

Austal Defence Shipbuilding Australia Pty Ltd, ABN 86 689 561 797  
 Austal Ships Pty Ltd, ABN 80 079 160 679  
 Austal Cairns Pty Ltd, ABN 32 153 468 627

## 1 Interpretations, Definitions and Order of Precedence

- (a) In these terms and conditions, unless stated otherwise:
- (i) capitalised terms have the meaning ascribed to that term in clause 1(b);
  - (ii) the word 'includes' in any form is not a word of limitation;
  - (iii) no third parties shall have the right to enforce any term of a PO.
- (b) Definitions: In these terms and conditions these terms have the following meanings:

<b>Asbestos Containing Material</b>	has the meaning given in sub-regulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
<b>Austal</b>	means the Austal entity set out in a PO as originator and any of its related bodies corporate (as defined by the <i>Corporations Act 2001</i> (Cth)).
<b>Confidential Information</b>	means any information that: <ul style="list-style-type: none"> <li>(a) is by its nature confidential; or</li> <li>(b) is designated by the discloser as confidential; or</li> <li>(c) the recipient knows or ought reasonably to have known is confidential in nature, and includes all information whether disclosed orally or in writing, but does not include information which:</li> <li>(d) is or becomes public knowledge other than by breach of the PO;</li> <li>(e) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the discloser; or</li> <li>(f) has been independently developed, gained or acquired by the recipient without any reference to the Confidential Information.</li> </ul>
<b>Contract Price</b>	means the price specified in the PO, including any GST component payable
<b>Goods</b>	means the goods specified in the PO (if any) to be provided by the Supplier and any goods or component parts supplied by the Supplier as part of the Services.
<b>Delivery Date</b>	means the date(s) for provision of the Supplies specified in the PO.
<b>Delivery Location</b>	means the location(s) for provision of the Supplies specified in the PO.
<b>GST</b>	means Goods and Services Tax as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (the <b>GST Act</b> ).
<b>Notifiable Incident</b>	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
<b>Personnel</b>	The employees, agents, officers, servants, suppliers, consultants, subcontractors and independent contractors engaged by either party in order to perform duties under the PO for which that party is responsible.
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Purchase Order or "PO"</b>	Contract between Austal and Supplier (bearing an order number); for the provision of Supplies, which has been issued by Austal and accepted by the Supplier pursuant to clause 2.
<b>PO General Terms and Conditions</b>	These general terms and conditions which are attached to and form part of each PO issued by Austal.
<b>Services</b>	means the services specified in the PO (if any) to be provided by the Supplier.
<b>Special Conditions</b>	means any special conditions stated in or attached to the PO.
<b>Supplier</b>	Person, company, firm or corporation to which a PO is issued.
<b>Supplies</b>	comprises the Goods and Services.
<b>WHS</b>	means:

- Legislation**
- a) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
  - b) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).
- (c) Subject to clause 2, the Contract between Austal and the Supplier comprises the:
- (i) Special Conditions;
  - (ii) Purchase Order (other than the Special Conditions); and
  - (iii) PO General Terms and Conditions.
- (d) If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

## 2 Existing Contract and Standing Offers

- (a) Subject to the terms of this PO and any Special Conditions, if the PO is issued under the terms of an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and these General Conditions of Contract (other than this clause 2) will have no effect.

