



## Sydney Airport Corporation Limited (ABN 62 082 578 809

### Conditions of Purchase (Goods and Services)

**These are the conditions upon which (subject to any variation agreed in writing) the Supplier sells Products to Sydney Airport.**

#### 1. Definitions

In these Conditions:

**Airport** means Sydney (Kingsford Smith) Airport as defined under the Airports Act 1996 (Cth).

**Applicable Laws** means any Statutory Requirements applicable to the supply of Products pursuant to these Conditions.

**Conditions** means these Conditions of Purchase (Goods and Services), which together with an Order form the contract between Sydney Airport and the Supplier for the supply of Products.

**Goods** means the goods described in an Order.

**Contract Intellectual Property** means all Intellectual Property developed or created by the Supplier or the Supplier's personnel in performing the Services including any documentation produced as part of the Services.

**GST** means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Intellectual Property** means all intellectual property rights, whether or not now existing, arising under statute or common law anywhere in the world in respect of works protected by copyright, trade marks, designs, patentable inventions, circuit layouts, databases, know-how, confidential information and trade secrets, and any application or right to apply for registration of any intellectual property in respect of such subject matter.

**Moral Rights** means a right of integrity of authorship; a right of attribution of authorship; a right not to have authorship falsely attributed; and/or a right of a similar nature, which is conferred by statute, and which exists or comes to exist anywhere in the world, in relation to a copyright work or other subject matter.

**Order** means a written purchase order for Products which is given by a representative of Sydney Airport to the Supplier.

**Price** means the price for the Products (including any and all applicable delivery or freight costs) as agreed between Sydney Airport and the Supplier:

- (i) the price described in the Order; or
- (ii) if no price is set out in the Order, then the price set out in the most recent schedule of prices agreed between Sydney Airport and the Supplier.

**Products** means the Goods and/or Services.

**Services** means the services described in an Order.

**Site** means those locations at the Airport where the Services are to be performed.

**Specification** means any documents or statements describing the Products provided to Sydney Airport and referred to in the Order, or in the absence of such a description or statement in the Order then the Supplier's published specifications for the Product.

**Statutory Requirement** means any statute, regulation, order, rule, subordinate legislation or other obligation enforceable under any statute, regulation, order, rule or subordinate legislation.

**Supplier** means the individual or company to whom the Order is directed and who will supply the Products to Sydney Airport.

**Sydney Airport** means Sydney Airport Corporation Limited (ABN 62 082 578 809).

**WH&S** means work health and safety.

#### 2. Application of these Conditions

- (a) Unless otherwise agreed in writing between the parties, these Conditions apply to any Order Sydney Airport places with the Supplier.
- (b) Each time the Supplier accepts an Order from Sydney Airport the Supplier accepts these Conditions which supersede all prior correspondence between the parties regarding the subject matter of the Order.
- (c) The Supplier will be deemed to have accepted an Order on the earlier of:
  - i. when the Supplier issues a written acceptance or acknowledgement of receipt of an Order (not otherwise rejecting it); or
  - ii. twenty-four (24) hours after the Order is sent (if the Supplier does not notify Sydney Airport before this time that it does not accept the Order).
- (d) Sydney Airport expressly rejects the Supplier's sale or service terms and under no circumstances will acceptance of, or payment for Products constitute acknowledgement or acceptance of the Supplier's sale or service terms.

#### 3. Variation and Cancellation of Orders

Sydney Airport may cancel or vary an Order (in full or part) by providing written notice to the Supplier at any time prior to the Goods being delivered or the Services being supplied without any liability to the Supplier for such cancellation or variation.

#### 4. Delivery

- (a) If the Order is for Goods, the Supplier must supply the Goods to Sydney Airport:



