

OHL York Joint Venture

ABN 40 604 169 754

Purchase Terms

1 Definitions and interpretation

"Business Day" means a day that is not a Saturday, a Sunday or a public holiday in NSW;
"Completion Date" means the date on which all goods and services comprising the Supplies have been delivered, completed and accepted in writing by JV as being delivered and complete;
"Principal" means NSW Roads and Maritime Services;
"JV" means OHL York Joint Venture ABN 40 604 169 754;
"Price" means the price set out in the Purchase Order which may only be varied by written notice by JV;
"Purchase Order" means a document bearing that heading provided by JV containing the information referred to in these Terms;
"Supplies" means the goods and services described in the Purchase Order and as varied from time to time by notice by JV;
"Supplier" means the entity identified on the Purchase Order;
"Terms" means these purchase terms together with the Purchase Order, any attachment, annexure or schedule explicitly referenced in the Purchase Order and any prior representations made by Supplier for the benefit of JV in relation to the Supplies, to the exclusion of all other terms put forward by Supplier at any time;
"Warranty Period" means, unless otherwise stated in the Purchase Order, the period of 12 months from the Completion Date (goods) and 6 months from the Completion Date (services).

2 Agreement

2.1 In consideration of the payment by JV of the Price for the Supplies, agrees to enter into a binding agreement for provision of the Supplies to JV on these Terms, which agreement will be formed upon the earlier of:
(a) acceptance by the Purchase Order (whether by notice or conduct); or
(b) commencement of any activity by Supplier in relation to the provision of the Supplies, and once formed constitutes the entire agreement between the parties in relation to the subject matter and may only be modified in writing by JV ("**Agreement**").
2.2 For the avoidance of doubt, if Supplier desires to provide the Supplies but does not accept the provisions of clause 2.1 it must notify JV of its non-acceptance and must not commence activity in relation to the Supplies.
2.3 Unless earlier terminated under clause 6.9 or 9.1, the term of the Agreement ends on the later to expire of the Completion Date and the Warranty Period ("**End Date**") and none of Supplier's rights or obligations under the Agreement may be assigned without the written consent of JV which consent JV may in its absolute discretion withhold.

3 Performance

3.1 Unless otherwise agreed by JV in writing, Supplier must deliver all goods and undertake all services comprising the Supplies strictly in accordance with the:
(a) instructions and timing for delivery of goods and performance of services;
(b) quantities;
(c) notes; and
(d) specifications or other instructions (if any) referred to, in the Purchase Order and these Terms and time is of the essence in respect of such obligations.
3.2 Unless otherwise explicitly provided in the Purchase Order, all goods comprised in the Supplies must be new, defect free and of acceptable quality and all Supplies must be provided free from all liens, charges and encumbrances of any kind.
3.3 JV may during the term of this Agreement in its absolute discretion reject any Supplies not provided in strict accordance with clauses 3.1 and 3.2 (including without limitation if a defect or deficiency arises or becomes apparent) and if so, JV may in its absolute discretion:
(a) return any goods to Supplier at Supplier's cost;
(b) require Supplier to rectify or re-supply the rejected Supplies at Supplier's cost within a specified timeframe; or
(c) by itself through engagement of a third party rectify or re-supply the rejected Supplies, and Supplier must reimburse JV all costs and expenses incurred by JV arising out of or in connection with such rejection and until paid such costs and expenses will be a debt due to JV by Supplier.

4 Title and risk

4.1 Risk in the Supplies remains with Supplier until the Completion Date.
4.2 Title in the Supplies passes to JV upon delivery of goods or completion of any services comprised in the Supplies.

5 Price & payment

5.1 Unless otherwise expressly specified, the Price is expressed in Australian dollars and inclusive of all delivery charges, packaging, freight, assembly costs, installation costs, insurance, statutory, sales, excise, GST or other charges, taxes, duties or imposts, is fixed and not subject to rise or fall or currency fluctuation.
5.2 To claim payment Supplier must have complied with its obligations under the Agreement and provided a valid Tax Invoice (under Australian law) containing:
(a) a Tax Invoice number
(b) Supplier's name and ABN as shown in the Purchase Order;
(c) the date of the claim;
(d) Purchase Order number;
(e) the project identifier and delivery address as shown in the Purchase Order;
(f) the rates, prices, quantities and gross value of the Supplies for which payment is claimed and the calendar month or months in which they were provided;
(g) any approved variations to the Price; and
(h) the total amount of the Price that is claimed,
addressed to JV at PO Box 6275, Rouse Hill NSW 2155 (mail); or fbestawros@ohlaustralia.com (email) "**Payment Claim**".
5.3 The cut-off date for receipt by JV of Payment Claims is the 2nd Business Day of the month following the latest month described in clause 5.2(f). Payment Claims received earlier than that cut-off date will not be processed until that cut-off date.
5.4 If JV does not accept that the amount of the Price claimed in a Payment Claim is due and payable, or if JV has determined to exercise its rights under clause 5.5, JV will reject the Payment Claim by notice, providing its reasons and the details of any set-off claim and the amount of the Price JV proposes to pay. Supplier must provide a replacement Tax Invoice within 3 Business Days, which JV will then process as if it had been received by the relevant cut-off date. Supplier may claim the disputed amount in the following month's Payment Claim or may issue a notice under clause 8. JV may set-off against payments due to Supplier any monies due or claimed as due to JV under the Purchase Order or any other account.
5.5 Subject to the preceding provisions of this clause 5, JV will pay Supplier the amount of the Price determined by JV as due to Supplier within 45 calendar days from end of month.

