

Sydney Water Corporation

Purchase Order Terms and Conditions



1 APPLICATION OF THESE TERMS AND CONDITIONS

- 1.1 SWC may issue a Sydney Water Order to the Contractor.
- 1.2 These terms and conditions apply to the supply of Goods and/or Services as set out in the Sydney Water Order. Any future Sydney Water Order issued to the Contractor is subject to the terms and conditions applicable at that time and found at www.sydneywater.com.au/purchaseorderc, which terms and conditions may vary from those set out in this document.
- 1.3 Unless agreed between the parties, no other terms and conditions, including any terms provided by the Contractor with any quotation or with particular Goods and/or Services upon delivery or performance, form part of this Contract. For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation or any other representation which cannot be excluded by law. This Contract constitutes a written offer, which, if not already accepted by the Contractor in writing, is accepted by conduct when the Contractor supplies the Goods and/or Services to SWC. The parties may at any time enter into a SWC Standard Agreement in relation to the supply of the Goods and/or Services, in which case that SWC Standard Agreement will apply instead and will supersede this Contract.

2 CONTRACTOR'S GENERAL OBLIGATIONS

- 2.1 The Contractor must supply the Goods and perform the Services (as applicable) in accordance with the requirements of this Contract, all Legislation and any relevant Australian standards or specifications specified by SWC in any reference documents identified in the Sydney Water Order, describing the scope of Services and/or the requirements for the Goods.
- 2.2 No provision of this Contract will be deemed to create an exclusive agreement between the parties. Each party will always be entitled to invite tenders from, and contract with, any other party it deems fit, for the provision or receipt of like goods and/or services. SWC has no obligation to issue any Sydney Water Order to the Contractor and the Contractor has no right to make any claim for loss of profit, contract or for any other Losses resulting from SWC choosing not to issue any Sydney Water Order.
- 2.3 The Contractor must ensure that:
- (a) it, and its Personnel are suitably experienced, skilled, qualified, knowledgeable and competent, and will supply the Goods and/or Services with due care and skill;
 - (b) it has all rights, title, interest, permits, licences, registrations, certificates and all administrative authorisations necessary to lawfully supply the Goods and/or Services and to comply with its obligations under the Contract (all of which the

Contractor is responsible for at its own risk and expense);

- (c) the Goods and/or Services (as applicable) will conform with this Contract and be fit for their intended purpose as stated in the Contract;
 - (d) any Goods supplied will be of acceptable quality and of good and sound design, materials and workmanship; safe and durable; and free from defects and any encumbrances or defects in title; and
 - (e) any Goods supplied will be fit for the purpose for which they are intended to be used (provided such purpose is stated in this Contract).
- 2.4 Title in any Goods (as applicable) will pass to SWC on delivery of the Goods to the Site, or on payment of the agreed price by SWC (whichever is earliest). The Goods remain at the risk of the Contractor until the Contractor has delivered the Goods, and SWC has accepted the Goods in accordance with this Contract.
- 2.5 The Contractor must comply with all reasonable directions given by or on behalf of SWC in relation to the Goods and/or Services or the performance of the Contract. The Contractor must cooperate with SWC and its other contractors, and promptly provide any information reasonably requested by SWC.
- 2.6 The Contractor acts as an independent contractor and neither the Contractor nor its Personnel (including those of any of the Contractor's related bodies corporate) are deemed to be either expressly or impliedly employees of SWC.
- 2.7 Neither party may make any public statements about SWC, the Contractor, this Contract, the supply or receipt of Goods and/or Services or either party's businesses, without the other party's prior written consent (which, subject to clause 18, will not be unreasonably withheld), and each party must promptly refer any media enquiries to the other party.
- 2.8 The Contractor must, and must ensure its Personnel engaged on the Site, comply with SWC's requirements identified in the Sydney Water Order or otherwise given by an authorised representative of SWC at the time of, or prior to, the relevant Sydney Water Order being issued.
- 2.9 The Contractor and its Personnel must comply with any applicable Site access policies and conditions of access related to the Site which will be provided by SWC to the Contractor. Access to the Site may be denied or suspended by SWC at any time at its discretion acting reasonably.

