent remedial measures where actual or potential risk of harm to people, property or the environment has been identified as a consequence of the Supplier's actions.
- 3.4 The Supplier must provide equipment, materials, training, personnel and other resources (including supervision) necessary to meet the environmental management requirements of this Contract.

4. SUPPLIER'S GENERAL OBLIGATIONS

- 4.1 The Supplier must:
- supply the Goods and perform the Services (as applicable) in accordance with the requirements of this Contract and all Legislation;
 - carry out and complete its obligations under the Contract so that the Goods and Services are fit for their intended purpose;
 - comply with all relevant Australian standards or where there is no applicable Australian standard then all applicable international standards, and any other relevant standards specified by HWC in any reference documents identified in the Purchase Order), and perform any other obligations in a thorough, competent, and professional manner in accordance with relevant professional principles and standards;
 - comply with, and ensure that its Personnel comply with HWC's policies, the Supplier Code of Conduct and all reasonable directions given by or on behalf of HWC in relation to the Goods and/or Services or this Contract;
 - perform the Services and supply the Goods with due care and skill;
 - ensure that its Personnel holds and maintains all appropriate licences, accreditations, certificates or registrations the Supplier or its Personnel are required to possess by any applicable Legislation in order to perform its obligations under this Contract, and is experienced, competent and qualified;
 - cooperate with HWC and its Personnel, and use its best endeavours not to interfere with the activities of HWC or its Personnel; and
 - promptly provide any information reasonably requested by HWC.

5. WARRANTIES

- 5.1 The Supplier warrants and repeats that:
- it and its Personnel possess the skills, experience, qualifications and knowledge needed to perform the Services in accordance with this Contract;
 - it will exercise the skill and expertise expected of a supplier experienced in providing similar services to the Services;
 - all HWC supplied materials shall be used only for the purposes of this Contract, and will be maintained and returned in the same condition that it was supplied;
 - it has all rights, title, interest, permits, licences, registrations, certificates and other administrative authorisations necessary to lawfully supply the Goods and perform the Services (as applicable) and comply with its obligations under the Contract (all of which the Supplier is responsible for at its own risk and expense);
 - it did not rely upon any representation made available to it by or on behalf of HWC in entering into this Contract;
 - the Goods and Services (as applicable) will be fit for their intended purpose as stated in, or reasonably to be inferred from, the Contract; and
 - all delivered Goods will have unencumbered title, be new, defect free, of merchantable quality, of sound design, materials and workmanship and have a life expectancy commensurate with that expected of the same or similar goods; and
 - HWC will have the full benefit of all manufacturer's warranties applicable to the Goods from delivery.

6. TIMING FOR SUPPLY

- 6.1 The Supplier must deliver the Goods to the Delivery Point and/or complete the Services (as applicable) by the Due Date.
- 6.2 If the Contractor is unable to deliver the Goods or complete the Services by the Due Date, the Supplier must notify HWC at the earliest possible opportunity detailing the:
- cause of the delay;
 - estimated duration of the delay; and
 - actions it has taken or will take to mitigate the delay.
- 6.3 Subject to clause 6.4, the Supplier is not entitled to an extension of time or to recover any costs or damages from HWC for any delay or disruption in performing this Contract.
- 6.4 To the extent that any delay in meeting a Due Date is due to an act of HWC, a breach of this Contract by HWC, a variation or suspension directed by HWC (other than a suspension directed to overcome the effects of an act, default or omission of the Supplier), HWC (acting reasonably) will grant a reasonable extension of time to the Due Date.

7. RISK AND TITLE

- 7.1 Risk in the Goods passes to HWC upon their delivery in accordance with clause 8.
- 7.2 Title in the Goods passes to HWC upon their delivery, unless HWC has paid for the relevant Goods prior to their delivery in which case title will pass upon payment.

8. DELIVERY OF GOODS

- 8.1 This clause 8 applies if the Contract includes the supply of Goods.
- 8.2 Unless otherwise agreed, the Supplier is responsible for safely unloading the Goods at the Delivery Point.

