


Prequalification Scheme: Motor Vehicles

SCM0653 2018-2028

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Schedule of document updates

Revision Number	Date	Update Description	Completed by
1.0	13 December 2021	Update formatting to TSY template.	NSWP Fleet team
1.1	10 August 2022	Review scheme conditions to support NSW electrification / accelerate ZEV uptake. Section 29 ZEV added, Section 9.1: Manufacturer warranty updated to include BEV requirement, definitions updated.	Amol Chavan Juergen Heina Anna Martinez Kim Witkowski
1.2	12 September 2022	Update table in clause 28.1 and 37.2 with Motor Vehicle category number and heavy commercial GVM to 4500kg.	NSWP Fleet team
1.3	17 October 2022	Update scheme date to 31 March 2028	NSW Procurement Fleet Team
1.4	21 December 2022	Update clause 37.10 safety features for Commercial Vehicles (Trucks) Update clause 38; Table 2 Maximum Motor Vehicle Emission Limits 2023 to 2028.	NSWP Fleet team
1.5	8 February 2023	Update Clauses: 37.2,37.8 with ANCAP requirement: 37.4, 37.5 safety features including 3-point seat belts. Removed 37.6, 37.7 merging with 37.5. Update Clause 37.9 safety features separating small and large buses. Update 37.10 with safety features for heavy commercials to include additional mirrors and reflectors.	NSWP Fleet Team
1.6	6 April 2023	Update Clause 38.2 with maximum CO ₂ emissions limit targets per category 2023-28	NSWP Fleet Team
1.7	28 April 2023	Update Clause 38.2 CO ₂ emissions national average per category for 2022	NSWP Fleet Team

1. Introduction

- 1.1** The NSW State Government Prequalification Scheme: Motor Vehicles SCM0653 (the Scheme) was established on 1 April 2012 and extended till 31 March 2028.
- 1.2** NSW Procurement (NSWP) in the NSW Treasury (Treasury) is responsible for overseeing and managing the Scheme.
- 1.3** The Purpose of the Scheme is to provide the NSW Government and other Eligible Buyers including Government agencies, State Owned Corporations and Non-Government Organisations with access to a range of Motor Vehicles to simplify and streamline the Procurement process. Vehicles in scope are:
- (a) Micro, light, small, medium, large and upper large passenger vehicles, both sedans and/or wagons and/or hatchback;
 - (b) Sport Utility Vehicles;
 - (c) Light Commercial Vehicles;
 - (d) Commercial Vehicles.
- 1.4** Manufacturers may apply to join the scheme at any time during the five-year period. The link to join the scheme may be accessed here:

<https://www.tenders.nsw.gov.au/?event=public.scheme.show&RFTUUID=9ADE8227-A954-9E18-CE558E0D9E4739E1>

Applicants will note this application includes three documents:

- (a) Scheme Conditions and Requirements
- (b) Online Application Form
- (c) Motor Vehicle Details and Pricing File.

Applicants are to note that, if granted admission to the Scheme, it is intended they will supply Motor Vehicles in accordance with the standard Customer Contract for all purchases made under the Scheme.

The terms and conditions of the standard Customer Contract will be those found at Attachment 1 to this document.

For manufacturers, the benefits of being an approved provider under the Scheme include:

- NSW Government and other Eligible Buyers, including Government agencies, State Owned Corporations and Non-Government Organisations can only purchase from an approved provider.
As an approved provider, NSW Government and Eligible Buyers can purchase the range of the manufacturers Motor Vehicles.
If a manufacturer is not an approved provider under the Scheme, NSW Government and other Eligible Buyers cannot purchase the manufacturers vehicles.
- simplifying Procurement processes, terms and conditions.