3 FORMER PUBLIC SECTOR EMPLOYEES

- 3.1 The Contractor acknowledges that pursuant to the Government Sector Employment Act 2013 (NSW):
- (a) SWC is unable to accept services provided by any former NSW public sector employee within the period covered by their severance payment, without that public sector employee first repaying the relevant proportion of their severance pay;

- (b) SWC is unable to accept services provided by any former NSW public service senior executive within the period covered by any compensation payment under their former contract, without that former public service senior executive first repaying the relevant proportion of their compensation; and
 - (c) this requirement applies to former employment or engagement in any capacity as staff members, contractors, consultants or employees or principals of companies engaged in contracting to a NSW public sector agency.
- 3.2 The Contractor warrants to SWC that it will not allocate responsibility for performing any part of the Services to a:
- (a) former NSW public sector employee within the period covered by their severance payment, without that public sector employee first repaying the relevant proportion of their severance pay; or
 - (b) former NSW public service senior executive within the period covered by their compensation payment under their former contract, without that former public service senior executive first repaying the relevant proportion of their compensation.

4 COMMENCEMENT AND COMPLETION

- 4.1 The Contractor must commence supply of the Goods and/or Services by the start date prescribed in the relevant Sydney Water Order (Commencement Date).
- 4.2 The Contractor must supply all the Goods and/or Services by the required completion date set out in the relevant Sydney Water Order (Completion Date).
- 4.3 If the Contractor is unable to meet a Completion Date, the Contractor must notify SWC immediately.
- 4.4 To the extent that any delay in meeting a Completion Date is due to an act of SWC, a breach of this Contract by SWC or variation requested by SWC, SWC (acting reasonably and in consultation with the Contractor) will grant a reasonable extension of time to the Completion Date that is proportionate to the delay or additional time required as a result of SWC's act, breach or requested variation.
- 4.5 Without in any way limiting SWC's rights at law, if any of the Goods and/or Services:
 - (a) are defective;
 - (b) do not meet their description; or
 - (c) do not meet the requirements set out in any reference documents specified in the Description field of the Sydney Water Order which describe the scope of services and/or the requirements for the goods,

SWC may at any time up to 12 months after delivery of the Goods and/or completion of the Services notify the Contractor of the issue, providing details of the

issue and evidence of any failure to comply with the requirements set out in this clause 4.5, and such Goods and/or Services must be re-performed, repaired, replaced or otherwise made good by the Contractor at its cost.

5 PRICE AND PAYMENT

- 5.1 Unless otherwise specified in the Sydney Water Order, the Price is inclusive of all Taxes other than GST.
- 5.2 The Contractor will issue a tax invoice to SWC (via SAP Business Network (preferred channel) or email at accounts.payable@sydneywater.com.au) on the fifth day of each month (or as otherwise agreed by the parties) for Goods supplied and/or Services performed (as applicable) up to and including the last day of the previous month. Each tax invoice must include details of the Goods supplied and/or Services performed, including their value, purchase order number and be forwarded together with adequate supporting documentation to evidence the amount due.
- 5.3 The Contractor must include with each tax invoice it provides, a signed and dated statement for the purpose of section 127 of the Industrial Relations Act 1996 (NSW), section 175B of the Workers Compensation Act 1987 (NSW) and Schedule 2, part 5 of the Payroll Tax Act 2007 (NSW), in a form acceptable to SWC, and which covers the period of the tax invoice.
- 5.4 SWC may, within 10 business days of receiving a tax invoice from the Contractor under clause 5.2, dispute an amount payable in good faith by providing the Contractor with a notice:
 - (a) advising the Contractor of the amount disputed; and
 - (b) providing the reasons for the dispute.
- 5.5 SWC will pay the undisputed amount within the payment period stated in the Sydney Water Order. SWC is not required to pay the disputed amount until the dispute is resolved in accordance with clause 6.
- 5.6 SWC may withhold, retain or set off from any payment due to the Contractor under this Contract any amounts SWC is entitled at law to retain, or which is otherwise due from the Contractor to SWC under this Contract. The right to withhold, retain or set off does not limit SWC's right to recover those amounts in any other way.
- 5.7 The Contractor may contact Sydney Water with any enquiries at businessconnect@sydneywater.com.au.

