



STANDARD TERMS AND CONDITIONS



**For Suppliers**

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## DOCUMENT VERSION CONTROL

Version No.	Description	Date	Author	Approval
1.0	Initial document	17 September 2020	Emma Christie	Emma Christie

## 1. DEFINITIONS

In these Conditions:

Conditions means these standard terms and conditions for Suppliers.

Confidential Information means the terms of the Contract and any information relating to TCS's or TCS's client's business, operations, finances, plans or customers which is disclosed to the Supplier but does not include information which is:

- (a) or becomes public knowledge other than by a breach of this Contract; or
- (b) in the possession of the Supplier without restriction on its disclosure.

Contract means the Conditions and the Order which together make up the contract between TCS and the Supplier.

Force Majeure Event means a riot, act of terrorism, war, invasion, civil war, rebellion, earthquake, tsunami, cyclone, flood, fire, explosion or other natural physical disaster (but excluding any other less severe weather conditions), ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste.

GST has the meaning defined in the A New Tax System (Goods and Services Tax) Act 1999.

Heavy Vehicle has the meaning defined in the Heavy Vehicle National Laws.

Order means the purchase order issued by TCS to the Supplier.

Security of Payments Act means where the works are located in:

- New South Wales - the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- Victoria - the *Building and Construction Industry Security of Payments Act 2002* (Vic);
- Queensland - the *Building and Construction Industry Payment Act 2004* (Qld);
- Western Australia - the *Construction Contracts Act 2004* (WA);
- South Australia - the *Building and Construction Industry Security of Payment Act 2009* (SA);
- Tasmania - the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- Australian Capital Territory - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT); and
- Northern Territory - the *Construction Contracts (Security of Payment) Act 2004* (NT).

Supplier means the person or company with whom the Order is placed.

Supplies means all goods and/or services identified in the Order.

TCS means Traffic Control Systems Pty Ltd ABN 35 088 402 966

## 2. APPLICATION

- 2.1 The Supplier agrees to supply the Supplies to TCS in accordance with the Contract.
- 2.2 The Contract constitutes the entire agreement between TCS and the Supplier and supersedes all previous communications or representations between TCS and the Supplier and any terms and conditions issued by the Supplier. The Contract shall not be amended unless expressly agreed in writing by TCS.
- 2.3 TCS will not issue an Order unless the Supplier has been pre-qualified by TCS within the two years immediately preceding the requirement for an order to be placed.
- 2.4 TCS's Order number, where applicable, must be quoted by the Supplier on all documents and correspondence relating to the Supplies.

### 3. PRECEDENCE

The Order may include additional or special terms relating to the Supplies. Where such terms are included in the Order, the following order of precedence shall apply, to the extent of any inconsistency:

- 3.1 the terms in the Order; and
- 3.2 these Conditions.

### 4. DELIVERY, DELAY AND EXTENSIONS OF TIME

- 4.1 The Supplies shall be provided at or delivered to the location/s identified in the Order by no later than the date or dates specified in the Order. Time is of the essence in relation to the provision or delivery of the Supplies. Partial deliveries shall not be made unless agreed in advance in writing by TCS.
- 4.2 The Supplier shall pack the Supplies in a manner which is suitable for the designated mode of transport, which will prevent loss or damage and, if a Heavy Vehicle is being used to transport the Supplies, in accordance with the Heavy Vehicle National Laws.
- 4.3 The Supplier must inform TCS in writing of any anticipated or actual delay in delivering or providing the Supplies within two business days of the event giving rise to the delay occurring.
- 4.4 Subject to the Supplier's compliance with clause 4.3, if the Supplier is delayed in providing or delivering the Supplies by a breach of the Contract by TCS or by a Force Majeure Event, the Supplier may make a written request to TCS for an extension of time to the date for delivery specified in the Order.
- 4.5 An application for an extension of time under clause 4.4 must be made by the Supplier within 2 business days of the notice of delay issued in accordance with clause 4.3.
- 4.6 Subject to the Supplier's compliance with clauses 4.3 to 4.5, TCS will grant the Supplier an extension of time to the date for delivery equivalent to the length of the delay caused by an event specified in clause 4.4.
- 4.7 If specified in the Order, liquidated damages at the rate identified in the Order shall be payable by the Supplier for each day that the Supplier fails to complete the provision or delivery of the Supplies by the date specified in the Order (or any other date for completion directed by TCS in accordance with clause 4.6).
- 4.8 If the Supplies are not completed or delivered by the date(s) specified in the Order (or any other date directed by TCS in accordance with clause 4.6), TCS shall be entitled:
  - 4.8.1 to return to the Supplier, at the Supplier's risk and expense, any of the Supplies already delivered but which cannot be effectively and commercially used and to recover from the Supplier any moneys paid by TCS for such Supplies; and
  - 4.8.2 to recover from the Supplier any additional expenditure reasonably incurred by TCS in obtaining other equivalent supplies in replacement.
- 4.9 The Supplier must comply with, and ensure its agents and subcontractors comply with, all relevant legislation, all reasonable directions given by TCS in relation to access to TCS's or its client's premises and all applicable TCS and TCS client policies and procedures.
- 4.10 Without limiting clauses 4.2 and 4.9, when delivering Supplies or arranging for the delivery of Supplies to TCS using a Heavy Vehicle, the Supplier must:
  - 4.10.1 comply with all mass, dimension, load and restraint requirements for vehicles or the carriage of goods by road;

