



**DALRYMPLE BAY
COAL TERMINAL**
PTY LTD

MARTIN ARMSTRONG DRIVE
MS 283, MACKAY
QLD 4740
AUSTRALIA

PHONE +61 7 4943 8444
FAX +61 7 4956 3353
ACN 010 268 167
ABN 12 010 268 167

CONDITIONS OF TENDERING

1. GENERAL

- (a) Tenderers shall comply with these Conditions of Tendering and any special conditions, contained elsewhere in the Tender Documents
- (b) For the purposes of these Conditions of Tendering:
 - i. Contract means the proposed form of agreement (included in the Tender Documents) between the Principal and the successful Tenderer;
 - ii. Principal-Supplied Information means information (oral or otherwise) provided or made available at any time by or on behalf of the Principal to any Tenderer (other than documents stated in the Contract to comprise part of the Contract) and includes any information described as such in the Tender Documents;
 - iii. Tender Documents means all those documents issued to the Tenderer as part of the tender process;
 - iv. Tenderer includes any person who has lodged or at any time proposes to lodge a tender (conforming or otherwise) for the Supply; and
 - v. subject to the above paragraphs, terms which are defined in the Contract or other Tender Documents shall have the same meanings for the purposes of these Conditions of Tendering except to the extent that their is no ambiguity.

2. VALIDITY PERIOD

- (a) Tenders shall remain valid for acceptance for 90 days from the closing date on tender. (Tender Closing Date).
- (b) A Tenderer must not withdraw, change (including by way of addition or qualification) or otherwise do anything which affects its tender:
 - i. before the expiration of 90 days after the Tender Closing Date.

3. TENDER DOCUMENTS

Prospective Tenderers shall ensure that their Tender Documents are complete according to the instructions provided in this document and the invitation to offer.

Every Tenderer must:

- (a) within three (3) days of receipt of the Tender Documents or any Addenda, acknowledge receipt in writing;
- (b) within five (5) days of receipt of the Tender Documents notify the Principal in writing whether or not the Tenderer intends submitting a tender;

Any amendments or additions provided to a Tenderer as an Addendum in accordance with these Conditions of Tendering shall form part of the Tender Documents.

Drawings issued, as part of the Tender Documents shall, unless otherwise expressly stated in the Tender Documents, be considered as approximate and for tendering purpose only and shall not be taken in any sense as working drawings.

4. VERBAL ADVICE

Tenderers agree that verbal advice or information given or obtained in respect of the Tender Documents shall not constitute a warranty or a representation to the Tenderer and shall not be binding on the Principal. The Principal shall be bound only by advice or information supplied by the Principal in writing in the form of an Addendum.

5. TENDERER TO ACQUAINT HIMSELF BEFORE TENDERING

5.1 Tender Document

If the prospective Tenderer requires further information to ensure that he has a clear and correct understanding of the nature and extent of the Contractor's Activities to be carried out under the Contract, he shall direct any enquiries to the Principal's Contract Administrator.

Every Tenderer must by notice in writing to the Principal's Contract Administrator, advise the Principal of any error, discrepancy, ambiguity, incompleteness, omission, inquiry or other issue arising in connection with the Tender Documents immediately the Tenderer becomes aware of it.

5.2 Claims Not Allowed

- (a) Every Tenderer must at its own cost and expense, and from its own sources satisfy itself as to all matters and things relevant to the performance of the Contract and the Tenderer's tender including without limitation:
 - i. the Tender Documents and any other information provided or made available by or on behalf of the Principal;
 - ii. all information relevant to the risk, contingencies and other circumstances having an effect on its tender and which is obtainable by the making of reasonable enquiries; and (the correctness and sufficiency of its tender and that its price covers the cost of complying with all the Contractor's Activities under the Contract and all matters and things necessary for the due and proper performance and completion of the Supply.

 - (b) Claims for extra expenses or for an extension of time under the Contract or otherwise will not be allowed on any grounds that insufficient information was given in the Tender Documents or otherwise, or that the Tenderer was not familiar with the conditions prevailing at the site.
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6. PRINCIPAL-SUPPLIED INFORMATION

Every Tenderer accepts that the Tenderer:

- (a) has not relied and will not rely upon, any Principal-Supplied Information for any purpose (including without limitation determining whether or not to lodge a tender, preparing its tender, entering into the Contract or performing the Contractor's Activities under the Contract);
- (b) has been or will be provided with Principal-Supplied Information only for the Tenderer's convenience and the Principal does not assume any responsibility, duty of care in respect of, give any warranty or guarantee or make any representations as to the Principal-Supplied Information (including its accuracy or adequacy);
- (c) shall have no claim against the Principal or any employee, agent or contractor of the Principal (whether in contract, tort (including negligence), equity, under statute or otherwise) from or in connection with the provision of the Principal-Supplied Information; and
- (d) without prejudice to paragraph (a), must satisfy itself as to and take into account any matter or thing disclosed by any Principal-Supplied Information relevant to the carrying out of the Contractor's Activities and completion of the Supply.