- 8.3 HWC may refuse to accept delivery at any time if the Goods do not comply with this Contract.
- 8.4 HWC is not obliged to accept delivery of separate component parts making up the Goods, or the part supply of the Goods.
- 8.5 The Supplier must ensure that all Goods:
- are packed in a manner that avoids damage during their transit and storage;
 - are accompanied by a packing list in each package of Goods delivered; and
 - clearly identify the Purchase Order number to which the Goods relate.
- 8.6 Where the Supplier is responsible for the transportation of any Goods, whether to HWC or otherwise, the Supplier must:
- ensure the vehicle carrying the Goods is not driven unless the load is arranged, contained, fastened or covered in a manner that complies with the performance standards and principles in the current Load Restraint Guide issued by the National Transport Commission Australia;
 - ensure over-centre load binders are not used on the vehicles carrying the Goods;
 - comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW) 2013*; and
 - comply with all:
 - relevant obligations concerning the labelling and transportation of dangerous goods; and
 - fatigue management and record keeping obligations.
- 8.7 Without limiting any other provision of this Contract, the Supplier must ensure that every subcontract in connection with the supply and/or delivery of the Goods, includes provisions to the same effect as clause 8.6, which is binding on the subcontractor.
- 8.8 The Supplier must provide evidence of compliance with clauses 8.6 and 8.7 to HWC on request.

9. DEFECTIVE GOODS AND/OR SERVICES

- 9.1 Without in any way limiting HWC's rights at law, if any of the Goods and/or Services:
- do not meet their description;
 - have not been performed or supplied in accordance with this Contract;
 - do not meet the requirements set out in any reference documents specified in the Purchase Order which describe the scope of Services and/or the requirements for the Goods; or
 - are otherwise defective,
- HWC may within the Warranty Period notify the Supplier of the issue, and such Goods and/or Services must (at HWC's election) be re-performed, repaired, replaced or otherwise made good by the Supplier at its cost within the period directed by HWC.
- 9.2 If the Supplier fails to rectify a defect in accordance with clause 9.1, HWC may rectify or cause to be rectified the defect at the Supplier's risk and expense and all costs incurred by HWC in doing so will be a debt due and payable from the Supplier to HWC.
- 9.3 Where a defect is rectified, a separate Warranty Period will apply in respect of the rectified Goods or Services and be for the same duration as the initial Warranty Period, commencing on the date the rectification work is completed.

10. PRICE, PAYMENT AND INVOICING

- 10.1 The Price:
- includes all Taxes other than GST;
 - includes all costs and expenses the Supplier may incur in performing this Contract, including the cost of delivery; and
 - unless otherwise agreed in writing, is not subject to escalation or variation.
- 10.2 The Supplier will provide HWC a Tax Invoice:
- on or after the delivery of the Goods;
 - on the completion of the Services; or
 - where it is agreed in writing by HWC that progress payments are to be made for the provision of Services, at the end of the calendar month (or other period specified in this Contract) for Services performed in that month or that period (as the case may be).
- 10.3 Each Tax Invoice must include the purchase order number, details of the Goods supplied and/or Services performed, including their value, and be forwarded together with adequate supporting documentation to evidence the amount due.
- 10.4 The Supplier must promptly provide to HWC such supporting documentation and other evidence reasonably required by HWC to substantiate performance of the Contract by the Supplier.
- 10.5 Subject to its rights under the remainder of this clause 10, HWC shall pay the Supplier the amount due no later than 30 days from the end of the month in which the Tax Invoice is received by HWC.
- 10.6 Without limiting any other rights of HWC, HWC is entitled to withhold payment of any invoice:
- where the Supplier has not complied with clause 10.1, 10.2, 10.3 or 10.4;
 - until the Supplier has provided satisfactory evidence:
 - that the Supplier is registered for GST;
 - of the Supplier's insurance policies;
 - until the Supplier has provided a statutory declaration in a form required by HWC, together with any supporting information reasonably required by HWC, confirming all of the Supplier's Personnel and suppliers have been paid all monies due and payable to them at the date of the Supplier's claim for payment; and
 - to the extent that it relates to Goods and/or Services that, in HWC's reasonable opinion, have not been supplied in accordance with this Contract.
- 10.7 Any withholding of a payment pursuant to clause 10.6 shall not be considered to be a dispute under clauses 10.8 to 10.10, and HWC shall pay

the Supplier within the timeframe stated in clause 10.4 after the non-compliance is resolved to HWC's satisfaction.