## 3 Acceptance of PO

- (a) Upon receipt of a PO, Supplier shall check it for discrepancies. Supplier shall acknowledge the PO within two (2) days of receipt.
- (b) Each PO is conditional upon Supplier's acceptance of these PO General Terms and Conditions. By proceeding with the PO, the Supplier agrees that it has reviewed and accepted these PO General Terms and Conditions.
- (c) Each PO, governed by these PO General Terms and Conditions, contains the entire agreement and understanding of the parties and supersedes any prior communication, proposal, quotation, statement, negotiation. No change to a PO is valid unless that change is in writing and signed by an authorised representative of Austal at a position of 'Head of Procurement' or more senior.
- (d) Austal does not accept other terms and conditions of sale or purchase issued to it after the issue of a PO, unless that acceptance is in writing, refers specifically to this clause of this document (including by reference to the PO number of the PO in question) and is signed by an authorised representative of Austal at a position of 'Head of Procurement' or more senior. Any other communication from Austal following a PO which appears to be an acceptance of any terms and conditions inconsistent with these PO General Terms and Conditions will be deemed to be a re-issue of the original PO together with this document. By taking any step whatsoever in response to a PO, the Supplier acknowledges and agrees to this term and indemnifies Austal from any and all costs (including legal costs on an indemnity basis), expenses and losses of any nature in connection with or consequent upon any judgement, determination or finding that Austal is bound by terms which are inconsistent with these PO General Terms and Conditions.
- (e) The Contract will commence on the earlier of:
- (i) the date that the Supplier acknowledges acceptance of the PO; or
  - (ii) the date that the Supplier commences performance of the Supplies,
- and will remain in force, unless terminated earlier in accordance with the Contract, until the Supplier has completed all of its obligations under the Contract.

## 4 Performance of the PO

### 4.1 Provision of Supplies

- (a) The Supplier must provide the Supplies to Austal at the Delivery Location on or before the relevant Delivery Date and in accordance with any special instructions for the delivery of the Supplies specified in the PO.
- (b) The Supplier shall set out the PO number in the delivery receipt and invoice and, if applicable, the Supplier shall provide the original equipment manufacturer (OEM/MFR) and the manufacturer's part number (MPN) for all the Supplies.

### 4.2 Inspection, Expediting and Drawings

- (a) Austal may at any time, by giving Supplier reasonable prior notice, inspect Supplies. Inspection by Austal shall neither relieve Supplier of any of its obligations nor waive any of Austal's rights or remedies.
- (b) Austal shall be granted access to any parts of Supplier's works and those of its sub-suppliers. Supplier shall expedite all sub-ordered Supplies on a regular basis and visit sub-supplier's works when necessary.
- (c) If Austal supplies manufacturing drawings and/or data to Supplier, Supplier shall ensure that all drawings and/or data used have been certified by Austal for construction.

## 4.3 Certificates and Documentation

- (a) Any certificates and any other documentation in relation to the Supplies, including SDRL (Supplier Document Requirements) shall be provided to Austal in accordance with the PO and Austal's directions.
- (b) Supplier shall ensure all supporting documentation, including timesheets, services-, survey-, testing- and other reports are approved by Austal in writing and submitted to Austal as directed.
- (c) The Supplier shall ensure that all provided certificates are current and valid.

## 4.4 Shipment

- (a) The Supplier shall give reasonable notice to Austal of dispatch of the Supplies including all relevant details such as the expected date and time of arrival at the Delivery Location.
- (b) Supplier shall be liable for any damage, loss or destruction to the Supplies or any property resulting from improper packaging or handling.
- (c) The shipment shall be accompanied by a delivery docket in accordance with Austal's directions. In the event the delivery docket is not provided, the Supplier agrees that Austal's count upon delivery will be final and conclusive.
- (d) Supplier shall ensure proof of delivery (POD) is provided to Austal and a POD must as a minimum contain:
  - (i) full address of delivery;
  - (ii) printed name and confirmation (signature or electronic) of receiving person; and
  - (iii) time and date of delivery.

## 4.5 Services

- (a) If Services form part of the PO, the following provisions shall apply:
  - (i) All invoices shall be accompanied by a schedule of completed work certified by Austal.
  - (ii) Progress payments shall not be made unless provided for in the PO.
  - (iii) The Supplier will be granted access to Austal's premises as reasonably required to carry out its obligations under a PO.
  - (iv) The Supplier and its Personnel shall comply with
    - (A) Austal's security and safety requirements as set out in clause 10; and
    - (B) any legal requirements.
  - (v) The Supplier warrants that it has fully and properly satisfied itself of all circumstances, conditions and requirements pertaining to or connected with the provision of the Services and all other conditions affecting the Services in order to achieve successful completion.
  - (vi) The Supplier warrants that its Personnel are suitably qualified, appropriately skilled and experienced and that all Personnel hold appropriate and current authorisations required for the Services.