6 DISPUTE RESOLUTION

- 6.1 This clause applies if there is a dispute between the parties, and a party gives notice of a dispute (**Notifying Party**) to the other party (**Receiving Party**) providing details of the dispute.

- 6.2 Within 5 business days of being notified of the dispute, the Receiving Party must give the Notifying Party a notice setting out brief details of the Receiving Party's position on the dispute.
- 6.3 If a party gives a notice under clause 6.1, each party must make available to each other a representative with authority to settle the dispute. The authorised representatives must meet with each other in person or by telephone within 15 business days of the notice given under clause 6.2 and must use reasonable efforts to resolve the dispute.

7 VARIATIONS

- 7.1 The parties may mutually agree in writing to vary this Contract, including by:
- (a) increasing or decreasing the quantity, character, quality, kind or execution of the Goods and/or Services;
 - (b) changing the delivery and the work program, as applicable; and
 - (c) changing the Price payable, as applicable.

8 INDEMNITIES

- 8.1 The Contractor indemnifies, defends and holds harmless SWC from, and against, all Losses of SWC in respect of, or in connection with:
- (a) loss or damage to any property, personal injury (including death or illness of any person) arising from any act or omission of the Contractor, or any act or omission of any of its Personnel;
 - (b) claims that use of the Goods and/or Services (including any Goods provided as part of the Services) breach the intellectual property rights of any third party; and
 - (c) any breach of confidence,
- arising out of or in relation to the performance of the Contractor's obligations under this Contract.
- The indemnities in clause 8.1 will be reduced to the extent that such Loss is caused or contributed to by SWC's negligence, fraud or wilful misconduct.

9 INSURANCE

- 9.1 The Contractor must effect and maintain throughout the continuance of this Contract:
- (a) 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;
 - (b) if performance of this Contract requires the Contractor or its Personnel to use or provide for use of plant and equipment that will be used at the Site, insurance covering all loss and damage to the Contractor's plant and equipment for its replacement value, and insurance covering liabilities in respect of any loss, damage or

destruction to any property arising from the use of such plant and equipment with a limit of liability of not less than \$20 million for each and every event, and each and every vehicle;

- (c) if the performance of this Contract requires the Contractor or its Personnel 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;
 - (d) professional indemnity insurance issued on a claims made basis with a limit of liability not less than \$10 million any one claim and in the annual aggregate and maintained for an additional seven years from the Completion Date, unless SWC confirms in writing that such professional indemnity insurance is not required; and
 - (e) other insurance to the full extent required by law.
- 9.2 The Contractor must ensure all insurance policies:
- (a) are obtained from an insurer authorised by APRA or regulated by the Prudential Regulation Authority in the United Kingdom or an insurer acceptable to SWC (acting reasonably);
 - (b) 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
 - (c) contain provisions normally included in insurances for the performance of similar contracts.
- 9.3 The Contractor will bear any and all excesses or deductibles in relation to any claim on a policy.

10 TERMINATION

- 10.1 SWC (at its discretion acting reasonably) may terminate this Contract for its convenience by 30 days' prior written notice. Following such termination, the Contractor will be entitled to payment:
- (a) pro-rata for the supply of any Goods, or the reasonable satisfactory performance of any Services (as applicable), prior to termination; and
 - (b) for the cost of goods, materials, plant and equipment properly ordered in respect of this Contract to the extent the Contractor cannot cancel such orders, provided that on payment by SWC, the unencumbered title to the materials passes to SWC. In the event that the Contractor provides notice to SWC that it intends to retain any goods, materials, plant and equipment properly ordered in respect of this Contract that have not yet been provided to SWC, the Contractor will not be entitled to payment in

respect of such goods, materials, plant and equipment.

10.2 Without limiting the availability of other rights or remedies:

- (a) where clause 24 applies to this Contract, SWC may terminate this Contract by immediate written notice if the Contractor or its Personnel commits “serious wrongdoing” (as defined in the PID Act) or other “misconduct” (as defined in the Government Sector Employment Act 2013 (NSW)); and
- (b) either party may terminate this Contract by immediate written notice if:
 - (i) the other party fails to remedy a breach of any Contract provision within 10 business days of receiving written notice of the breach (or such longer period as agreed by the parties); or
 - (ii) any act related to bankruptcy, change of control, receivership or insolvency occurs in relation to the other party.