- 1.5** The NSW Government's objectives for its Motor Vehicle fleet are to:
- (a) Decrease the capital cost of Motor Vehicles
 - (b) Reduce the total Motor Vehicle life cycle cost
 - (c) Meet specified Motor Vehicle safety and emission standards.
- 1.6** To support these objectives the Government will aggregate Motor Vehicle purchase volume under an Aggregated Buy (AggBuy) process.
- Aggregating volumes increases the attractiveness and positions NSW Government as a core customer to Manufacturers as approved provider under the Scheme by:
- (a) increasing volume commitments to fewer suppliers;
 - (b) reducing and standardising the range of cars available;
 - (c) improving processes;
 - (d) encouraging suppliers to offer maximum discounts by committing volume where possible;
 - (e) improving ease and efficiency of doing business with NSW Government;
 - (f) maximising the period of forward commitment.
- The Aggregated Buy process includes a Request For Quote (RFQ) tender to Manufacturers as approved provider under the Scheme seeking additional upfront discount pricing. This may occur every 6, 9 or 12 months.
- It is not a mandatory requirement that Manufacturers as approved providers under the Scheme participate in the Aggregated Buy Request For Quote tender. It will not affect their place on the Scheme.
- 1.7** Motor Vehicle options and accessories and spare parts can be supplied under the Scheme.
- 1.8** All model variants available from manufacturers as approved providers under the Scheme are eligible to be assessed for inclusion on the Approved Vehicle List (AVL). The Aggregated Buy (AggBuy) vehicle list is a sub-set of the AVL.

2. Definition of terms

“ABN” means an Australian Business Number as provided in the GST Law.

“AggBuy” means a 6, 9 or 12 month Aggregated Buy process where Motor Vehicle purchase volumes are aggregated by Government.

“Applicant” means the entity that applies to join the Scheme.

“Approved Provider” means an Applicant that has been granted admission to the Scheme.

“AVL” means approved vehicle list.

“Customer” means an Eligible Customer that has placed an Order.

“Customer Contract” means the contract between the Eligible Customer and the Approved Provider or Nominated Vehicle Dealer for the supply of Motor Vehicles.

“Customer Contract Term” means, if applicable, in respect of a Customer Contract, the term of that Customer Contract.

“Electric Vehicles (EV)” means the broader electric vehicle category including Battery Electric Vehicle (BEV), Hybrid electric vehicle (HEV), Plug-in Hybrids (PHEV) and hydrogen fuel cell electric vehicles (FCEV).

“Eligible Customer” means:

- (a) a government agency as defined in the Public Works and Procurement Act 1912; and
- (b) a public body as defined by clause 6 of the Public Works and Procurement Regulation 2019; and
- (c) any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority and includes a Minister of the Commonwealth or the State and any person, body, entity or authority exercising a power under an Act of Parliament.
- (d) such other persons, entities or jurisdictions, which the Secretary, Treasury may from time to time in the Secretary’s discretion, specify.

A detailed definition can be found here: <https://buy.nsw.gov.au/buyer-guidance/before-you-buy/other-considerations/non-agency-buyers>

“Evaluation Team” means the team established to evaluate Responses to the RFP and subsequent annual refreshes.

“FCEV” means hydrogen fuel cell electric vehicles

“Fleet Management Providers” means a panel of Fleet Management Providers appointed by NSW under Contract C300.

“Framework” means the NSW Government Procurement Policy Framework. The Framework is located at: <https://buy.nsw.gov.au/buyer-guidance/before-you-buy/procurement-framework>

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Free Supplies” and “Input Taxed Supplies” have the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes A New Tax System (Goods & Services Tax) Act 1999 (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“Guaranteed Delivery Time” means the guaranteed time for the supply of the Motor Vehicle as agreed by the Customer and the Nominated Vehicle Dealer in respect of a particular Customer Order.

“ICE” means internal combustion engine.

“Late Response” means a Response received after the Closing Date and Time for Responses and includes a Response which is only partly received by the Closing Date and Time.

“Lessors” means a panel of Lessors appointed by NSW under Contract C333.

“Material Adverse Event” means where the Respondent or Approved Provider is subject to insolvency or an ICAC inquiry or legal proceedings.

“Motor Vehicle/s” or **“Motor Vehicle Model/s”** or **“Motor Vehicle Model Variant/s”** means:

- (a) Micro to Upper Large passenger sedans and/or wagons and/or hatchback
- (b) People Movers
- (c) Sport Utility Vehicles
- (d) Light Commercial Vehicles and
- (e) Heavy Commercial Vehicles under the Scheme.