## 4.6 Acceptance:

- (a) Austal, or its authorised agent, may accept or reject the relevant Supplies within 14 days after delivery of the Supplies to the Delivery Location specified in the Contract. If Austal does not notify the Supplier of acceptance or rejection within the 14 day period, Austal will be taken to have accepted the Supplies on the expiry of the 14 day period.
- (b) Austal may reject the Supplies where the Supplies do not comply with the requirements of the Contract including any acceptance tests specified in the Special Conditions. If Austal rejects the Supplies, Austal may:
  - (i) require the Supplier to provide, at the Supplier's cost, replacement Supplies which comply with the requirements of the Contract in accordance with clause 8(b); or
  - (ii) terminate the Contract in accordance with clause 9.2.

In either case and at Austal's request, the Supplier must promptly remove any relevant Supplies, from Austal's premises at its cost.

## 5 Delay, Force Majeure and Liquidated Damages

### 5.1 Delay

- (a) If Supplier discovers that it will be unable to meet any of its obligations (including time of delivery), Supplier shall immediately notify Austal thereof in writing. Such notice shall:
  - (i) describe all relevant details;
  - (ii) list all Supplier's mitigation measures;
  - (iii) forecast the impact on the provision of the Supplies (including anticipated commencement and duration of the hinderance); and
  - (iv) be accompanied by supporting documentation regarding all those aspects.

- (b) Austal may thereupon (without prejudice to any other rights) terminate all or part of the PO in accordance with clause 9.1.
- (c) For the purpose of this clause 5.1 the expression 'Force Majeure Event' means an unforeseeable event beyond the parties' reasonable control, which directly prevents a party from meeting its obligations, and which is not caused or contributed to by error, neglect, act or omission of that party or its Personnel, such as:
  - (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, blockade, embargo, international trade sanction, insurrection of military or usurped power;
  - (ii) earthquake, flood, fire, epidemics, named cyclone/hurricane/typhoon, tidal wave, explosion and/or other natural physical disaster, but excluding weather conditions as such regardless of severity;
  - (iii) changes to any general or local statute, ordinance, decree, or other law, or any regulation or by-law of any local or other duly constituted authority or the introduction of any such statute, ordinance, decree, law, regulation or by-law;
  - (iv) acts of god; government requisitions, control, intervention, requirement or interference or mandatory government or regulatory intervention.
- (d) In case of a Force Majeure Event, Supplier shall in the notice under clause 5.1(a) additionally:
  - (i) specify as to why Supplier deems itself affected by a Force Majeure Event,
  - (ii) demonstrate that Supplier has made all efforts to avoid and minimise the effects of such event;
  - (iii) detail whether Supplier seeks extension of time; and
  - (iv) include supporting documentation regarding all those aspects. An extension of time shall only be valid if granted by Austal in writing.
- (e) Supplier shall not be entitled to and hereby waives any and all claims to increased compensation for / or damages which it may suffer from any causes under this clause 5.1.

## 5.2 Liquidated Damages

- (a) The parties acknowledge that if the Supplier does not meet an obligation in respect of which liquidated damages ("LDs") are expressed to apply ("LD Event"), Austal will suffer loss and damage, thus any amount of LDs is a genuine pre-estimate of such loss and damage.
- (b) In case of an LD Event Austal shall be entitled to claim from the Supplier LDs and the PO price shall be reduced by the amount of such LDs.
- (c) Austal's entitlement to LDs shall not limit, affect or exclude any of Austal's rights or remedies, including those in respect of which LDs do not accrue.
- (d) The parties may agree on LD Events and specify those in a PO, including LDs for delay, in which case Austal shall be entitled to claim LDs as set out or referenced in a PO, if Supplier is delayed in delivery of the Supplies and no extension of time has been granted in writing.
- (e) In any event, including in case a PO does not expressly include or reference or otherwise stipulate LDs, then, without limiting any of Austal's other rights, Supplier shall indemnify and make good Austal against all claims, liens, costs (including legal costs) and expenses whatsoever relating to or arising as a result of or contributed to by any act, omission or negligence of Supplier or its Personnel in connection with the performance of the PO or by failure of Supplier to perform any of its obligations under or to comply with requirements of the PO.