11 ASSIGNMENT

Neither party can assign, transfer or sub-contract the Contract in whole or in part or any legal or equitable interest in it without the prior written consent of the other party (which will not be unreasonably withheld).

12 WORK HEALTH & SAFETY

- 12.1 The Contractor must, and must ensure that its Personnel engaged on any Site, comply with any applicable Legislation and all reasonable directions of SWC or its representative regarding work, health and safety and must promptly report all injuries and incidents to SWC.
- 12.2 On reasonable request by SWC and with prior notice, the Contractor must provide evidence of a safe system of work in accordance with any applicable Legislation.
- 12.3 If SWC notifies the Contractor that safety prequalification is required, the Contractor must participate and ensure its Personnel participate in the Safety Prequalification System at the entity level and at an individual level at the expense of SWC.
- 12.4 The Contractor must, and must ensure its Personnel:
 - (a) register as subscribers to use the Safety Prequalification System, and comply with the terms of subscription, including any obligation to make payment of subscription fees to any third party engaged by SWC to host and manage the Safety Prequalification System;
 - (b) collect and verify all qualifications, permits, insurances and any other information reasonably required by SWC in respect of the Contractor’s Personnel (which includes any subcontractor personnel) attending the Site and

upload this information to the Safety Prequalification System;

- (c) allocate the appropriate skills to each of their respective personnel, that correctly match the level of activity and risk associated with the tasks performed by their personnel;
- (d) maintain accuracy and currency of all information uploaded to the Safety Prequalification System by implementing an internal process to manage any updates or replacement of information, as and when that information becomes inaccurate or out of date;
- (e) undertake any online induction which SWC requires the Contractor and its Personnel (which includes any subcontractor personnel) to complete as a condition of providing the Goods and/or Services; and
- (f) comply with all SWC’s reasonable instructions for participation in the Safety Prequalification System.

12.5 Where permit to work requirements apply to the Site, the Contractor acknowledges the Permit to Work Certificate issued by SWC (as a prerequisite for work commencing on the Site), is conditional on the Contractor and its Personnel meeting the requirements for participation in the Safety Prequalification System.

13 ENVIRONMENTAL DUE DILIGENCE

- 13.1 The environmental requirements set out in this clause 13:
 - (a) are in addition to but are not in substitution for, any other requirements of any Legislation or other conditions of Contract;
 - (b) are in addition to any environmental requirements or documentation specified in the Sydney Water Order; and
 - (c) are not to be taken to limit the powers of SWC nor the Contractor’s obligations and responsibilities under this Contract.
- 13.2 The Contractor 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 the environment at the Site, or in the vicinity of the Site.
- 13.3 The Contractor must comply with any reasonable request made by SWC’s nominated representative(s) to stop work or to take urgent remedial measures where actual or potential risk of harm to the environment has been identified as a consequence of the Contractor’s actions.
- 13.4 The Contractor must provide equipment, materials, training, Personnel and other resources (including supervision) reasonably necessary to meet the environmental requirements of this Contract.

13.5 Where not obtained by SWC, and where given reasonable notice by SWC, the Contractor must obtain from the relevant authorities the approvals, licences and permits required to provide the Goods and/or Services. The Contractor must obtain each approval, licence or permit required under this Contract before commencing any work that relates to that approval, licence, or permit.

14 NSW GUIDELINES

14.1 The provisions in this clause 14 only apply to the supply of Goods and/or Services as specified in this Contract, comprising Building and Construction Work. In addition to terms defined in this Contract, terms used in this clause 14 have the meaning given to them in the NSW Guidelines.

14.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines and the NSW Code.
- (b) The Contractor must notify the CCU and SWC of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a subcontractor or consultant, the Contractor must ensure that its contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 14, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by the NSW Guidelines and the NSW Code.
- (d) The Contractor must not appoint or engage another party in relation to the supply of the Goods and/or Services where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

14.3 Access and information

- (a) The Contractor must maintain adequate records of its compliance with the NSW Guidelines, including compliance by its Personnel, consultants, and related entities.
- (b) The Contractor must allow, and take reasonable steps to facilitate authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Services;

- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines by the Contractor, its Personnel, its consultants, and related entities.