“Nominated Vehicle Dealer” means the Motor Vehicle Dealer that has entered into an agreement with the Approved Providers to supply Motor Vehicles under this Scheme to Eligible Buyers on the Customer Contract terms and conditions.

“OEM” means original equipment manufacturer.

“NSW Procurement (NSWP)” means a business unit of the NSW Treasury representing the Secretary and authorised to arrange and administer contracts on behalf of the Secretary.

“Order” means a valid order issued to a Supplier or Nominated Vehicle Dealer in accordance with the Customer Contract and Part 3. Statement of Requirements.

“Review Committee” means the committee established to review decisions made by NSW, which are the subject of an appeal by a Respondent or an Approved Provider. The Review Committee is composed of independent NSW Public Sector Officer(s).

“Scheme” means the Pre-Qualification Scheme: Motor Vehicles administered by NSW.

“Scheme Termination Notice” means a notice published on the NSW Government eTendering website issued by NSW advising of the intent to terminate the Scheme.

“Secretary” means the Secretary, Treasury and includes the duly authorised delegates, including officers of the Treasury.

“Supplier” means an Approved Provider.

“ZEV” means zero emissions vehicle such as Battery electric vehicles (BEV) and hydrogen fuel cell electric vehicles (FCEV).

3. Selection Criteria

- 3.1** Applications to the Scheme will be assessed according to the following criteria:
- (a) Capability and capacity to perform under the Scheme Conditions;
 - (b) Compliance with NSW Government procurement policy and other relevant policies to the supply of the Goods/Services;
 - (c) Compliance with relevant legislation and standards;
 - (d) Financial capacity and stability;
 - (e) Compliance with the Scheme Conditions & Requirements;
 - (f) Total cost of ownership.
- 3.2** An Evaluation Team will assess all Responses received and recommend the membership of the Scheme.

4. Presentation to evaluation team

The Evaluation Team may invite the Respondent to give a presentation on their Response to the Evaluation Team.

5. Notification of assessment outcome

- 5.1** NSWSP on the recommendation of the Evaluation Team may accept a Response (with or without limitation) or reject the Response.
- 5.2** The NSWSP will notify all Respondents of the outcome of their Response in writing.

6. Confidentiality

- 6.1** Information submitted by an Applicant will be treated as confidential by NSWSP unless otherwise required by law.
- 6.2** Information submitted by an Applicant may be subject to presentations, enquiries, investigation, searches, and confirmation. Applicants are deemed to have authorised any such action.

7. Request for review of the decision

- 7.1** Should an Applicant believe that there are substantive grounds for NSWSP to reconsider their decision not to admit the Applicant to the Scheme, the Applicant may request a review of the decision in writing, providing full details of the reasons for the request to:
- Contact Officer, Pre-Qualification Scheme: Motor Vehicles
NSW Procurement
Level 35, 52 Martin Place
SYDNEY NSW 2000

- 7.2** NSWP will refer the matter to the Review Committee and notify the Applicant in writing of the outcome of the review.

8. Purchase process

- 8.1** A Customer may initiate the ordering process by either (a) sending a Request for Quotation (RFQ) to one or more Approved Providers or Nominated Vehicle Dealers or (b) by directly issuing an Order to a single Approved Provider or Nominated Vehicle Dealer or (c) placing an order via an approved Fleet Management Provider.
- 8.2** An important feature of the ordering process is the different approaches taken in respect of NSW Government agencies (via Fleet Management Providers) and other Eligible Buyers.
- 8.3** All NSW Government Agencies can purchase or lease vehicles from the Scheme.

NSW Government Agencies – Aggregated Buy (AggBuy)

In addition to the Scheme vehicles, Government will aggregate Motor Vehicle purchase volume under an Aggregated Buy (AggBuy) process.

NSWP aggregates the Motor Vehicle purchase requirements of Government agencies.