7. DEPARTURES FROM THE TENDER DOCUMENTS

A non-conforming tender will not be considered unless a completed conforming tender is offered. There are certain mandatory requirements of the Supply with which Tenderers must comply. Subject to submitting conforming tenders for all Works, the Tenderer may submit Alternative Tenders.

An Alternative Tender shall contain details of departures from any parts of the Tender Documents, including the Drawings (if applicable). These departures shall be listed in the relevant Schedule or in a separate section of the tender titled Departures from the Tender Documents. The departures shall be detailed in the same order as the relevant Tender Documents clauses. The list shall include separate prices to enable the tender to be adjusted to comply with the Tender Documents.

Details of any technical, monetary or other advantage or disadvantage to the Principal shall be given.

The tender shall be deemed to comply with the Tender Documents in every respect except for the departures listed in the Departures from the Tender Documents Schedule or in a separate section of the tender titled Departures from Tender Documents. Where there is an inconsistency (other than those properly listed as departures from Tender Documents) between a provision of the Tender Documents and a provision of the tender (including supporting documentation), the provision of the Tender Documents shall prevail. To the extent of the inconsistency, the provision of the tender shall have no force or effect.

Adjustment to the Tender Price will not be accepted for any item omitted from the list of departures.

A non-conforming tender, or portion thereof, if accepted, would be subject to all the other requirements of the Tender Documents, apart from the nominated and accepted items of non-conformity.

Statements such as the following, shall have no force or effect:

- tender complies except as stated otherwise;
- except for minor items to be negotiated;
- except detailed in the tender.

8. TENDERER'S STANDARD CONDITIONS

Any of the Tenderer's standard conditions of tendering, supply, Contract of Sale or other standard terms shall be excluded completely from forming part of the Conforming Tender.

9. TENDER PRICE

9.1 Currency

All Tender prices shall be expressed in Australian currency.

9.2 Goods and Services Tax (GST)

Pricing submitted shall be exclusive of GST. GST is to be shown separately on tender documentation.

9.3 Firm Price Tenders

In all cases, a Firm Price Tender is preferred. Unless otherwise provided for in the Tender Documents, the tender is to be submitted on the basis that the Contract Price will not be subject to adjustment for variations in costs.

9.4 Variable Price Tenders

Where the Tender Documents include Commercial Conditions which allow a Tenderer to submit a tender on a variable or part variable price basis, the Tenderer shall enclose with his tender, details of price adjustments for variations in the cost of labour, materials, rates of exchange, duty and transport as applicable. The tender shall be deemed to be on a firm price basis for any item for which price adjustment details are not provided.

Where a Reference Date is stated in the Tender Documents the Tender Price shall be deemed to be based on the indices and base rates applying at that date.

10. TENDERERS' LEGAL AND ETHICAL OBLIGATIONS

Every Tenderer must:

- (a) prior to lodging any tender, obtain or procure any approval, qualification, registration or licence required to be held by the Tenderer to enable it to lawfully carry out the Contractor's Activities and the Supply;
 - (b) in preparing and lodging any tender comply with all applicable laws and legal requirements; and
 - (c) without limiting paragraph (b):
 - i. not collude with, accept any commission from, offer any commission to, or inflate its tendered price for the benefit of, any other Tenderer;
 - ii. without limiting any other clause of these Conditions of Tendering, not disclose any part of its tender to any other Tenderer;
 - iii. not enter any contract, arrangement or understanding with any other Tenderer or any trade, industry or other association to the effect that the Tenderer, if successful, will confer any benefit on any other party;
 - iv. and not enter any other improper or anticompetitive contract, arrangement or understanding with any other party in connection with the tender, the Contractor's Activities or the Supply;
 - (d) keep confidential and not:
 - i. disclose to any person; or
 - ii. copy, use or otherwise deal with for any purpose, any information regarding the Tender Documents, the Supply or the Principal (including its business or activities) except to the extent:
 - iii. the Tenderer is specifically authorised in writing by the Principal; or
 - iv. the information is necessarily disclosed to and used by others (who are also bound to keep the information confidential) for the purposes of enabling the Tenderer to prepare a tender; and
 - (e) not in any way publicise or disclose to any person (including without limitation, any other Tenderer) the terms of a tender lodged or proposed to be lodged by the Tenderer, the Contract, the Tender Documents, the Supply, the site or the Principal.
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11. LODGEMENT OF TENDERS