- (c) The Contractor, and its related entities must comply with a request from authorised personnel (including personnel of the CCU) for production of any specified documents by a certain date, in person, by post or via electronic means.

14.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would or has precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with and in accordance with the NSW Guidelines.
- (c) The Contractor acknowledges that where a sanction is imposed it is without prejudice to any rights that would otherwise accrue to the parties, and that the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (i) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
 - (ii) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

14.5 Compliance

- (a) The Contractor bears the cost of its compliance with the NSW Guidelines and NSW Code, including in respect of any positive steps it must take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from SWC or the State of New South Wales for such costs.
- (b) Subject to clause 14.5(c), where the Contractor's obligations to supply the Goods and/or Services or any other obligation under the Contract conflicts with the Contractor's requirement to comply with the NSW Guidelines and NSW Code the Contractor must immediately notify SWC (or its nominee). On receipt of notice in accordance with this clause 14.5(b), the parties will meet to discuss the course the Contractor may adopt within 10 business days of receiving such notice.

If after 10 business days a course cannot be determined the parties must follow the procedure in clause 6.

- (c) Where a change in the Contract, Goods and/or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Contractor must immediately notify SWC (or its nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change, including any amendments it proposes to a Workplace Relations Management Plan (as required under the NSW Guidelines) or WHS management plan (as required under the Work Health and Safety Regulation 2017 (NSW)).

On receipt of notice in accordance with this clause 14.5(c), the parties will meet to determine the course the Contractor may adopt within 10 business days of receiving such notice. If after 10 business days a course cannot be determined the parties must follow the procedure in clause 6

decision. If the Contractor does not agree, it may follow the procedure in clause 6.

- 16.3 The Contractor must, within 7 days of receiving a written request by SWC, provide SWC with immediate access to the following information contained in records held by the Contractor to allow SWC to comply with the GIPA Act:

- (a) information that relates directly to the supply of Goods and/or Services;
- (b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Goods and/or Services; and
- (c) information received by the Contractor from SWC to enable it to provide the Goods and/or Services.

- 16.4 Nothing in this Contract operates to restrict or otherwise affect the unfettered discretion of SWC in exercising its powers as a statutory corporation, and if there is any conflict between the unfettered discretion of SWC in the exercise of such powers on the one hand and the satisfaction or performance of SWC's obligations under this Contract, the former will prevail.

- 16.5 The Contractor must always comply with all Applicable Corruption Law related to bribery and corruption and not offer, promise or give (either directly or indirectly) any financial or other Advantage:

- (a) to any person with the intention of inducing that person to breach a position of trust or duty of good faith or impartiality; or
- (b) to any public official intending to influence that official, with the aim that either party should benefit as a result.

- 16.6 The Contractor warrants to SWC that:

- (a) it has not been found to have engaged in Corrupt Conduct;
- (b) it has not been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law;
- (c) it has read and will comply with SWC's Supplier Code of Conduct; and
- (d) in performing its obligations under this Contract, it will not employ, or continue to employ, an employee or subcontractor found to have engaged in Corrupt Conduct, or who has breached SWC's Supplier Code of Conduct, or who has been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

- 16.7 The Contractor must ensure that:

- (a) it does not employ, continue to employ, or otherwise engage or continue to engage any Personnel; and

15 GOVERNING LAW & DISPUTE SETTLEMENT

The governing law of this Contract is NSW. The parties submit to the non-exclusive jurisdiction of the courts of NSW.

16 OTHER MATTERS

- 16.1 All rights, obligations and liabilities under or in connection with this Contract are to apply unlimited and are otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the Civil Liability Act 2002 (NSW) have limited or otherwise affected those rights, obligations and liabilities.

- 16.2 SWC may be required to publish certain information about this Contract in accordance with the Government Information (Public Access) Act 2009 (NSW) (GIPA Act). The Contractor must, within 10 business days of entering into this Contract, advise SWC 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 SWC may consider seeking to exempt those provisions from publication. If SWC considers that the reasons provided are not sufficient to warrant seeking an exemption, SWC will provide written notice to the Contractor of its decision, including its reasons for the

- (b) no subcontractor employs, continues to employ, or engage or continue to engage any person,

in relation to the performance of this Contract, who has been found to have engaged in, or in the case of a company any officer of which has been found to have engaged in, Corrupt Conduct, or who has breached SWC's Supplier Code of Conduct, or who has been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

16.8 The Contractor must terminate any subcontract in relation to the performance of this Contract if any officer of the subcontractor has been found to have engaged in Corrupt Conduct or who has been found by a tribunal or a court of competent jurisdiction to have breached any Applicable Corruption Law.