NSWP may release RFQs to Approved Providers on the Scheme and seek upfront discounts over either a 6, 9 or 12 month aggregated Motor Vehicle purchase time period.

It is not a mandatory requirement that Manufacturers as approved providers under the Scheme participate in the Aggregated Buy Request for Quote tender. It will not affect their place on the Scheme.

RFQ responses will be evaluated and a number of upfront discounts offered by successful respondents will be accepted. Fleet Management Providers will complete the purchase of Motor Vehicles on behalf of NSW Government agencies throughout the 6, 9 or 12-month period covered by the Aggregated Buy RFQ.

Other Eligible Buyers

Other Eligible Buyers, if purchasing a significant number of Motor Vehicles may also wish to run their own RFQ process similar to that run by NSWP for NSW Government Agencies.

9. Manufacturer's warranty

- 9.1** 5 Year Warranty: All Motor Vehicle Model Variants in all categories must have 5 Year Warranty available. If a 5 year warranty is not standard on a Motor Vehicle Model Variant, the Approved Provider is required to provide extended warranty which when combined with the standard warranty will amount to a 5 year warranty. Upon the sale of any Motor Vehicle purchased from the Scheme, the 5 year warranty (including extended warranty period) must be transferable to the new owner. For BEVs, the 5 year warranty is required only for the high voltage battery and the power train / drive unit.
- 9.2** The Approved Provider must, for each Model Variant sold to an Eligible Customer, provide the Manufacturer's warranty to the Eligible Customer. The Nominated Vehicle Dealer that supplies a Model Variant to an Eligible Customer must pass on the manufacturer's warranty to the Eligible Customer and the Nominated Vehicle Dealer must arrange for the repair or

replacement of the Motor Vehicle at the Nominated Vehicle Dealer's expense (alt. in accordance with the manufacturer's warranty).

10. NSW Government procurement policy framework

- 10.1** NSW Government Procurement Policy Framework outlines how the NSW Government will conduct its procurement activities when interacting with the private sector. The Framework establishes standards of behaviour expected from Customers and Approved Providers and is located at: <https://buy.nsw.gov.au/buyer-guidance/before-you-buy/procurement-framework>
- 10.2** The Approved Provider must comply with applicable NSW Government policies and guidelines including the NSW Government Aboriginal Procurement Policy located at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> and the NSW Small and Medium Enterprise and Regional Procurement Policy located at <https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy>.
- 10.3** Approved Providers must at all times comply, and must ensure its Nominated Vehicle Dealers comply, with the Framework and the requirements of the Scheme Conditions.
- 10.4** Any breach of the Framework may result in the removal from the Scheme.

11. Insurance

- 11.1** The Approved Provider must obtain, and must ensure its Nominated Vehicle Dealers obtain, on terms that are reasonably satisfactory to NSWSP and thereafter maintain the policies of insurance listed below during the term of the Scheme and during each Customer Contract Term.

Type of insurance	Minimum sum insured
Broadform Public and Products	<p>\$10 million for any single occurrence and unlimited in the aggregate as to the number of occurrences</p> <p>The total aggregate liability during any one period of insurance for all claims arising out of the Approved Provider's Products shall not exceed \$20 million</p>
Workers Compensation	As required by the laws of each relevant State and Territory

11.2 Evidence of insurance

On request by NSWSP, the Approved Provider must provide certificates of currency proving that the policies of insurance required under this Scheme have been affected and are current. A certificate of currency provided under this section must be issued by the insurance company providing insurance and must contain all details reasonably requested by NSWSP, including a summary of all risks covered and any exclusions.

11.3 Approved Provider notification

The Approved Provider must notify NSWSP within two (2) business days of any event which affects or may affect the Approved Provider's compliance with this clause, including any cancellation of a policy or reduction of limit of coverage.

12. Changes to Approved Provider status

Approved Providers must immediately inform NSWSP of any significant change to their status or the Nominated Vehicle Dealer's financial capacity, capability, ownership status, key personnel, contact details or address by writing with full details to:

Contact Officer, Pre-Qualification Scheme: Motor Vehicles
NSW Procurement
Level 35, 52 Martin Place
SYDNEY NSW 2000

13. Reporting requirements

13.1 Approved Providers are required to submit a report to NSWSP every quarter containing the details of all Motor Vehicle purchases by all Eligible Buyers during the reporting period.