## 6 Payment and Title

### 6.1 Price

- (a) Unless stated otherwise in a PO, the total PO price is in Australian currency; inclusive of GST; is fixed and firm; not subject to escalation; and includes all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas all packing, testing, documentation costs and delivery free into store ("FIS") to the delivery point set out in a PO.

### 6.2 Invoices

- (a) The Supplier must submit a correctly rendered invoice to Austal. An invoice is correctly rendered if:
  - (i) it is correctly addressed and calculated in accordance with the Contract;
  - (ii) where relevant, the Supplier has complied with clause 4.1(b);
  - (iii) Austal has not rejected the Supplies under clause 4.5;
  - (iv) it is for an amount which does not exceed the Contract Price;
  - (v) it includes the PO number, and the name and contact details specified in PO;
  - (vi) it is a valid tax invoice in accordance with the GST Act; and
  - (vii) it is accompanied by such supporting documentation and other evidence reasonably required by Austal to substantiate performance of the Contract by the Supplier or payment of the Contract Price by Austal.

- (b) Subject to compliance with clause 6.2(a), Austal has ten (10) days to approve a correctly rendered invoice.

## 6.3 Payment

- (a) For Australian Suppliers and unless stated otherwise in a PO, payment of an invoice received from the Supplier shall be made by Austal, following delivery of Supplies to the Delivery Location stated in the PO, within thirty (30) days from the Austal approving an invoice in accordance with clause 6.2(b).
- (b) For non-Australian Suppliers, payment of an invoice received from the Supplier shall be made by Austal within the payment timeframe agreed during the Supplier onboarding process, as documented in Austal's supplier onboarding records and confirmed in the PO.
- (c) Payment may be facilitated by any subsidiary of Austal Ltd (ABN 73 009 250 266) for and on behalf of the originator of a PO, without changing or otherwise affecting:
- (i) the contractual relationship between the Supplier and Austal;
  - (ii) and any obligation of Austal in relation to the relevant taxation authorities.
- (d) Unless stated otherwise in a PO, Austal will compensate the Supplier for the provision of items which Austal has, in writing, requested Supplier to procure on a reimbursable basis, including services, tools, equipment/goods and consumables that are not included in the Supplies ("Reimbursable Items") on net-cost basis (exclusive of any GST), subject to Austal's prior written approval or written instruction to procure Reimbursable Items.
- (e) Austal shall be entitled to withhold payments to the extent Austal considers Supplier in non-compliance or otherwise in default with any of its obligations or with Austal's requirements.
- (f) Austal may set off, against any amount otherwise due, any debt or any claim which Austal considers *bona fide* that it has against the Supplier, whether under this contract or any other contract or otherwise.

## 6.4 Taxes and Duties

- (a) The Supplier shall comply with any legal requirements relating to all taxes, duties and government charges imposed or levied by any governmental authority ("Taxes") and agrees that any Taxes, including any Taxes applicable at the Supplier's country of residence and any Taxes imposed during transit and at the destination of the Supplies, are included within the PO price and are therefore Supplier's responsibility, unless stated otherwise in the PO.
- (b) Austal may withhold any Taxes from any payments which would otherwise be made by Austal to the Supplier to the extent that such withholding is required by law or directions of any relevant taxation authority. In the event Austal assumes liability for the payment of Taxes arising directly or indirectly from Supplier's performance of this PO, then Austal shall be entitled to claim any tax deductions or credits available as a result of the payment of such Taxes by Austal.
- (c) The Supplier shall indemnify and make good Austal in respect of all claims and costs (including legal costs) arising as a result of or in connection with any failure by Supplier to comply with this clause 6.4.