- 10.8 HWC may, within 21 Business Days of receiving an invoice from the Supplier under clause 10.2 or a non-compliance under clause 10.6 is resolved to HWC's satisfaction, dispute an amount payable by providing the Supplier a notice:
- advising the Supplier of the disputed amount; and
 - providing reasons for the dispute.
- 10.9 If HWC disputes the whole or any part of an invoice issued by the Supplier in accordance with clause 10.6:
- the Supplier must reissue the invoice for the undisputed amount;
 - HWC must pay the Supplier the undisputed amount in accordance with clause 10.5; and
 - HWC is not required to pay the disputed amount until the dispute is resolved in accordance with clause 10.10.
- 10.10 If HWC notifies the Supplier that it disputes an amount under clause 10.6:
- within 21 Business Days of being notified of the dispute, the Supplier must give HWC a notice setting out brief details of the Supplier's position on the dispute;
 - if the Supplier gives a notice under clause 10.10(a) and if requested to do so by HWC, the parties must make representatives with authority to settle the dispute available for the purpose of meeting in an effort to resolve the dispute. At least one meeting of the authorised representatives must take place in person or by telephone within 15 Business Days of the Supplier giving notice under clause 10.10(a) or other timeframe agreed between the parties; and
 - the parties must make reasonable efforts to resolve the dispute.
- 10.11 Payment is not evidence of the value of work done, goods and/or services delivered, that work or Goods and/or Services are satisfactory, or an admission of liability, but is payment on account only.
- 10.12 HWC may withhold, retain or set off from any payment due to the Supplier under this Contract any amounts due from the Supplier to HWC whether under this Contract or otherwise.

11. VARIATIONS

- 11.1 HWC may, by written notice, direct the Supplier to vary the Contract, including by:
- increasing or decreasing the quantity, character, quality, kind or execution of the Goods and/or Services; and
 - changing the delivery and the work program, as applicable and the Supplier must comply with such direction.
- 11.2 If HWC issues a variation which omits Goods and/or Services, it may perform them itself or have them performed by a third party.
- 11.3 Unless otherwise agreed in writing by the parties, variations must be valued using:
- the rates set out in the Purchase Order; or
 - if the Purchase Order does not include a relevant rate, rates that HWC considers reasonable.

12. SUSPENSION

- 12.1 HWC may at any time direct the Supplier to suspend supply of all or part of the Good and/or Services at any time and for any reason.
- 12.2 HWC may notify the Supplier when it may resume supplying the suspended Goods and/or Services and the Supplier must resume supplying those Goods and/or Services as soon as reasonably practicable thereafter.
- 12.3 The Supplier shall not be entitled to any reimbursement of its costs in connection with the suspension.

13. INDEMNITIES

- 13.1 To the fullest extent permitted by law, the Supplier indemnifies, defends and agrees to hold harmless HWC and its Personnel (excluding the Supplier) (together the **Indemnified Parties**) from and against all Losses the Indemnified Parties suffer or incur in respect of, or in connection with:
- loss or damage to any property (including Loss resulting from such loss or damage) arising from any act or omission of the Supplier or any of its Personnel;
 - personal injury (including death or illness of any person) arising from any act or omission of the Supplier or its Personnel;
 - any third party claim:
 - that use of the Goods and/or Services (including any Goods provided as part of the Services) by an Indemnified Party breaches the Intellectual Property Rights of a third party, including any Moral Rights; or
 - concerning any intellectual property rights assigned or licence to HWC under this Contract;
 - any unlawful, wilful or negligent act or omission of the Supplier or any of its Personnel;
 - any breach of a duty of confidence owed under this Contract or at law by the Supplier or its Personnel;
 - contamination arising from any act or omission of the Supplier;
 - the rectification of defects in the Good and/or Services; or
 - any act of abandonment of some or all of this Contract by the Supplier,
- except to the extent that such Loss is caused or contributed to by HWC's fraud, negligence or wilful misconduct.
- 13.2 It is not necessary for an Indemnified Party to incur expenses or make payment before enforcing an indemnity under this Contract.
- 13.3 Each indemnity in this Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives the expiry or termination of this Contract.
- 13.4 Without affecting the rights of the parties under this Contract, where an indemnity in this Contract is given by the Supplier in favour of a person other than HWC, this Contract operates as a deed poll by the Supplier for the benefit of that person and such person may rely on, and enforce, each indemnity as a deed poll made in their favour by the Supplier.