- i.at the location;
  - ii.in accordance with the Specification;
  - iii.in the quantity and at the Price;
  - iv.by the time and date;
  - v.in a fit and proper condition and properly packed for delivery; and
  - vi.including installation and/or assembly,  
as specified in the Order.
- (b) If the Order is for Services, the Supplier must supply the Services to Sydney Airport
- i.with all due skill and care;
  - ii.in accordance with the Specification;
  - iii.in compliance with any Statutory Requirements relating to the Services or supply of the Services and any other requirements relevant to providing Services to Sydney Airport as notified to the Supplier or contained in the Order;
  - iv.in a manner which prevents (or if not possible to prevent, limits) the impact on Airport operations; and
  - v.in a manner which does not present a hazard, and if applicable, co-operatively coordinates with other contractors working at the Site.
- (c) If the Supplier will be unable to supply the Products by the date specified in the Order, it must notify Sydney Airport in writing immediately. Changes to the date for supply will only be permitted where the Supplier has obtained Sydney Airport's prior written consent.
- (d) Delivery of only part of the Products specified in an Order will not be accepted unless in exceptional circumstances and in any event not without Sydney Airport's prior written consent.
- (e) In the case of delivery of Goods, the Supplier must obtain the signature and printed name of the Sydney Airport personnel on staff to accept delivery of the Goods (Proof of Delivery). It is the Supplier's responsibility to keep and maintain the Proof of Delivery. In the event there is a dispute in relation to unpaid invoices under these Conditions, the Supplier will be required to produce the Proof of Delivery as evidence of Goods delivered to Sydney Airport.
- 5. Invoicing**
- (a) When supplying Goods to Sydney Airport, the Supplier must ensure that all invoices, packing slips and all other correspondence relating to the Order include the following details:
- i.the name of the Sydney Airport representative who made the Order; and
  - ii.a Sydney Airport purchase order number as printed on the Order or as otherwise notified by a representative of Sydney Airport to the Supplier.
- (b) Sydney Airport is unable to acknowledge receipt of the Products nor process payment for the Products unless the purchase order number is included in the documentation issued by the Supplier in relation to the Products.
- (c) The Supplier acknowledges that invoices which do not quote the purchase order number will be returned to the Supplier for insertion of the required information.
- 6. Acceptance of Goods**
- (a) For each Order for Goods, Sydney Airport will inform the Supplier whether it accepts the Goods, after Sydney Airport has had an opportunity to inspect the Goods supplied.
- (b) If the Supplier does not supply the Goods in accordance with these Conditions, then Sydney Airport may, at its complete discretion:
- i.accept the Goods, if Sydney Airport informs the Supplier that it will do so; or
  - ii.refuse to accept the Goods in which case:
    - A. Sydney Airport will inform the Supplier to collect the Goods from it; and
    - B. the Supplier must do so immediately, at the Supplier's cost.
- 7. Payment**
- If:
- (a) the Supplier has supplied the Products in accordance with the Order;
- (b) (in the case of the supply of Goods) Sydney Airport accepts the Goods; and
- (c) the Supplier has issued a valid tax invoice to Sydney Airport which:
- i.includes the Supplier's ABN;
  - ii.reflects the terms of the Order;
  - iii.identifies the amount of GST payable;
  - iv.includes Sydney Airport's purchase order number;
  - v.includes the relevant Sydney Airport contact in relation to the order;
  - vi.includes the Supplier's bank account details to enable EFT payment transmission; and
  - vii.is sent electronically to Sydney Airport Accounts Payable at Accounts.Payable@syd.com.au
- (**Tax Invoice**) then Sydney Airport will pay the Supplier the Price, (subject to any adjustment Sydney Airport may be entitled to apply under clause 8).
- (d) Payment will be made by Sydney Airport by electronic funds transfer by not less than 30 Business Days from date on which Sydney Airport receives the valid Tax Invoice from the Supplier in accordance with clause 7(c).
- (e) The Supplier acknowledges that no amount will be due and payable by Sydney Airport in respect of any such supply unless Sydney Airport has received from the Supplier the valid Tax Invoice in accordance with clause 7(c)
- (f) The Price for all Products supplied under an Order is inclusive of GST.



## 8. Set-off

Sydney Airport is entitled to deduct any money owed to it (for any reason) by the Supplier from any amount payable by Sydney Airport to the Supplier.

## 9. Supplier's Warranty

The Supplier makes the following representations and warranties and it is a condition of these Conditions and any Order that:

- (a) in the case of Goods supplied by the Supplier, they will:
  - i.be free of any charges, encumbrances and all other adverse interests (including any Security Interest as defined in the Personal Property Securities Act 2009 (Cth));
  - ii.be new, free from any defects in design, materials and workmanship, safe, fit for purpose for which they are sought, and of merchantable quality;
  - iii.be stored, delivered, transported and handled in accordance with best industry practice;
  - iv.comply with the Specifications; and
  - v.comply with all relevant standards and industry codes,
- (b) in the case of Services provided by the Supplier, they will:
  - i. comply with all reasonable directions of Sydney Airport;
  - ii.be supplied with due care, skill and diligence that would be expected of a skilled professional experienced in providing the same or similar services;
  - iii.be supplied to the best industry standards; and
  - iv.comply with all relevant standards and industry codes,
- (c) the Supplier, its employees, agents and subcontractors have the necessary facilities, equipment and suitably qualified personnel to prepare and supply the Products;
- (d) the Supplier holds all necessary licenses, permits and registrations required it by and to comply with the Applicable Laws;
- (e) the Supplier will perform all of its obligations under an Order in accordance with the Applicable Laws;
- (f) the Products do not infringe any Intellectual Property rights or other rights of any other third party;