6 Principal's requirements

6.1 Supplier acknowledges that the provision of the Supplies is made to JV as a part of the obligations of JV under a contract of works with the Principal ("**Works Contract**").
6.2 **NSW Code and NSW Guidelines**
(a) Supplier must at its own cost comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement ("**NSW Code**") and the **NSW Guidelines** ("**NSW Guidelines**") (both of which are available at <http://www.industrialrelations.nsw.gov.au>).
(b) Supplier must notify JV of any possible non-compliance with either the NSW Code or NSW Guidelines and of any remedial action taken within 24 hours of becoming aware of the possible non-compliance and must keep and provide JV with access to adequate records of compliance.
6.3 **No collusive arrangements**
(a) Supplier warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with this Agreement.
(b) Without limiting any other right or remedy the Principal, through JV if necessary, may recover from Supplier the value of any payment or other benefit made directly or indirectly to an unsuccessful supplier or a trade or industry association in breach of the warranty in clause 6.3(a).
6.4 **Compliance with NSW Government requirements**
(a) Supplier acknowledges that JV is under obligation to implement and maintain systems, strategies and plans compliant with the NSW Government Guidelines in relation to: Work, Health and Safety Management System Guidelines; the NSW Guidelines; Quality Management Systems Guidelines for Construction; Environmental Management Systems Guidelines; Training Management Guidelines; and Aboriginal Participation in Construction Guidelines.
(b) Supplier warrant that it will comply with all relevant elements of JV's systems, strategies and plans.
6.5 **Intellectual property**
(a) To the extent that, in relation to the provision of the Supplies:

(i) Supplier creates any information, including without limitation any document or data, ("**Information**") capable of protection under Australian law regarding copyright, patent design or other legally protected right ("**IP Rights**"), Supplier warrants that upon creation of such Information it will assign or otherwise transfer all IP Rights to the Principal;
(ii) Supplier utilises Information subject to IP Rights not created specifically for the purposes of the Agreement but required for the use of the Supplies, Supplier warrants that it will provide an irrevocable, perpetual, royalty free licence to the Principal and, for the period of the Agreement JV, to utilise such Information and that such licence will be capable of sub-licence by the Principal, and Supplier creates or utilises Information subject to IP Rights, Supplier warrants that such creation and use will not infringe any third party IP Rights;
(iii) Supplier warrants that any Information subject to IP Rights provided to it by JV will only be used for the purposes of the provision of the Supplies under the Agreement.

6.6 **Confidentiality**
Supplier must keep secret and confidential all Information provided to it by JV or created by it in relation to the Supplies and only disclose such Information to those persons to whom disclosure is reasonably necessary for the purposes of the Agreement. Such obligation does not apply in relation to Information which is generally available to the public or if disclosure is required by law.
6.7 **Media releases and enquiries**
Supplier warrants that by notice to JV it will:

(a) obtain the Principal's prior approval of any press release or promotional advertisement or release for publication in any media of Information concerning any activities in relation to the Works Contract; and
(b) refer all media enquiries in relation to the Works Contract to the Principal.

6.8 Novation

In the event that the Principal terminates the Works Contract through the default or insolvency of JV, Supplier agrees to a novation of this Agreement to the Principal or the Principal's nominee upon demand.

6.9 Termination for convenience

JV, or the Principal (or Principal's nominee in the event that clause 6.8 applies), may terminate the Agreement by notice with effect as of and from a specified date without giving reasons and if so, subject to JV's other rights under the Agreement, JV will pay:
(a) the amount of the Price it reasonably considers due to Supplier for work carried or Supplies provided up to the date of termination;
(b) the cost of materials reasonably ordered by and which Supplier is legally obliged to accept but only if and to the extent such materials become the unencumbered property of JV; and
(c) the costs reasonably incurred by Supplier prior to the termination in expectation of completion of the Supplies but only where and to the extent that such costs have not been otherwise recovered through other payment by JV and provided Supplier has acted to mitigate such costs.