- 4.10.2 comply with all fatigue management, driving hours, speed or traffic requirements;
- 4.10.3 comply with all relevant requirements in relation to container weight declarations; and
- 4.10.4 manage all work diaries, transport and journey documentation, including consignments notes, declarations, manifests and log books,

in accordance with the Heavy Vehicle National Law and Regulations.

- 4.11 The Supplier must co-operate and comply with all reasonable directions of TCS in:
  - 4.11.1 monitoring and ensuring compliance by the Supplier and TCS with the Heavy Vehicle National Laws;
  - 4.11.2 responding to an investigation or enquiry from any relevant government authority or agency regarding compliance with the Heavy Vehicle National Laws; and
  - 4.11.3 inspecting any transport or journey documentation of the Supplier that relates to the provision of Supplies.

## 5. WARRANTIES

- 5.1 The Supplier warrants that the Supplies will:
  - 5.1.1 be fit for purpose;
  - 5.1.2 be free from defects in design, materials and workmanship; and
  - 5.1.3 comply with Australian Standards and any specifications specified by TCS.
- 5.2 If the Supplies do not conform with the quantity, quality or specification stated in the Order, or do not meet the required standards of design, materials or workmanship, TCS shall be entitled, without prejudice to any other remedy, to exercise any of the following rights:
  - 5.2.1 to reject all or any of the Supplies and require the Supplier to credit TCS with the price of the Supplies; or
  - 5.2.2 to require the Supplier to promptly replace or repair the Supplies at no cost to TCS.
- 5.3 The warranties given by the Supplier under this clause 5 shall apply for a period of 12 months from completion of delivery or provision of the Supplies unless a different warranty period is specified in the Order.

## 6. RISK AND TITLE

- 6.1 Subject to clause 6.2, risk and title to the Supplies shall pass to TCS upon delivery, but without prejudice to any right of rejection TCS may have.
- 6.2 Any Supplies which are defective, damaged or do not comply with the Contract may be rejected by TCS and returned to the Supplier, at the Supplier's expense. Risk and title in any rejected Supplies remains with the Supplier.

## 7. PRICE AND PAYMENT

- 7.1 The price specified in the Order is fixed and is not subject to rise and fall. The price is inclusive of all taxes (excluding GST), duties, packaging and delivery charges for the Supplies to the destination specified in the Order.

- 7.2 The Supplier shall submit an invoice to TCS by email to [accounts.payable@trafficsa.com.au](mailto:accounts.payable@trafficsa.com.au) within 10 days of completion of the provision or delivery of the Supplies or at such other times specified in the Order.
- 7.3 All invoices must include the Order number, clearly identify the Supplies included in the invoice and any GST component.
- 7.4 Invoices will be paid by TCS within 30 days of the end of the month in which the invoice is received or within such other timeframe as specified in the Order.
- 7.5 TCS is entitled to set off from any amount owed by TCS to the Supplier, any amount the Supplier owes TCS, whether under this Contract or otherwise.
- 7.6 TCS may withhold payment for Supplies that it disputes in good faith until the dispute has been resolved.