- (a) Tenders (together with any documents submitted by the Tenderer as part of a tender, shall be written in the English language, and measurements and quantities shall be in units consistent with the provisions of the Weights and Measures (National Standards) Act 1960 (as amended).
 - (b) Tenders may be lodged either by post or by a recognised carrier providing a direct service to the address nominated in the Invitation Letter in a sealed envelope marked with the name and number of the project.
 - (c) Every Tenderer must lodge any tenders before the time specified in the Invitation Letter for the closing of tenders on the Tender Closing Date or such later time or date which the Principal may determine in its absolute discretion and notify to the Tenderer.
 - (d) The Principal in his discretion may reject a tender delivered after the Tender Closing Date and closing time, no matter what the reason may be for the late delivery.
 - (e) The tender, complete with all supporting documents, shall remain the property of the Principal.
 - (f) Every Tenderer must lodge a tender which:
 - i. complies in all respects with the requirements of the Tender Documents;
 - ii. is for the carrying out and completion of the Supply on the terms of the Tender Documents (including the Contract) and does not make any assumption in relation to the Contract, the Supply or the Tender Documents (Assumptions);
 - iii. is lodged in the name of the entity which will perform the Supply;
 - iv. must specify:
 - a. in the case of an individual, his full Christian or given names, surname and address;
 - b. in the case of a business name, the names and address of all proprietors and the address of the principal place of business; or
 - c. in the case of a company, the full name of the company and the address of the registered office of the company; and
 - v. includes the fully completed and duly signed and witnessed Tender Forms and all Tender Schedules and all other information, documentation and material required by the Tender Documents.
 - (g) Where the Supply includes the provision of goods:
 - i. the Principal does not anticipate situation that results in holding of excess, obsolete or redundant stock during the currency of the Contract. However, should such a situation arise, the Tenderer is requested to advise as part of its tender, its willingness to buy back such items and the conditions under which it is prepared to do so; and
 - ii. preparedness to buy back will be considered favourably in the evaluation of tenders.
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12. CANVASSING, INTERVIEWS AND FURTHER INFORMATION

- (a) The canvassing by Tenderers and/or their agents will be considered grounds for the rejection of a tender.
- (b) The Principal may interview a Tenderer in relation to its tender. The Tenderer shall not discuss or attempt to interview or discuss any matter in relation to its tender or any other tender to the Tender Documents with any employee or agent of the Principal.
- (c) Every Tenderer must at its own cost and expense, provide to the Principal any further information requested by the Principal in respect of the Tenderer's tender, promptly after receiving the Principal's request.
- (d) All correspondence, resolved and agreed Tender Information Requests and agreed records of interview, form part of the tender. Any provision contained therein, which does not fully conform with the Tender Documents, shall have no force or effect unless the particular provision is noted as a departure from the Tender Documents.

13. PRINCIPAL'S CONSIDERATION OF TENDERS

Subject to the terms of these Conditions of Tendering, the Principal shall consider any tender, which complies with and is lodged in accordance with these Conditions of Tendering.

14. PRINCIPAL'S OBLIGATIONS LIMITED

The Principal's obligations to any Tenderer (including as to any aspect of the tender process):

- (a) are limited to only those obligations expressly set out in these Conditions of Tendering; and
- (b) exclude (to the maximum extent permitted by law) any obligations, which may otherwise be implied or imposed on the Principal under contract, in equity, by statute or otherwise.

15. ACCEPTANCE OF TENDER

- (a) The Principal may in its absolute discretion but shall not be bound to accept the lowest tender or any tender at all.
 - (b) The Tenderer shall provide an address in Australia where notice of acceptance of a tender may be given.
 - (c) A tender shall not be considered to be accepted until a notice in writing of such acceptance signed by the Principal is handed to the Tenderer, or is delivered by prepaid post to, or is left at the address shown in his tender or both parties have signed the Contract.
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- (d) Unless the Principal expressly agrees otherwise:
- i. the Notice of Acceptance of tender is not authorisation for the Tenderer to commence the Contractor's Activities or the Supply unless it expressly states otherwise;
 - ii. the successful Tenderer shall execute and return to the Principal the Contract (or such other contract for the carrying out of the Contractor's Activities and the Supply as the Principal may accept) within seven (7) days of the Principal providing the same for execution;
 - iii. without affecting the successful Tenderer's obligations under the last preceding subclause after the formal acceptance of a tender but, until the Contract (or such other contract for the carrying out of the Contractor's Activities and the Supply as the Principal may accept) has been formally executed by the parties, the Principal and the successful Tenderer shall be bound to the Contract (or such other contract for the carrying out of the Contractor's Activities and the Supply as the Principal may accept) as if they had both executed the same.