## 6.5 Title and Risk

- (a) Unless stated otherwise in a PO, title to and property in the Supplies shall pass immediately to Austal upon full payment and the Supplies shall be appropriately marked and identified as the property of Austal.
- (b) Risk in the Supplies shall remain with Supplier until delivery has been effected to the Delivery Location set out in the PO.
- (c) If the Services include the repair of any items, the Supplier bears the risk of any loss or damage to the item being repaired from the date on which it is delivered to the Supplier until it is returned to Austal at the Delivery Location.

## 7 Indemnity and Insurance

### 7.1 Indemnity

- (a) Supplier shall indemnify and make good Austal against all claims, liens, costs (including legal costs) and expenses whatsoever relating to or arising as a result of or contributed to by:
- (i) any act, omission or negligence of Supplier or its Personnel in connection with the performance of the PO or by failure of Supplier to perform any of its obligations under or to comply with requirements of the PO;
  - (ii) the death or personal injury of any person;
  - (iii) loss of or damage to any third party property;
  - (iv) an infringement or alleged infringement of that third party's IP rights or moral rights in connection with the Supplies; or
  - (v) a breach or alleged breach of any obligation of confidentiality owed to that third party in connection with the Supplies

except to the extent that any such liability, loss or damage is solely and directly caused by Austal's gross negligent act or omission.

## 7.2 Consequential Loss

- (a) Neither party shall be liable for any indirect or consequential losses or damages including, but not limited to; loss of opportunity, loss of revenue, loss of use, loss of production, loss of contract, loss of goodwill, loss of reputation, loss of profits or business interruptions. Each party shall defend, indemnify and hold the other harmless for all claims for indirect or consequential losses or damages.

## 7.3 Insurance

- (a) Supplier shall, at its cost, effect and maintain (and upon request provide Austal with evidence thereof)
  - (i) adequate material loss or damage insurance at least to the extent of the full replacement value of the property;
  - (ii) where required under the applicable delivery terms, adequate transit insurance;
  - (iii) if Services form Part of the PO, the following types of insurance cover:
    - (A) worker's compensation insurance to satisfy the applicable State or Territory legislation including cross border legislation;
    - (B) public and product liability insurance for personal injury and property damage, including contractual liability extension and a cross liability clause, with limit of not less than AUD\$10,000,000 per occurrence in respect to public liability and AUD\$10,000,000 in the annual aggregate in respect to products liability;
    - (C) where applicable, motor vehicle third party property damage insurance with a limit of not less than \$30,000,000 any one event and as per the applicable law, insurance for third party physical injury;
  - (iv) such other insurances as may be necessary from time to time as notified to the Supplier by Austal and specified in the PO.
- (b) Notwithstanding any other provision to the contrary, Supplier's insurances pursuant to clause 7.3(a), but not in respect to clause 7.3(a)(iii)(A) (worker's compensation insurance) and where permitted at law, shall note Austal as an additional insured and shall provide for the insurer to waive all rights of subrogation against Austal.
- (c) In respect to clause 7.3(a)(iii)(A) (worker's compensation insurance), where permitted at law, the policy is to be endorsed to include a principal's indemnity extension for act benefits and at Common Law in favor of Austal with a waiver of subrogation in favor of Austal.
- (d) All insurances provided by the Supplier shall be primary and Supplier's insurer shall not seek to include any insurances, which Austal may procure to contribute to any loss, damage, or injury.