- 13.5 If for any reason an Indemnified Party is unable to rely on or enforce an indemnity as contemplated by clause 13.1, the Supplier agrees to do all things necessary to give full benefit of the indemnities to the Indemnified Party as contemplated by the indemnities.
- 14. INDIRECT LOSS**
- 14.1 Subject to clause 14.2, to the fullest extent permitted by law, neither party will be liable to the other (whether arising in contract, tort (including negligence), statute, equity or otherwise) for any of the following types of loss or damage arising under or in relation to this Contract:
- loss of revenue, use, production, goodwill, profit, business, contract or anticipated savings; or
 - financing costs.
- 14.2 Clause 14.1 does not apply to limit or exclude the Supplier's liability:
- under an indemnity in clause 13;
 - for loss of or damage to an Indemnified Party's reputation; or
 - to the extent that the Supplier:
 - has an entitlement to recover losses or damages of the type contemplated in clause 14.1 under any insurance policy required by clause 16; or
 - would have had an entitlement to recover in the manner contemplated in clause 14.2(c)(i) but for a failure by the Supplier to effect and maintain such insurance, comply with its terms or properly and diligently pursue a claim under an insurance policy.
- 15. PROPORTIONATE LIABILITY**
- 15.1 To the maximum extent permitted by law the parties agree that the *Civil Liability Act 2002* (NSW) has no application to this Contract.
- 16. INSURANCE**
- 16.1 The Supplier must effect and maintain throughout the continuance of this Contract:
- broadform public and products liability insurance issued on an occurrence basis with a limit of liability of not less than \$20 million for each and every occurrence and, in respect of products liability, in the annual aggregate; and
 - if the performance of this Contract requires the Supplier to use or provide for use of plant and equipment that will be used at the Site in connection with this Contract, insurance covering all loss and damage to the Supplier's plant and equipment, for its replacement value;
 - if the performance of this Contract requires the Supplier or its Personnel or subcontractors to use or provide for use of motor vehicles, motor vehicle third party property damage insurance covering liabilities in respect of any loss, damage or destruction to any property arising from the use of such motor vehicles with a limit of liability of not less than \$30 million for each and every event, and each and every vehicle;
 - if the Contract includes professional services or activities, professional indemnity insurance issued on a claims made basis with a limit of liability not less than \$5 million for any one claim and in the annual aggregate for each policy year for any civil liability arising out of the Supplier's professional services or activities. Such insurance is to be maintained for six years after expiry or termination of this Contract;
 - transit insurance for the full value of all Goods whilst they are in transit;
 - workers compensation insurance as required by law;
 - other insurance to the full extent required by law; and
 - other insurance as may be reasonably required by HWC.
- 16.2 The Supplier must ensure all insurance policies required under this clause 16:
- are obtained from an insurer authorised by APRA or regulated by the Prudential Regulation Authority in the United Kingdom or an insurer acceptable to HWC (acting reasonably), or in the case of New South Wales workers' compensation scheme, with an insurer that has been granted a licence by the Workcover Authority of New South Wales to provide workers' compensation insurance;
 - cover the Supplier and its Personnel for all their respective obligations and liabilities under the Contract;
 - do not contain terms, conditions or exclusions which would reduce the level of cover available in response to a claim arising from or in relation to the performance of this Contract; and
 - contain provisions normally included in insurances for the performance of similar contracts.
- 16.3 The Contractor will bear any and all excesses or deductibles in relation to any claim on a policy.
- 16.4 The Supplier must produce evidence, on demand and to the satisfaction of HWC, that such insurances have been effected and maintained.
- 17. PERSONNEL**
- 17.1 If requested by HWC, the Supplier must promptly remove and replace, at no additional cost to HWC, any of the Supplier's Personnel who, in HWC's opinion, is incompetent, negligent or guilty of misconduct or for any other reason notified to the Supplier by HWC.
- 18. TERMINATION**
- 18.1 HWC (at its absolute discretion) may terminate this Contract for its convenience by 7 days' prior written notice, and the Supplier must immediately discontinue the supply in accordance with the notice and comply with any reasonable directions given by HWC. The Supplier must mitigate all loss and expenses in connection with the termination, and following such termination the Supplier will only be entitled to payment:
- pro-rata for satisfactory performance prior to termination; and