16.9 The Contractor must:

- (a) keep accurate and complete records of all transactions related to this Contract and will promptly report to SWC any breach or potential breach of clauses 16.5 to 16.8; and
- (b) reasonably cooperate with SWC in relation to any investigation that SWC wishes to conduct into any breach or potential breach of clauses 16.5 to 16.8, whether or not it has been reported to SWC.

17 INTELLECTUAL PROPERTY

17.1 By these terms and conditions, any Intellectual Property Rights discovered or created in connection with the supply of Goods and/or Services (as applicable) are hereby assigned to SWC.

17.2 The Contractor grants SWC a perpetual, irrevocable and royalty-free licence to reproduce, use, modify, adapt and sub-license the Contractor's Background IP for the purpose of using, maintaining, repairing or modifying any of the Goods and/or Services.

18 CONFIDENTIALITY

18.1 Each party must not use Confidential Information received under this Contract except for the purposes of this Contract and must not disclose any Confidential Information to any person without the written consent of the other party except:

- (a) to the party's Personnel where such disclosure is required for the purposes of this Contract; or
- (b) if the party is required to do so by law or by a stock exchange or in connection with legal proceedings relating to this Contract.

18.2 Where a party discloses information under clause 18.1(a), that party must ensure any persons receiving Confidential Information agree to be bound by the terms of clause 18.1.

19 CONSEQUENTIAL LOSS

19.1 Subject to clause 19.2, to the maximum extent permitted by law, each party will have no liability to

the other party for Consequential Loss arising out of or in relation to this Contract.

19.2 The exclusion of liability under clause 19.1 will not apply to limit or exclude either party's liability:

- (a) under an indemnity under clause 8;
- (b) for physical loss of or damage to any property;
- (c) for loss of or damage to a party's reputation;
- (d) arising from any breach of Legislation by a party;
- (e) arising out of or in connection with fraudulent, malicious or criminal conduct or wilful default by a party; or
- (f) to the extent that the Contractor:
 - (i) has an entitlement to recover insurance proceeds in respect of that liability under any insurance policy required under clause 9.1; or
 - (ii) would have had an entitlement under clause 19.2(f)(i) but for a failure by the Contractor to effect and maintain such insurance, comply with the terms of an insurance policy or properly and diligently pursue a claim under an insurance policy.

20 MODERN SLAVERY

20.1 In respect to this Contract, the Contractor must not engage in (and must use Reasonable Steps to investigate its labour practices, and those of its Engaged Entities, to identify and address those risks of Modern Slavery Conduct in the Contractor's operations and supply chains to ensure there are not):

- (a) any activities, practices or conduct that would constitute an offence under Modern Slavery Laws; or
- (b) any activities, practices or conduct which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws, if it had occurred within the relevant Australian jurisdiction.

20.2 The Contractor must:

- (a) if it becomes aware of any actual or suspected Modern Slavery Conduct, immediately notify SWC with adequate particulars and of what actions taken, or being taken, to remedy such Modern Slavery Conduct;
- (b) put in place all necessary processes, procedures, and compliance systems to ensure it can comply with its obligations under this clause 20;
- (c) provide information to SWC, as reasonably requested by SWC, and comply with such reasonable directions given by SWC, to enable SWC to comply with its obligations under the Modern Slavery Laws;

- (d) take Reasonable Steps to ensure its Engaged Entities include provisions equivalent to the obligations in this clause 20 in their contracts with their suppliers; and
- (e) take Reasonable Steps to ensure that its Engaged Entities provide their respective directors, officers, employees and suppliers with at least the minimum level of wages and other entitlements required by law.

20.3 The Contractor warrants that it has disclosed any actual or suspected Modern Slavery Conduct engaged in by the Contractor, the Contractor's directors, officers, employees or related entities, or by any of the Contractor's Engaged Entities.

21 SEVERANCE

If any clause or part of any clause is held by a court to be void or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Contract and this Contract otherwise remains in full force and effect.