## 8 Warranty and Defects

- (a) Supplier warrants that Supplies supplied shall be of merchantable quality, fit for the purpose intended and free of defects in materials, workmanship and design. If Austal supplies manufacturing drawings and/or data to Supplier, Supplier warrants that the Supplies are manufactured and supplied strictly in accordance with such drawings and/or data or any subsequent revisions thereof.
- (b) Supplier shall (at the option of Austal), unless stated otherwise in a PO, either replace or repair and make good any Supplies or parts of Supplies supplied by it, which have found to be defective or in any way unsuitable for the purpose intended for a period of twenty four (24) months from date of acceptance by Austal's customer of the product in respect of which the Supplies were provided.
- (c) If Supplier repairs or replaces Supplies during the warranty period then, unless stated otherwise in a PO, a new warranty shall apply to those Supplies for a period of the greater of (i) the remaining period set out under clause 8(b); and (ii) twelve (12) months from the date such repairs or replacements were completed.
- (d) All costs in attending to warranty repairs including all shipping and costs associated with the return of defective Supplies to the Supplier for repair and the return of repaired/replaced Supplies to Austal, travelling and accommodation costs (for Supplier's personnel only) as well as assembly and disassembly costs shall be for the account of the Supplier.
- (e) The warranty provisions under this clause shall not extend to defects resulting from or caused by (i) normal wear and tear; (ii) gross negligent or deliberate acts or omissions of Austal or Austal's customer of the product in respect of which the Supplies were provided.
- (f) Supplier shall indemnify and make good Austal against all claims by any person for loss or damage, direct or indirect caused by Supplies supplied under the PO by Supplier and being Supplies which are defective or otherwise not of merchantable quality.

## 9 Cancellation, Termination and Suspension

### 9.1 Cancellation

- (a) Austal may at its option cancel the PO or any part thereof at any time. Austal shall then only be liable for costs incurred by the Supplier that are directly attributable to the cancellation, such as costs for materials manufactured and supplied in accordance with the PO prior to the date of cancellation and costs for materials and other items ordered by the Supplier for which Supplier is legally bound to pay, but only to the extent that such costs arise directly as a result of Austal's cancellation and provided that the Supplier substantiates such amounts to the satisfaction of Austal.
- (b) To the extent Austal reimburses Supplier pursuant to clause 9.1(a), title to and property in all those materials and other items shall pass to Austal.

### 9.2 Termination for Supplier's Default

- (a) If Supplier
  - (i) fails to make delivery;
  - (ii) fails to perform within the time specified on the PO;
  - (iii) delivers non-conforming Supplies;
  - (iv) fails to make progress so as to endanger performance of the PO; or
  - (v) is otherwise in breach of a provision of the PO,then in any case Austal may cancel the PO or part thereof and Supplier shall be liable for all costs incurred by Austal in purchasing similar Supplies elsewhere.

### 9.3 Reciprocal Termination Rights

- (a) Either party may terminate a PO where the other party is:
  - (i) entering into an arrangement or order being made for winding up of the other party; or
  - (ii) insolvent or has an administrator or a receiver and manager appointed.

### 9.4 General Termination Provisions

- (a) If a PO is terminated,
  - (i) the parties shall, subject to clause 11.3(d), be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination (rights to recover damages shall not be affected).
  - (ii) the Supplier shall:
    - (A) stop any activities in accordance with the termination; and
    - (B) comply with any directions given by Austal; and
    - (C) mitigate all loss, costs and expenses in connection with the termination;
    - (D) not be entitled to profit anticipated on any terminated part of the PO.

### 9.5 Suspension

- (a) In addition to any of its other rights, Austal may at any time direct the Supplier in writing to suspend any activities under a PO or parts thereof.
- (b) In the event of such suspension the parties agree that no party shall be entitled to seek reimbursement or compensation from the other party for any costs incurred, caused or contributed to by such suspension, unless both parties expressly agree otherwise in writing prior to the suspension coming into effect. By giving the Supplier written notice, Austal may direct the Supplier to resume activities under a PO or parts thereof within reasonable period of time.

## 10 Security and Safety

### 10.1 Compliance with requirements

- (a) If Austal provides the Supplier with access to any Austal place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by Austal or of which the Supplier is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.
- (b) Where the Supplies are designed, manufactured, supplied, installed, commissioned or constructed by the Supplier within Australia or the Supplier imports the Supplies into Australia (and is an importer for the purposes of the WHS Legislation), the Supplier must:
  - (i) comply with, and must ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract in Australia; and