 - for the cost of goods, materials, plant and equipment properly ordered in respect of this Contract to the extent the Supplier cannot cancel
- such orders, provided that on payment by HWC, the unencumbered title to the materials passes to HWC,
- 18.2 Without limiting the availability of other rights or remedies, HWC may immediately terminate this Contract by notice in writing to the Supplier if the Supplier:
- in Hunter Water's opinion, has or will breach the Supplier Code of Conduct;
 - commits a breach HWC believes cannot be promptly remedied;
 - infringes any law in connection with this Contract;
 - engages in wilful misconduct; or
 - otherwise breaches this Contract and fails to remedy it within 7 days after written notice from HWC to do so;
- 18.3 Without limiting the availability of other rights or remedies and to the extent permitted by law, HWC may terminate this Contract by immediate written notice to the Supplier if any act related to bankruptcy, change of control, receivership or insolvency occurs in relation to the Supplier.
- 19. INTELLECTUAL PROPERTY**
- 19.1 HWC will own the Intellectual Property Rights discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Contract.
- 19.2 The Supplier grants HWC a perpetual, irrevocable and royalty-free licence to reproduce, use, modify, adapt and sub-license the Supplier's Background IP for the purpose of using, maintaining, repairing or modifying any of the Goods and/or Services (as applicable).
- 19.3 The Supplier agrees, and must procure that it obtains all necessary written consents from its Personnel, to any act or omission that might otherwise infringe an author's Moral Rights.
- 19.4 If requested by HWC, the Supplier must promptly provide HWC with evidence of the consents required under clause 19.3.
- 20. CONFIDENTIALITY**
- 20.1 General Restrictions
The Supplier must:
- subject to clause 20.2, not, whether before or after the expiration or sooner termination of this Contract, divulge, suffer or permit any of its Personnel to divulge to any person any of the contents of this Contract or any Confidential Information without the prior written consent of HWC;
 - comply with all policies, procedures and directions of HWC concerning the use, storage and transfer of Confidential Information;
 - without limiting clause 20.1(b), use an Approved File Sharing System for the use, storage and transfer of Confidential Information;
 - upon becoming aware of a Data Breach:
 - immediately notify HWC;
 - mitigate, to the extent practicable, any harmful effect of such Data Breach; and
 - comply with any direction of HWC in relation to the Data Breach; and
 - ensure that all subcontracts it enters into concerning the Goods or Services or this Contract include restrictions no less onerous than those included in this clause 20.
- 20.2 Exceptions
The restrictions imposed by clause 20.1 do not apply to the disclosure of Confidential Information:
- which is now or hereafter comes into the public domain through no fault of the Supplier or any of its Personnel;
 - which is required to be disclosed by law or the Listing Rules of the Australian Stock Exchange Limited;
 - to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the Supplier is a party or to an expert in the course of any determination by him to which the Supplier is a party; or
 - which, in the reasonable opinion of the Supplier, is required to be disclosed to any:
 - lender to the Supplier;
 - insurer in respect of the insurances required to be maintained by the Supplier under this Contract; or
 - professional adviser or consultant to the extent necessary for the Supplier to comply with its obligations under this Contract,
provided that the Supplier first obtains (and enforces if required by HWC) an undertaking from each such person to comply with clause 20.1 as if it applied to them directly.
- 20.3 Actions on termination, expiry or HWC's request
- Immediately upon the termination or expiration of this Contract or on written request by HWC, the Supplier must, at HWC's election:
 - return to HWC or its nominee;
 - destroy; or
 - in the case of machine readable records, delete,
all Confidential Information in the possession or control of the Supplier or its Personnel and ensure that any person to whom the Supplier has disclosed Confidential Information does the same.
 - When the Supplier has complied with its obligations under clause 20.3, it must certify to HWC in writing that all such Confidential Information has been, as appropriate, returned, destroyed or deleted.
- 20.4 Right to injunctive relief
The Supplier acknowledges and agrees that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 20, and that HWC will be entitled, without limiting any of its other rights or remedies, to such injunctive relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.
- 20.5 Publicity
The Supplier and its Personnel must:
- not make any comment or issue any information, publication, document or article for publication (including on social media) concerning the Services and/or Goods supplied to HWC, HWC