22 SWC DATA

22.1 The Contractor does not own or have any interest or rights in the SWC Data.

22.2 The Contractor must, and must ensure its Personnel:

- (a) only process SWC Data as part of the supply of Goods and/or Services (as applicable) and in accordance with Sydney Water's reasonable instructions from time to time;
- (b) not access, modify, or delete SWC Data at any time for any reason, or otherwise use, publish, or copy SWC Data for any purpose, other than as:
 - (i) expressly permitted by this Contract or SWC in writing; or
 - (ii) required by law, by a court or any regulatory authority, provided that (unless otherwise prohibited) prior to doing so, the Contractor promptly notifies SWC in writing to allow SWC to take all reasonable steps to resist such requirement;
- (c) not purport to sell, let for hire, assert a lien over, assign rights in, commercially exploit, or otherwise dispose of any Sydney Water Data; and
- (d) not permit access to SWC Data from, or transfer any SWC Data to, or store any of SWC Data at, a location outside of NSW unless SWC has provided its prior written consent with conditions. "Transfer" also means sharing information via e-mail.

22.3 Where a breach of clause 22 has occurred or an alleged, or suspected breach is occurring, the Contractor must:

- (a) immediately notify SWC, and within 48 hours of this notification, investigate the actual, alleged,

or suspected breach, and notify SWC of its findings; and

- (b) provide SWC with access to all information that SWC needs to comply with its security reporting obligations.

22.4 If an actual breach has occurred, the Contractor must explain to SWC what the nature of the breach is, what the consequences of that breach are, and what the Contractor's plan is, to remedy that breach. Within 24 hours of its investigation into the breach as required by clause 22.3(a), the Contractor must remedy the breach and update SWC on the resolution of the breach.

22.5 Within three months following termination or expiry of the Sydney Water Order, the Contractor must destroy SWC Data relevant to that Sydney Water Order and provide to SWC a certificate of destruction, unless instructed by SWC to return the SWC Data.

23 PRIVACY

The Contractor must and must ensure its Personnel (including any subcontractor personnel), in relation to this Contract:

- (a) only collect, store, secure, allow access to, use and disclose personal and health information if permitted to do so by SWC;
- (b) comply with NSW Privacy Laws; and
- (c) notify SWC immediately at privacy@sydneywater.com.au if it becomes aware of a breach or possible breach of any obligations in this clause 23.

24 PUBLIC INTEREST DISCLOSURES

24.1 This clause 24 applies to the extent this Contract is an *agency service contract*.

24.2 In this clause 24, words and expressions which are not defined in this Contract, but which have a defined meaning in the Public Interest Disclosures Act 2022 (NSW) (PID Act), have the same meaning as in the PID Act. These words and expressions are in italics.

24.3 The Contractor must ensure that all individuals involved in supplying the Goods and performing the Services are made aware:

- (a) that they are *public officials* for the purposes of the PID Act, and of how *voluntary public interest disclosures* can be made; and
- (b) of SWC's Wrongdoing Reporting Policy, SWC's Ethical Framework, which is contained in the document titled 'The Very Human Story of Sydney Water' and the fact that a person who is dissatisfied with the way in which a *voluntary public interest disclosure* has been dealt with may be entitled to take further action under the PID Act or other laws.

24.4 The Contractor must:

- (a) notify SWC of *serious wrongdoing* committed, or alleged to be committed, by an individual involved in supplying the Goods and/or Services, and of *voluntary public interest disclosures* that relate to SWC or that involve the maker of the disclosure being known as a *public official* associated with SWC;
- (b) if requested by SWC, use best endeavours to assist in investigations of *serious wrongdoing*. The Contractor acknowledges that SWC has an obligation to take *corrective action* under the PID Act; and
- (c) where the Contractor engages a subcontractor or consultant, ensure that its contract with the subcontractor or consultant imposes equivalent obligations to those in this clause 24.