- (ii) where applicable, comply with, and must ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with Austal, the Supplier or the subcontractors (as the case may be) and any other person who, concurrently with Austal, the Supplier or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.
- (c) The Supplier must ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who use the Supplies for a purpose for which they were designed or manufactured.
- (d) Without limiting the Supplier's obligations under the Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Supplier must, in connection with or related to the Supplies or the work performed under the Contract, provide, and must use its reasonable endeavours to ensure that a subcontractor provides, to Austal within 10 days (or such other period as agreed by Austal in writing) of a request by Austal any information or copies of documentation requested by Austal and held by the Supplier or subcontractor (as the case may be) to enable Austal to comply with its obligations under the WHS Legislation.
- (e) The Supplier shall ensure that Supplier personnel who are required to work at the Austal premises participate in any safety induction training and site safety induction briefings that are provided by Austal, before any work is carried out on the Austal premises.
- (f) The Supplier must not provide Supplies containing Asbestos Containing Material and must not take any Asbestos Containing Material onto Austal premises in connection with providing the Supplies.

## 10.2 Notifiable Incidents

- (a) If a Notifiable Incident occurs in connection with work carried out under the Contract:
  - (i) on Austal premises;
  - (ii) which involves Austal personnel; or
  - (iii) which involves an Austal specified system of work,the Supplier must:
  - (iv) immediately report the incident to Austal;
  - (v) promptly provide Austal with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
  - (vi) provide Austal with such other information as may be required by Austal to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation; and
  - (vii) provide other reasonable assistance required by Austal to undertake mandatory incident reporting.

## 11 PO Management, Policy and Law

### 11.1 Applicable Law and Dispute Resolution

- (a) To the extent permitted under the legislation at the place where Supplier has to fulfil its obligations under the PO, the laws of the State of Western Australia shall apply to the PO and the courts of the State of Western Australia shall have non-exclusive jurisdiction to decide any matter arising out of the PO.
- (b) If a dispute arises and cannot be settled by negotiation within thirty (30) days of written notice, the dispute shall be referred to and finally resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration ("**ACICA**") Arbitration Rules with the seat of arbitration being Perth, Western Australia and the number of arbitrators to be one (1). Each party shall pay their own costs of the arbitration and the costs of the arbitrator shall be shared equally between the parties. The parties shall at all times during the dispute continue to fulfil their obligations under a PO.

### 11.2 Assignment and Subcontracting

- (a) The Supplier must not, without Austal's prior written consent, assign or deal with any right under the PO and any purported dealing in breach thereof is of no effect.
- (b) The Supplier shall not subcontract the whole of the scope of supply / work under the PO.
- (c) The Supplier, by subcontracting any part of the scope under the PO shall not be relieved of its liabilities or obligations, and shall be responsible for its subcontractors or sub-suppliers.

### 11.3 Waiver, Amendment, Survivorship, Severability

- (a) A change to a PO or to any provision thereof shall be of no effect unless it is in writing from Austal.
- (b) Failure by either party to enforce a term of a PO shall not be construed as in any way affecting the enforceability of that term or the PO as a whole.
- (c) If any part of a PO is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the PO shall not be affected and shall be read as if that part had been severed.

- (d) Any term of a PO which expressly or by implication from its nature is intended to survive the termination or expiration of the PO and any rights arising on termination or expiration shall survive termination or expiration.

## 11.4 Anti-Bribery and Anti-Corruption

- (a) Supplier represents and warrants that other than as set out in the PO or as otherwise advised to Austal in writing it, its Personnel, and each of its officers, directors, employees, consultants, agents and any other third parties acting on its behalf shall not, directly or indirectly, either by itself or through any third party or person, (i) pay, (ii) offer to pay, (iii) promise to pay, or (iv) authorize the payment, of any moneys, or otherwise provide or offer to provide anything of value, to any employee, contractor, consultant or representative of Austal, its customer or any government or regulatory body for the purpose of improperly influencing or inducing or rewarding any favourable treatment, or obtaining any advantage, in connection with the PO.
- (b) In the event of any breach of this condition by the Supplier, Austal may terminate the PO immediately and from the date of termination the PO shall be void and of no effect. Any payments made by Austal to Supplier before or after the date of termination under this clause shall be refunded by the Supplier to Austal on demand.