(including its Personnel) or this Contract without the prior written approval of HWC; and

- (b) refer to HWC any enquiries concerning HWC (including its Personnel), the Services and/or Goods supplied to HWC, any Data Breach, or this Contract from any media.

20.6 Public Access to Government Information

HWC may be required to publish certain information about this Contract in accordance with the *Government Information (Public Access) Act 2009 (NSW)* ("**GIPA Act**"). The Supplier must, within five (5) Business Days of receipt of the Purchase Order, advise HWC in writing identifying any provisions of this Contract it considers to be commercial-in-confidence or which could reasonably be expected to affect public safety or security or which constitute another public interest consideration against disclosure under the GIPA Act and providing reasons so that HWC may consider seeking to exempt those provisions from publication.

21. SUBCONTRACTING

- 21.1 The Service Provider must not subcontract any of its obligations under this Contract without HWC's prior written consent (which may be withheld in HWC's absolute discretion).
- 21.2 The Service Provider is liable to HWC for the acts and omissions of its Personnel and subcontractors.

22. TAXES AND GST

- 22.1 Subject to the remainder of this clause 22, the Supplier must pay all Taxes concerning the supply of Goods and/or Services.
- 22.2 Each party warrants to the other that it is registered for GST and must immediately notify the other if it ceases to be so registered.
- 22.3 If consideration given by a party (**Payer**) in connection with this Contract does not include GST and is consideration for a taxable supply for which the party who makes the supply (**Supplier**) is liable for GST, the Payer must pay the Supplier an additional amount equal to the consideration multiplied by the rate of GST.

23. RELATIONSHIP

- 23.1 No provision of this Contract will be deemed to create an exclusive agreement between the parties and HWC will always be entitled to invite tenders from and contract with any other party it deems fit, for the provision of like goods and/or services. HWC has no obligation to issue any Purchase Order to the Supplier and the Supplier has no right to make any claim for loss of profit or contract or any other Losses resulting from any failure by HWC to issue any Purchase Order.
- 23.2 The Supplier is an independent contractor. Nothing in this Contract gives rise to a relationship of employment, agency, partnership or joint venture.

24. OTHER MATTERS

- 24.1 Nothing in this Contract operates to restrict or otherwise affect the unfettered discretion of HWC in exercising its powers as a statutory corporation, and if there is any conflict between the unfettered discretion of HWC in the exercise of such powers on the one hand and the satisfaction or performance of HWC's obligations under this Contract, the former will prevail. The Supplier acknowledges that anything HWC does, fails to do or purports to do, pursuant to its statutory functions and powers will be deemed not to be an act or omission under or in connection with this Contract.

25. GENERAL

- 25.1 In the interpretation of this Contract, no rule of construction applies to the disadvantage of one party on the basis that it put forward or drafted this Contract or a provision in it.
- 25.2 This Contract can only be varied by agreement in writing signed by both parties.
- 25.3 This Contract is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.
- 25.4 A right may only be waived in writing, signed by the party giving the waiver and a waiver of a right on one occasion does not operate as a waiver of that right if it arises again.
- 25.5 The Supplier's rights and obligations under this Contract must not be assigned or novated without HWC's prior written consent.
- 25.6 The invalidity or unenforceability of any provision of this Contract does not affect the validity or enforceability of any other provision of this contract and the invalid or unenforceable part is severable.
- 25.7 Clauses 1-5, 13-22, 23-24, 25-27, this clause 25.7 and any other clauses which by their nature are intended to survive the expiry or termination of the Contract survive the expiry or termination of this Contract.

26. DEFINITIONS

"**Approved File Sharing System**" means one of the following platforms:

- Dropbox;
- Google Drive;
- secure file transfer; or
- a secure file sharing system directed at any time by HWC

"**Business Days**" means a day on which banks are open for business in New South Wales, but not a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

"**Confidential Information**" means information that:

- is by its nature confidential;
- is designated as confidential on its disclosure;
- the Supplier knows or ought to know is confidential; or
- HWC otherwise deems to be sensitive information.