25 DEFINITIONS

In this Contract, the following definitions apply, except where the context otherwise requires:

Advantage means any financial or other advantage, payment, gift, promise or transfer of anything of value;

Applicable Corruption Law means all of the laws, rules, regulations and other legally binding measures relating to bribery, corruption, money laundering, fraud or similar activities in Australia;

CCU is the Construction Compliance Unit established to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines;

Confidential Information means all confidential, non-public or proprietary information, including the terms of this Contract, regardless of how the information is stored or delivered, exchanged between the parties at any time, relating to the business, technology or other affairs of either party;

Consequential Loss means any:

- (a) loss of contracts other than this Contract;
- (b) loss of opportunity to enter alternative transaction or contract; or
- (c) loss of profit which does not arise as the natural, probable or reasonably foreseeable consequence of a breach of this Contract by a party or from any tortious or unlawful conduct of a party;

Contract means collectively the Sydney Water Order, these standard terms and conditions and any reference documents specified in the Description field of the Sydney Water Order which describe the scope of Services and/or the requirements for the Goods and includes any special conditions;

Contractor means the contractor identified in the Sydney Water Order;

Contractor's Background IP means Intellectual Property Rights owned by or licensed to the Contractor (including know how and technical information);

Corrupt Conduct has the meaning given in the Independent Commission Against Corruption Act 1988 (NSW);

Engaged Entities means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by that party in connection with the Contract.

Goods means the items as specified in any Sydney Water Order to be provided by the Contractor, and any other goods forming part of the provision of the Services, in accordance with the Contract;

Intellectual Property Rights means all present and future rights conferred by law in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

Legislation means all:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and NSW;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods and/or Services; and
- (c) 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 reasonable legal costs incurred or as awarded) of any kind or nature however they arise and whether they are present or future, fixed or unascertained, actual or contingent;

Modern Slavery Conduct means the conduct described in clause 20.1(a) and (b);

Modern Slavery Laws means

- (a) the Modern Slavery Act 2018 (NSW);
- (b) the Modern Slavery Act 2018 (Cth);
- (c) Divisions 270 and 271 of the Criminal Code Act 1995 (Cth);
- (d) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the Crimes Act 1900 (NSW); and
- (e) where the location of the Services provided is outside of NSW, any laws or legislation equivalent to the laws referred to in paragraphs (a) to (d) in any such other Australian state or territory;

NSW Code means the NSW Government Supplier Code of Conduct, as amended or updated from time to time;

NSW Guidelines means the NSW Industrial Relations Guidelines: Building and Construction

Procurement (July 2013 and updated in September 2017), as updated from time to time;

NSW Privacy Laws means Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Act 2002 (NSW);

Permit to Work Certificate means a permit issued by SWC to its contractors allowing them to commence work on the Site. This includes the Contractor and its Personnel (including any subcontractor personnel);

Personnel means the employees, agents and contractors of a party;

Price means the price in the Sydney Water Order;

Reasonable Steps means those steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy Modern Slavery Conduct. In assessing whether steps are reasonable, the parties may refer to the NSW Anti-slavery Commissioner's Guidance on Reasonable Steps and related information and resources published by the Anti-Slavery Commissioner;

Safety Prequalification System means SWC's electronic prequalification system for managing the safety prequalification requirements of SWC's contractors. This includes the Contractor and its Personnel (including any subcontractor personnel);

Services means the services as specified in any Sydney Water Order to be provided by the Contractor in accordance with the Contract;

Site means the places and facilities where Goods are to be supplied and/or Services are to be performed, as set out in the Sydney Water Order;

Supplier Code of Conduct means the [Supplier Code of Conduct](#) as published on the Sydney Water website;

SWC/Sydney Water means Sydney Water Corporation (ABN 49 776 225 038);

SWC Data means all data, and information of SWC, its operations, facilities, customers, clients, personnel, assets and/or programs, in whatever form that information may exist, and whether received by the Contractor from SWC, or entered into, stored in, generated by, retrieved, printed, processed or produced as part of the deliverables provided to SWC for the supply of Goods and/or Services (as applicable);

SWC Standard Agreement means an agreement in the form of SWC's standard goods agreement covering supply of the Goods, or SWC's standard services agreement or professional services agreement covering the performance of the Services, or SWC's standard goods and services agreement covering supply of the Goods and performance of the Services, whichever is relevant and whether issued as an individual agreement or as a work order contract;

Sydney Water Order means an order provided from SWC's financial management system, asset management system and/or any other electronic and/or manual system advised to the Contractor by SWC; and

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.