## **8. CONFIDENTIALITY**

- 8.1 Subject to clause 8.2, the Supplier must not, without the prior written approval of TCS, disclose Confidential Information other than as strictly necessary for the purpose of fulfilling its obligations under this Contract.
- 8.2 The Supplier's obligation not to disclose Confidential Information without TCS's prior written approval, does not apply to any disclosure that is:
  - 8.2.1 required by law; or
  - 8.2.2 made to its legal advisers, accountants or auditors.
- 8.3 If TCS requests that the Supplier return or destroy any Confidential Information in its possession, the Supplier shall be entitled to retain one copy of documents which contain Confidential Information to enable it to comply with its record keeping obligations.

## **9. INSURANCE**

The Supplier agrees to maintain the following insurance with a reputable insurer:

- 9.1 Public and product liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of and damage to property arising out of anything done or omitted to be done by the Supplier, in the amount of at least \$20 million per occurrence;
- 9.2 Workers compensation insurance covering liability to employees of the Supplier under the laws of their place of employment; and
- 9.3 Such other insurance as specified by TCS in the Order.

## **10 INDEMNITIES**

- 10.1 The Supplier shall indemnify TCS, its related entities and their officers, employees and contractors (the "Indemnified Parties"), against any liability, damage, costs, loss, expense or claim, of any nature whatsoever, made against or incurred by an Indemnified Party arising from the Supplier's negligence, breach of contract, breach of statute or otherwise, in connection with:
  - 10.1.1 the design, manufacture, supply, sale, delivery or use of the Supplies; and
  - 10.1.2 any failure of the Supplies to comply with the requirements of the Contract.

- 10.2 The Supplier's liability to indemnify the Indemnified Parties shall be reduced proportionately to the extent that TCS caused or contributed to the liability, damage, cost, loss, expense or claim.

## **11 INTELLECTUAL PROPERTY**

- 11.1 The Supplier indemnifies TCS against any claim made or action commenced against TCS in relation to an alleged infringement of a third party's intellectual property rights arising from the use of the Supplies.
- 11.2 Where the design, specifications or data for the Supplies is provided by TCS, ownership of all intellectual property rights in any work produced by the Supplier in the course of providing the Supplies shall be assigned by the Supplier to and vests upon creation in TCS.
- 11.3 The intellectual property rights in any improvements or modifications to any design, specification or data provided by TCS shall be assigned by the Supplier to and vests upon creation in TCS.
- 11.4 The Supplier grants TCS a non-exclusive, royalty-free and transferrable licence to use any background or third party intellectual property contained in the Supplies.

## **12 TERMINATION**

- 12.1 TCS may terminate the Contract for its convenience at any time upon giving the Supplier five business days written notice of termination. In the event that a notice is given by TCS, the Supplier shall stop work immediately and comply with any directions given by TCS.
- 12.2 Within one month of the date of termination, the Supplier shall submit a claim for payment of any Supplies provided prior to the date of termination. TCS's liability to pay the Supplier in the event of a termination in accordance with clause 12.1 shall not exceed the total price specified in the Order.
- 12.3 If the Supplier breaches a material obligation under the Contract, TCS shall have the right to terminate all or part of the Contract by written notice to the Supplier and without prejudice to any other of its rights or remedies.
- 12.4 If the Supplier has a receiver appointed in respect of its business or any of its assets or is compulsory or voluntarily wound up, then TCS shall have the right to terminate the Contract by written notice and without prejudice to any accrued rights or remedies.
- 12.5 No termination of the Contract shall prejudice any rights or obligations of either party hereunder. Both parties shall use all reasonable endeavours to mitigate their losses on such termination or suspension.

## **13 SUBCONTRACTS**

The Supplier shall not subcontract any part of the provision of the Supplies, nor assign any of its rights or obligations under the Contract, without the prior written consent of TCS. TCS's consent shall not relieve the Supplier of any of its liabilities or obligations under the Contract.