13.2 A sample report template which details all required information to be provided to NSWSP is located in the excel pricing file template available on eTendering. As a minimum the following information is to be provided:

- (a) Customer/Agency name
- (b) Vehicle registration number
- (c) Make, model and variant
- (d) VIN (Vehicle Identification Number)
- (e) FCAI vehicle category (e.g. medium SUV)
- (f) Recommended Retail Price (AUD ex GST)
- (g) Purchase price (AUD ex GST)
- (h) Vehicle model code
- (i) Delivery date

14. Supplier information management

14.1 Organisational Information

Approved Providers must ensure that their information and their Nominated Vehicle Dealer information, including contact details and insurance certificates of currency remain current. Where details change, Approved Providers must immediately advise NSWSP.

14.2 Material Adverse Events

Where an Approved Provider or a Nominated Vehicle Dealer, becomes subject to a Material Adverse Event, it must immediately notify NSWSP by writing to:

Contact Officer, Pre-Qualification Scheme: Motor Vehicles
NSW Procurement
Level 35, 52 Martin Place
SYDNEY NSW 2000

15. Performance management

NSWP will manage the performance of Suppliers by:

- (a) monitoring supplier performance on financial capability, Goods and Services Procurement Policy Framework compliance, contract performance and project outputs and outcomes;
- (b) applying sanctions such as temporary suspension from the Scheme, where performance is deemed unsatisfactory;
- (c) revoking a Supplier's membership to the Scheme following due consideration of the circumstances, where performance is determined to be unsatisfactory; and
- (d) providing the opportunity for a Supplier to request a review of the decisions referred in paragraphs (b) and (c) above.

16. Temporary suspension from the Scheme

- 16.1** NSWSP may suspend a Supplier from the Scheme for up to 90 days if it considers the Supplier has:
- (a) not complied with the requirements of the Scheme; or
 - (b) demonstrated unsatisfactory performance.
- 16.2** Before a Supplier's membership on the Scheme is suspended, NSWSP will advise the Supplier via email of the matters prompting the proposed action and will give the Supplier the opportunity to provide reasons as to why its membership should not be suspended.
- 16.3** NSWSP will advise the Supplier of the reasons for the suspension and of any actions by the Supplier required to lift the suspension. A Supplier that has been suspended from the Scheme must inform NSWSP if and when the actions required to lift the suspension have been undertaken.
- 16.4** NSWSP will regularly review the status of Suppliers who have been suspended. If the action taken by the Supplier is considered by NSWSP to be insufficient, the suspension period may be extended and the Supplier will be notified accordingly. NSWSP may revoke the suspension if it is satisfied that the Supplier has taken appropriate action to address the reasons for the suspension.

17. Removal from the Scheme

17.1 NSWP may revoke a Supplier's membership on the Scheme if the Supplier has:

- (a) provided false or misleading information with their Response to the Scheme; or
- (b) breached any of the Scheme Conditions; or
- (c) failed to meet applicable financial requirements; or
- (d) been the subject of substantiated reports of unsatisfactory performance for other Customers; or
- (e) been determined by NSWP as not suitable for future work; or
- (f) provided unsatisfactory performance with contracts under the Scheme; or
- (g) experienced a Material Adverse Event; or
- (h) otherwise failed to meet the standards required of the Scheme in terms of its project outcomes, business management systems, client satisfaction and ethical business practices; or
- (i) engaged or engages in activities that contravene or circumvent the requirements of the NSW Government Scheme Guidelines for Customers when available; or
- (j) refused to supply Motor Vehicles to a Customer without reasonable grounds for such refusal; or
- (k) has not complied with relevant laws and policies including breaching the Framework.

17.2 Before a Supplier's membership on the Scheme is revoked, NSWP will advise the Supplier via email of the matters prompting the proposed action and will give the Supplier the opportunity to provide reasons as to why its membership should not be revoked.