## 11.5 Privacy

- (a) If the Supplier obtains any personal information in the course of delivering the Supplies, the Supplier must comply with all requirements of the Privacy Act and, in particular, must:
  - (i) collect, use and disclose personal information only for the purposes specified in the Contract, and in accordance with the Privacy Act and any other applicable privacy laws;
  - (ii) protect personal information from misuse, interference, loss, unauthorized access, modification or disclosure in accordance with the Privacy Act and any other applicable privacy laws;
  - (iii) promptly notify Austal of any actual or suspected data breaches involving personal information, and cooperate with Austal in responding to and mitigating the effects of such breaches, in accordance with the Privacy Act;
  - (iv) assist Austal in fulfilling its obligations under the Privacy Act, including by providing information, cooperation and assistance as reasonably requested by Austal;
  - (v) ensure that all personnel who have access to personal information are aware of and comply with the Privacy Act and any other applicable privacy laws; and
  - (vi) (f) upon the expiration or termination of the Contract, promptly return or destroy all personal information that it has collected, used or disclosed in the course of providing services under the Contract, in accordance with the Privacy Act and any other applicable privacy laws.
- (b) Supplier shall indemnify Austal against any loss, liability or costs (including legal costs) suffered by Austal which arises directly or indirectly from a breach of any of this clause.

## 11.6 Confidential Information

- (a) Each party dealing with confidential information under the PO shall ensure that the confidential nature of the information is protected except if and limited to the extent that disclosure is required under law or statutory or portfolio duties or the disclosing party has obtained the other Party's prior written consent. The Supplier shall only use confidential information solely for the purposes of the PO and return or destruction of items relating to confidential information shall not release the Supplier from such obligations.

## 11.7 Intellectual Property and Patents

- (a) Intellectual Property ("IP") means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
- (b) Where IP is owned and supplied by a party (whether separately or as part of the Supplies), that party shall retain ownership of all such IP. The other party undertakes not to disclose any information related to such IP to any third parties without the prior written consent of the first party, except where it is necessary for the usual or intended use of the Supplies.
- (c) The ownership in IP which is created under or otherwise in connection with the PO, shall vest in the party which created such IP. In case that Austal is not be the owner of such IP, then Austal shall be granted by the owner of such IP, a royalty-free, irrevocable, world-wide, perpetual, non-exclusive, unrestricted license regarding such IP. Said licence shall not be limited to a particular project or purpose, shall include the right to sub-license and all documentation, data, samples or any other materials developed or created in connection with such IP.
- (d) Supplier warrants that Supplies supplied – other than Supplies supplied in accordance with technical plans or drawings provided to Supplier by Austal – do not infringe any IP, and shall hold harmless and indemnify Austal from and against all claims and proceedings for or on account of such infringements in respect of Supplies supplied by Supplier and from and against all related claims, demands, proceedings, damages, costs, charges and expenses.

## 11.8 Forced Labour or Slavery

- (a) In this clause Forced Labour or Slavery means “slavery” and “forced labour” as these terms are defined by the International Labour Organisation (ILO) from time to time, including in any present or future ILO conventions.
- (b) The Supplier warrants that:
  - (i) it has thoroughly investigated its labour practices, and those of its Personnel, to ensure that there is no Forced Labour or Slavery used anywhere in the Supplier’s business or by any of its Personnel;
  - (ii) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause will continue to be the case at all times; and
  - (iii) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties made in this clause.

## 11.9 Veterans Procurement Policy

- (a) The Supplier must use its reasonable endeavours to increase its:
  - (i) purchasing from Veteran enterprises; and
  - (ii) employ Veteran Australians, or
  - (iii) otherwise to involve enterprises of Veterans, in the performance of the Contract.
- (b) For the purposes of this clause:
  - (i) “Veteran” means a person who has served, or is serving, as a member of the ADF; and
  - (ii) “Veteran enterprise” means an organisation that is 50 per cent or more owned by Veteran(s) and that is operating a business.

## 11.10 Cyber Security

- (a) The Supplier and any of its Personnel shall comply with Austal’s ‘Third-Party Management Standard’, relating to Cyber Security, which will be provided upon request.