## **14 SECURITY OF PAYMENTS ACT**

- 14.1 The Supplier must:
- 14.1.1 ensure that, within 24 hours after any notice is received under the Security of Payments Act by



the Supplier from any of its subcontractors in relation to the Supplies, a copy of that notice is given to TCS;

- 14.1.2 immediately notify TCS if it becomes aware that a subcontractor intends to exercise a statutory lien over any plant and materials supplied by the subcontractor for use in connection with the work forming part of the Supplies; and
- 14.1.3 ensure that its contract with its subcontractors contains clauses equivalent to clause 14.1, so as to enable the Supplier to comply with its obligations under this clause 14.1.

14.2 If TCS becomes aware that a subcontractor is or is likely to become entitled to:

- 14.3.1 suspend work or the supply of related goods and services (forming part of the Supplies) under the Security of Payments Act; or
- 14.3.2 exercise a statutory lien over any unfixed plant and materials supplied by the subcontractor for use in connection with the work forming part of the Supplies,

TCS may in its absolute discretion, pay the subcontractor such money that is or may be owing under the Security of Payments Act to the subcontractor in respect of the related goods and services forming part of the Supplies. Any such amount paid by TCS is recoverable from the Supplier as a debt due and payable to TCS and TCS may set off that amount from money otherwise payable to the Supplier.

14.5 Upon an adjudication application under the Security of Payments Act, the parties acknowledge and agree that the Supplier shall choose the Resolution Institute to be the authorised nominating authority for the purposes of the Security of Payments Act.

## 15 VARIATIONS

- 15.1 TCS may direct the Supplier to undertake a variation to the Supplies. Upon receipt of a direction to vary the Supplies, the Supplier shall advise TCS of the effect that the variation will have on the timeframe for the delivery of the Supplies and provide an estimate of the cost of the variation.
- 15.2 The cost of the variation and any change to the date for delivery shall be agreed between the parties.
- 15.3 All variations must be approved by TCS in writing.

## 16 WORK HEALTH AND SAFETY

- 16.1 In providing the Supplies, the Supplier shall be responsible for ensuring that its personnel and subcontractors carry out and complete the Supplies safely and in accordance with all legislative requirements, including the Work Health and Safety legislation applicable to the site.
- 16.2 The Supplier shall:
  - 16.2.1 cooperate with TCS and its customer and any persons on site that have a work health and safety duty;
  - 16.2.2 use safe systems of work;
  - 16.2.3 comply with applicable safety policies of TCS and its customer; and
  - 16.2.4 ensure that its personnel undertake any site induction required by TCS's customer.

- 16.3 The Supplier shall immediately notify TCS of any death, injury, illness or dangerous incident (including a near miss) (“safety incident”) which arises in relation to the provision of the Supplies and provide all information and assistance requested by TCS in relation to the safety incident.

## 17 MODERN SLAVERY

In performing its obligations under the Contract, the Supplier shall:

- 17.1 comply with the Modern Slavery Act 2018 (Cth) and if the Supplier conducts business in New South Wales, the Modern Slavery Act 2018 (NSW); and
- 17.2 take all reasonable steps to ensure that there is no modern slavery or human trafficking in its supply chain or in any part of the Supplier’s business.

## 18 NOTICES

- 18.1 Any notice required to be given by a party shall be sent to the postal or email address specified in the Order.
- 18.2 A notice shall be deemed to have been given when:
- 18.2.1 if sent by post, on the date which is 4 business days after the date of dispatch; or
- 18.2.2 if sent electronically, at the time shown in the delivery confirmation report generated by the sender’s email system or if the sender’s email system does not generate a delivery confirmation report, within 12 hours after the email is sent, unless the sender receives a return email notification that the email was not delivered.
- 18.3 A notice received after 5pm (recipient’s time) is taken to have been received on the next business day.

## 19 GENERAL

### 19.1 Jurisdiction

This Contract is governed by and must be construed according to the laws applying in South Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of South Australia with respect to any proceedings that may be brought in connection with the Contract.

### 19.2 Assignment

A Party may only assign a right under the Contract with the prior written consent of the other party, which shall not be unreasonably withheld.

### 19.3 Waiver

A right under this Contract cannot be waived except in writing by a party.