18. Request for review of decision to suspend or revoke membership

18.1 Where a Supplier considers that there are substantive grounds for NSWP to reconsider its decisions for suspension or revocation, the Supplier may, within 20 days from the letter or email advising of the original decision, request a review of the decision in writing, providing full details of the reasons for the request for review to:

Contact Officer, Pre-Qualification Scheme: Motor Vehicles
NSW Procurement
Level 35, 52 Martin Place
SYDNEY NSW 2000

18.2 NSWP will refer the matter to the Review Committee and notify the Supplier in writing of the outcome of the review.

19. Disclaimer

19.1 NSWSP reserves the absolute discretion to:

- (a) accept a Respondent with or without limitations and/or conditions;
- (b) reject a response;
- (c) suspend or revoke an Approved Provider's membership to the Scheme;

19.2 In exercising its discretion, NSWSP or personally its officers and employees will not be held liable for any costs or damages incurred by a Respondent or an Approved Provider.

20. Termination

20.1 The Scheme can be terminated with 90 days' notice at the sole discretion of NSWSP by posting a Scheme Termination Notice on the NSW Government eTendering website.

20.2 The Supplier may, at any time discontinue its participation in the Scheme on 90 days' written notice to NSWSP.

20.3 The Supplier must continue to fulfil its contractual obligations under any Customer Contract entered into under the Scheme.

21. List of approved providers may be published

21.1 The list of prequalified Approved Providers and Nominated Vehicle Dealers will be published on NSWSP's website including the following information

- (a) Name of Approved Provider and Nominated Vehicle Dealers;
- (b) Address of Approved Provider and Nominated Vehicle Dealers;
- (c) Contact details of Approved Provider and Nominated Vehicle Dealers;
- (d) Motor Vehicles and pricing (NSWBuy only) of the Approved Provider.

This will be found at <https://buy.nsw.gov.au/schemes/motor-vehicles-scheme>

22. Government information (public access)

NSWP and Eligible Buyers may disclose certain information in connection with the Scheme in accordance with the Government Information (Public Access) Act (NSW) 2009.

23. Respondent's acknowledgement

In applying for membership to the Scheme, the Respondent agrees that it accepts the Scheme Conditions.

24. Prequalification no guarantee of orders

The Scheme establishes a List of prequalified Approved Providers. The Approved Provider's membership of the Scheme does not guarantee the receipt of any Orders under the Scheme or continuity of membership of the Scheme.

25. Review and development of Scheme

25.1 NSWP will monitor and regularly review the Scheme to determine whether the objectives and intent of the Scheme continue to be met.

25.2 Modifications to the Scheme may be made at NSWP's discretion during the life of the Scheme.

26. Amendments to the Scheme

26.1 The Scheme Conditions may be amended periodically by NSWP as required.

26.2 Approved Providers must ensure they comply with the most recent version of the Scheme Conditions which are available to view or download at <https://buy.nsw.gov.au/schemes/motor-vehicles-scheme>

26.3 Approved Providers will be notified via email of amendments to the Scheme Conditions.

26.4 Approved Providers may withdraw from the Scheme at any time in accordance with Clause 21.2.

26.5 Approved Providers must adhere to all scheme conditions including any amendments.

27. Buy.nsw

27.1 NSWP will publish confidential pricing information on buy.nsw for the use of Eligible Buyers

27.2 While NSWP will make reasonable endeavours at all times to make buy.nsw secure, NSWP does not guarantee:

- (a) the security of buy.nsw, the internet, and any other system, including the system used by NSWP to access or use buy.nsw;
- (b) that the delivery of business documents will be uninterrupted or secure;
- (c) that buy.nsw will be uninterrupted, timely, secure or error-free; and
- (d) that buy.nsw, the internet, and any other system, including the system used by the Supplier, will be free of viruses or errors.

27.3 The Supplier must immediately notify NSWP if it suspects, becomes aware, or has knowledge of any unauthorised use of buy.nsw by another person.