## 10. Remedies for breach of Supplier's Warranty

If a Product does not comply with any of the warranties set out at clause 9, then without prejudice to any other remedies available to Sydney Airport (and notwithstanding that Sydney Airport may have already paid for the Products, taken delivery of the Products and/or accepted the Products), Sydney Airport may:

- (a) refuse to accept any subsequent supply of Products from the Supplier which the Supplier attempts to carry out;
  - (b) reject some or all of the Products and return them to the Supplier at the Supplier's risk and cost;
- require the Supplier to rectify the failure or replace the rejected Products or to provide a full refund of the price paid for the Products to Sydney Airport.

## 11. Ownership and Copyright in Documentation

- (a) The Supplier must procure that all Contract Intellectual Property vests in Sydney Airport upon creation.
- (b) The Supplier:
  - i. agrees to assign and, to the extent permitted by law, absolutely assigns and transfers; and
  - ii. must procure that the Supplier's personnel assign and transfer,

to Sydney Airport with full title guarantee its and their entire right, title and interest in and to all existing and future Contract Intellectual Property, including all statutory and common law rights attaching thereto.

To the extent permitted by law, the Supplier must procure that any individual who contributed to the Contract Intellectual Property unconditionally and irrevocably waives all Moral Rights in relation to it.

## 12. Indemnity

The Supplier indemnifies and will keep Sydney Airport indemnified in respect of any loss or liability (including legal costs and expenses on a full indemnity basis and whether incurred or awarded against Sydney Airport) that Sydney Airport may suffer or incur a result, whether directly or indirectly, of:

- (a) any breach by the Supplier of these Conditions or an Order;
- (b) any defect in the Products;
- (c) any death or injury to a person, or any loss or damage to Sydney Airport's or a third party's real or personal property caused by the Supplier's act or omission or the Products;
- (d) any negligent or willful act or omission of the Supplier;
- (e) any infringement of Sydney Airport's Intellectual Property rights; and
- (f) any claim that the Products infringe the Intellectual Property rights of a third party.

## 13. Insurances

The Supplier must maintain the following insurances:

- (a) combined public and product liability insurance with a minimum limit of indemnity of \$10 million;
- (b) where the Supplier is supplying Services, it must maintain professional indemnity insurance with a minimum limit of indemnity of \$5 million;
- (c) workers compensation insurance; and
- (d) insurance covering the Supplier for any loss or damage to any of the Supplier's property used directly or indirectly in connection with the Products.

In the event that the Supplier is carrying out activities airside, then its relevant policy/s of insurance must not contain any exclusionary provisions in relation to the operation of airports or activities carried out airside at an airport or in connection with an airport.

## 14. Work Health and Safety

The Supplier must:



- (a) comply with the requirements of the Applicable Laws related to WH&S;
- (b) exercise and implement all precautionary measures necessary to ensure the work health and safety of and the welfare of all workers and other persons, members of the public and other third parties who may be affected by the execution of the Services; and
- (c) eliminate where possible work health and safety risks or where elimination is not possible, minimise WH&S risks.

**15. Supplier Conduct**

The Supplier must:

- (a) conduct themselves in an upright and professional manner at all times whilst on Sydney Airport's premises;
- (b) act with honesty and integrity at all times;
- (c) not engage in any conduct that would bring Sydney Airport into disrepute;
- (d) not make disparaging statements, comments or remarks in relation to the Products, Sydney Airport, its personnel or any projects at Sydney Airport; and
- (e) comply with Sydney Airport's Supplier Code of Conduct (available at [www.sydneyairport.com.au](http://www.sydneyairport.com.au)).

**16. Confidentiality**

The Supplier must not, without the prior written consent of Sydney Airport, disclose to anyone else (including by way of advertising) the existence or details of any Order, unless that disclosure is reasonably necessary to enable the Supplier to supply the Products to Sydney Airport.

**17. Applicable Law**

These Conditions and any Order made pursuant to them, are governed by the laws of New South Wales.

**18. Interpretation**

- (a) If any part of these Conditions is unenforceable or illegal it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or offending part) is to be severed from these Conditions without affecting the enforceability, validity or legality of these Conditions.
- (b) Any clause of these Conditions capable either expressly or by implication to have continuing effect after fulfilment or termination of an Order, shall survive termination.