"**Contract**" means collectively the Purchase Order, these standard terms and conditions, any reference documents specified in or provided by HWC in connection with the Purchase Order which describe the scope of Services and/or the requirements for the Goods, and any reference document specified in these terms and conditions or the Supplier Code of Conduct;

"**Data Breach**" means:

- the accidental loss or destruction of, or unauthorised disclosure of or access to, Confidential Information, Personal Information and/or Records collected, accessed, used, stored or transferred by the Supplier or its Personnel during the course of performing this Contract, or
- the unauthorised access to any information or communications technology systems used by Supplier or its Personnel in connection with the provision of the Goods and Services.

"**Delivery Point**" means the location for delivery of the Goods as specified in the Purchase Order;

"**Due Date**" means the date for completion of the Services or delivery of the Goods (as applicable) as specified in the Purchase Order, or where clause 6.4 applies the revised date for completion or delivery (as applicable);

"**Fatal Risk Standards**" means HWC's Fatal Risk Standards available on HWC's website;

"**Goods**" means:

- the items as specified in any Purchase Order or otherwise are required to be provided by the Supplier; and
- any goods (including equipment, consumables and installation materials) that are required for or reasonably necessary or incidental to the provision of the Services

in accordance with the Contract;

"**GST**" means that term as defined in the GST Law;

"**GST Law**" means that term as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**HWC**" means Hunter Water Corporation (ABN 46 228 513 446);

"**Intellectual Property Rights**" means all:

- intellectual property rights, including copyright, trademarks, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and
- other rights or protections of a similar nature to any of the rights referred to in paragraph (a), whether current or future or registered or unregistered;

"**Legislation**" means all:

- acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and New South Wales;
- certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods and/or performance of the Services; and
- requirements of any authority with jurisdiction in respect of the Goods and/or Services and/or the Site, as applicable;

"**Losses**" means all liabilities, losses, damages, expenses, compensations, fines, penalties, charges and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature however they arise and whether they are present or future, fixed or unascertained, actual or contingent and including any loss of profits, loss of revenue or loss of opportunity;

"**Moral Rights**" has the same meaning as in the *Copyright Act 1968* (Cth);

"**Personal Information**" has the meaning as in the *Privacy Act 1988* (Cth);

"**Personnel**" means officers, employees, agents, contractors and consultants engaged by each party (but does not include the other party);

"**Purchase Order**" means the purchase order issued by HWC to the Supplier in respect of the Goods and Services;

"**Price**" means the price set out in the Purchase Order;

"**Records**" means any information or data created, generated, received and kept in relation to the delivery of this Contract;

"**Services**" means the services or Supplier's obligations as specified in any Purchase Order or Contract and includes any services, functions and responsibilities not described in the Contract but which are reasonably necessary or incidental to the provision of the Goods and Services and performance of the Supplier's obligations under the Contract;

"**Site**" means the places and facilities where the Goods are to be supplied and/or the Services (as applicable) are to be performed, as set out in the Purchase Order or otherwise advised by HWC;

"**Supplier**" means the Supplier identified in the Purchase Order;

"**Supplier's Background IP**" means Intellectual Property Rights in existence prior to the parties entering this Contract or developed by the Supplier independently of this Contract;

"**Supplier Code of Conduct**" means HWC's Supplier Code of Conduct available on HWC's website;

"**Tax Invoice**" means a tax invoice as defined and in compliance with GST Law;

"**Taxes**" means all forms of taxation, duties, imposts and levies, whether of Australia or elsewhere, and any interest, surcharge, penalty or fine in relation to them;

"**Warranty Period**" means:

- 24 months from the date the Goods are delivered in accordance with this contract; or
- 12 months from the completion of the Services.

27. INTERPRETATION

27.1 In this Agreement:

- a person includes an individual, firm, joint venture, association or body, corporate or unincorporate;
- a party includes its successors and permitted assigns;
- the time for doing anything is, if it ends on a non-Business Day, deemed to end on the next Business Day;
- headings are for convenience only;
- communications must be in English;
- a reference to Legislation or a provision of it is to it as amended, re-enacted or replaced;
- 'includes' or 'including' or any similar such word are not intended as words of limitation; and
- an agreement on the part of two or more persons binds them jointly and severally.