16. PRINCIPAL'S DISCRETION

Without limiting any other rights of the Principal, the Principal may in its absolute discretion (but shall be under no obligation to):

- (a) cancel the tender process at any time by notice in writing to the Tenderers;
 - (b) provide to all Tenderers any further information provided to a particular Tenderer;
 - (c) at any time prior to the Tender Closing Date issue any Addenda to the Tender Documents (including by way of modification, clarification or in response to a Tenderer's query) which is expressly identified as an Addenda to the Tender Documents;
 - (d) extend the Tender Closing Date or closing time;
 - (e) refuse to consider any tender which:
 - i. is lodged by any means other than in accordance with these Conditions of Tendering;
 - ii. is lodged after the time specified for closing of tenders on the Tender Closing Date;
 - iii. has been lodged by a Tenderer who has not complied with these Conditions of Tendering;
 - (f) in its evaluation and assessment of tenders:
 - i. apply such criteria as the Principal sees fit;
 - ii. if the Principal considers any tender to be ambiguous, erroneous or incomplete:
 - a. refuse to consider the tender;
 - b. request further information from the Tenderer; or
 - c. request the Tenderer to amend its tender, as the Principal sees fit; or
 - iii. disclose any part of the Tenderer's tender to any third party (who is bound to keep the same confidential);
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- (g) consider any tender lodged by a Tenderer which is in any way related to, or associated with the Principal;
- (h) decide to:
 - i. accept a Tenderer's tender for;
 - ii. not proceed with;
 - iii. carry out itself; or
 - iv. have any other person or persons (whether or not a Tenderer who has submitted a tender) carry out,all or any part of the Supply;
- (i) at any time:
 - i. re-tender the Supply with all or any of the Tenderers who have submitted a tender, or any other person (whether or not they submitted tenders); or
 - ii. invite any other person to participate as a Tenderer in the tender process;
- (j) at any time prequalify, shortlist or enter into negotiations with any one or more persons (whether or not they submitted tenders); or
- (k) require changes to the Supply or the terms of the Contract before proceeding to engage any Tenderer in connection with the Supply.

17. EXCLUSION OF CLAIMS

Every Tenderer accepts that no Tenderer shall have any claim whatever against the Principal or any employee, agent or contractor of the Principal (whether in contract, tort (including negligence), equity, under statute or otherwise) arising from or in connection with:

- (a) any costs, expenses or other liabilities incurred by the Tenderer in preparing a tender or otherwise in connection with the Tenderer's tender (whether or not a tender is lodged by the Tenderer or the Tenderer's tender is accepted) including any costs, expenses, or other liabilities incurred by the Tenderer in providing any further information or in carrying out any further work at the request of the Principal;
 - (b) the Principal exercising in its absolute discretion, any discretion or right it has under these Conditions of Tendering or in connection with the Supply; or
 - (c) any of the matters or things relevant to the Supply in respect of which the Tenderer must satisfy itself under these Conditions of Tendering.
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18. PRIVACY ACT COMPLIANCE

- (a) In relation to any Personal Information (as defined in the Privacy Act 1988 (Act) provided by a Tenderer in connection with its tender, the Tenderer warrants to the Principal:
- i. the Tenderer has obtained the consent of each individual about which any Sensitive Information (as defined in the Act) is provided; and
 - ii. the Tenderer has or will within the time required by the Act ensure that each individual about whom any Personal Information is provided has received a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - (a) in relation to disclosure of the Personal Information to the Principal, any Related Body Corporate (as that term is defined in the Corporations Act 2001) of the Principal and any consultant of the Principal requiring the information for the purposes set out in paragraph B;
 - (b) and disclosing that the entities referred to in paragraph A shall use the Personal Information for the purposes of reviewing and assessing the Tenderer's tender.
- (b) The Tenderer will comply with the provisions of the Privacy Act in relation to any Personal Information provided to the Tenderer by the Principal, any Related Body Corporate of the Principal and any consultant of the Principal.

19. APPLICATION OF CONDITIONS

Except to the extent the Principal expressly agrees otherwise, these Conditions of Tendering shall continue to apply to any process which the Principal may undertake (following the close of tenders under the initial tender process) in connection with the selection of the successful Tenderer or the award of a Contract for the Supply (including, without limitation, any process involving the re-tendering of the Supply, short listing of, or further negotiations with, any of the Tenderers).