7 Warranties

Supplier warrants that:
7.1 the Supplies will be provided in accordance with Supplier's obligations under this Agreement and in conformance with all relevant laws, Australian standards and other statutory and regulatory requirements;
7.2 the Supplies will be fit for their intended purpose and for any purpose reasonably inferred or explicitly referenced in the Terms;
7.3 it will provide for the benefit of the Principal all warranties applicable to the Supplies including without limitation warranties applicable to goods procured by Supplier from any third party;
7.4 it has effected and will maintain throughout the term of the Agreement at its own expense all insurances required by law together with any insurances otherwise required under the Terms and that it will provide copies of certificates of currency to JV upon demand;
7.5 it will hold on trust for JV the proceeds of any insurance claim relating to the Supplies and upon receipt to immediately pay such proceeds to JV; and
7.6 if it enters into the Agreement as the trustee of a trust, it is empowered to do so by the relevant trust deed and is entitled to be indemnified out of the assets of the trust in relation to Supplier's obligations under the Agreement.

8 Disputes

8.1 In the event of any dispute arising out of or in connection with the Agreement either party may notify the other in writing that a dispute has arisen and giving full details of the dispute. The parties must within 14 days of such notice meet and in good faith attempt to resolve dispute. Other than for urgent interlocutory relief, neither party may proceed to litigation unless the preceding provisions of this clause have been complied with.
8.2 Notwithstanding the existence of a claim or dispute, both parties must continue to fulfill their obligations under the Agreement unless JV otherwise notifies Supplier in writing.

9 Termination for Default

JV may terminate the Agreement by notice to Supplier if Supplier:
9.1 (a) breaches any obligation under the Agreement that JV considers capable of rectification and Supplier, within 7 days of the date on which JV notifies Supplier of the breach and required rectification action, fails to rectify the breach to JV's satisfaction;
(b) breaches any obligation under the Agreement that JV considers cannot be rectified; or
(c) becomes bankrupt, insolvent, has an administrator appointed or becomes unable to pay its debts as they fall due, and if so, JV will have no further payment liability to Supplier unless and until all Supplies are provided to JV's satisfaction.
9.2 Upon termination under clause 6.9 or 9.1, Supplier must:
(a) comply with any lawful directions of JV, the Principal or the Principal's nominee; and
(b) properly secure all Supplies and, where relevant, leave the site under the Works Contract in a safe condition, and further, and also upon the End Date;
(c) return or provide to JV all Information provided to, or created by, Supplier (as the case may be) and any other property of JV or the Principal; and
(d) provide all Information or materials otherwise required to complete, use or operate the Supplies.

10 Indemnity

Supplier indemnifies and will keep indemnified JV and the Principal (jointly and severally) against any and all loss, damage, cost, claim, expense, liability or other detriment that JV and/or the Principal suffers or incurs however arising out of or in connection with the Agreement.

11 General

11.1 **Waiver**
The failure by JV to insist upon strict performance by Supplier of any of Supplier's obligations or required actions under the Agreement does not constitute acceptance by JV and is not a waiver of any of Terms or of any breach by Supplier of any Terms. Any waiver by JV must be in writing signed by its authorised representative. Unless otherwise explicitly provided in writing, no direction, consent or approval by JV will relieve Supplier of any obligation or liability arising out of or in connection with the Agreement.
11.2 **Severability**
Each provision of the Agreement will be deemed severable as far as possible from the other provisions of the Agreement. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted. The Agreement with the offending provision severed and omitted and with any consequential amendment, if necessary, will otherwise remain of full force and effect.
11.3 **Joint and several liability**
If Supplier consists of two or more persons then each person is jointly and severally bound by, carries liability under and gives the warranties and indemnities set out in the Agreement.
11.4 **Governing Law**
The Agreement is governed by and interpreted in accordance with the laws of NSW and the parties submit to the non-exclusive jurisdiction of the courts of that State.
11.5 **Cumulative remedies**
All of JV's rights and remedies in the Agreement are cumulative and in addition to and without prejudice to the rights and remedies it has at law, in equity or by statute
11.6 **Survival of Terms**
The occurrence of the End Date or the earlier termination of the Agreement will be without prejudice to any obligations or rights of either party which have accrued prior to that time and will not affect any provision of the Agreement which is expressly or by implication provided to come into effect on or survive such occurrence or termination. The provisions of clauses 6, 7, 8, 9, 2, 10 and 11 survive the End Date and any termination of the Agreement.