28. Motor vehicle categories

28.1 The Scheme comprises the following Motor Vehicle categories:

Category Number	Category Description
1	Passenger Car - Micro
2	Passenger Car – Light
3	Passenger Car – Small
4	Passenger Car – Medium
5	Passenger Car – Large
6	Passenger Car – Upper Large
7	Passenger SUV – Small
8	Passenger SUV – Medium
9	Passenger SUV – Large
10	Passenger SUV – Upper Large
11	Passenger – People Mover
12	Commercial – PU/CC 4x2 Under 4,500 kg GVM*
13	Commercial – PU/CC 4x4 Under 4,500 kg GVM*
14	Commercial – Van less than or equal to 2,500kg GVM
15	Commercial – Van over 2,501 GVM to 4,500kg GVM
16	Commercial – Bus 8 to 19 seater
17	Commercial – Bus 20 + seater
18	Commercial – Light Duty Truck => 4,501kg – 8,000kg GVM
19	Commercial – Medium Duty Truck => 8,001kg GVM & GCM < 39,001kg
20	Commercial – Truck Heavy Duty => 8,001kg GVM & GCM > 39,000kg

* Refer Clause 37.6 on Page 23 for more information

29. Zero Emission Vehicles

- 29.1** NSW Government is committed to reducing greenhouse gas emissions from transport by encouraging the transition to zero emissions vehicles (ZEV's). Battery electric vehicles (BEV) and hydrogen fuel cell electric vehicles (FCEV) are zero emission electric vehicles.
- 29.2** The NSW Electric Vehicle Strategy ("the "EV Strategy") supports the NSW Government's Net Zero Plan Stage 1: 2020-2030: the foundation for NSW's action on climate change and goal to reach net zero emissions by 2050.
- The NSW Net Zero Plan: 2020-2030 can be downloaded at <https://www.environment.nsw.gov.au/topics/climate-change/net-zero-plan/electric-vehicle-strategy>
- 29.3** The EV Strategy aims to accelerate ZEV introductions, encourage the growth of ZEV development and to stimulate major expansion of electric car models.
- 29.4** A key EV strategy targets 100% of the NSW Government passenger fleet procurement to be battery electric vehicle (BEV) or hydrogen fuel cell electric vehicles (FCEV) by 2030. An interim target of 50% is set by 2026.
- 29.5** Scheme conditions support the EV Strategy, vehicle manufacturers and NSW Government Agencies to move from ICE vehicles to ZEV's including either battery electric vehicles (BEV) or hydrogen fuel cell electric vehicles (FCEV).
- 29.6** Government is committed to assessing suitability of EV model introductions (BEV's, FCEV's) from manufacturers by applying the same rigorous safety standards as all other commercially available vehicles.
- 29.7** Government is supportive of EV pilot programs across the passenger, light commercial and heavy-duty commercial vehicle segments.
- 29.8** Government will explore the definition of a premium brand vehicle for considered admittance to the Scheme providing they meet scheme conditions.
- 29.9** The NSW Government will include ZEV procurement in its strategic discussions with manufacturers during all interactions. This will include, but not limited to, the following:
- (a) Information related to future ZEV model releases for Battery electric vehicle (BEV) and hydrogen fuel cell vehicle (FCEV) model introductions favouring models with longer driving ranges, extended warranty coverage periods, advances in battery management systems that contribute to extending driving range, improving safety, and extending battery life.
 - (b) General market intelligence regarding the future release of ZEV models and upgrades, charging infrastructure and the ability to support smart charging.
 - (c) Sharing information with manufacturers of the types/models of ZEV's that may be deemed suitable for government fleet needs.
 - (d) Gaining early access to new ZEVs for evaluation purposes.
- 29.10** The NSW Government will explore the benefits of annual /bi-annual aggregated volume

procurement and bulk forward ordering with other jurisdictions, councils and state and territory governments.

The intention is to support and encourage manufacturers to accelerate the importation of EV's through bulk purchasing agreements.

- 29.11** Preference will be given to select a ZEV (BEV and FCEV) by NSW Government agencies providing they are deemed fit for purpose.

30. Transmission

- 30.1** Automatic transmission is required for Motor Vehicles across the passenger Motor Vehicle categories including Sports Utility Vehicles (SUVs) and Light Commercial 4x2 Pick Up/Cab Chassis under 3.5 GVM.
- 30.2** The NSW Government will on occasion purchase manual transmission passenger, SUV and Light Commercial 4x2/4x4 Pick Up/Cab Chassis under 3.5 GVM on a case-by-case basis.

31. Standardisation

- 31.1** The NSW Government is standardising its fleet through reducing the number of Motor Vehicle Model Variants available per category to NSW Government Agencies.

32. Luxury car tax limit

Any passenger Motor Vehicle with a value, including GST, subject to the Luxury Car Tax will not be included on the Scheme. The NSW Government reserves the right to purchase Motor Vehicles exceeding the Luxury Car Tax limit on a case-by-case basis. Information can be found here: <https://www.ato.gov.au/Business/Luxury-car-tax/>

33. Total cost of ownership

Motor Vehicles will be included for supply under the Scheme only where they offer value for money based on Total Cost of Ownership (residual determination in the market, whole of life costs and general repair and maintenance performance).

34. Applications for new motor vehicle models and variants

At any time during the term of the Scheme, Approved Providers may submit applications for new Motor Vehicle Models and new Motor Vehicle Model Variants. All applications for the inclusion of new Motor Vehicle Models and new Motor Vehicle Model Variants will be evaluated for inclusion by NSWGP using the same evaluation methodology used to evaluate Motor Vehicle Models and Motor Vehicle Model Variants that established the original Scheme in 2013.

35. Removal of superseded motor vehicle models and variants

At any time during the term of the Scheme NSWGP may remove superseded Motor Vehicle Models and superseded Motor Vehicle Model Variants from the Scheme.

36. Motor vehicle model variant discounts off list price

The percentage discount offered off the List Price (Recommended Retail Price – Goods and Services Tax) for each Model Variant shall not decrease throughout the remaining term of the Scheme (up to 5 years) below the percentage discount offered originally. At any time during the term of the Scheme an Approved Provider may increase the percentage discount they offered for any Motor Vehicle Model Variant.

37. Safety

- 37.1** To attain selection on the Scheme all vehicles must have a 5-star Australasian New Car Assessment Program (ANCAP) safety rating subject to their availability in the category of vehicle and the vehicle's suitability for its intended use role.
- 37.2** Vehicle's ANCAP ratings are date-stamped with the applicable test year. ANCAP rating should have a date-stamp no more than three years old wherever practical.
- 37.3** Vehicles entering the NSW Government fleet should incorporate the following safety assist technologies subject to their availability in the category of vehicle and the vehicle's suitability for its intended use role:
- (a) Electronic stability control (ESC)
 - (b) Lane support systems (LSS)
 - (c) Autonomous emergency braking (AEB)
 - (d) Reverse Collision Avoidance Systems, such as cameras and/or monitors
 - (e) 3-point seat belts all seats
- 37.4** The NSW Government Category Management Working Group (CMWG) will monitor the changing safety assessment program and make recommendations as needed.

Table 1: Minimum Motor Vehicle ANCAP Requirements

Category Number	Category Description	ANCAP Rating	Transmission Requirement
1	Passenger Car – Micro	5* refer Note 1	Auto only
2	Passenger Car – Light	5* refer Note 1	Auto only
3	Passenger Car – Small	5* refer Note 1	Auto only
4	Passenger Car – Medium	5* refer Note 1	Auto only
5	Passenger Car – Large	5* refer Note 1	Auto only
6	Passenger Car – Upper Large	5* refer Note 1	Auto only
7	Passenger SUV – Small	5* refer Note 1	Auto only
8	Passenger SUV – Medium	5* refer Note 1	Auto only
9	Passenger SUV – Large	5* refer Note 1	Auto only
10	Passenger SUV – Upper Large	5* refer Note 1	Auto only
11	Passenger - People Mover	5* refer Note 1	Auto only
12	Commercial – PU/CC 4x2 Under 4,500kg GVM	5* refer Note 2	Auto only
13	Commercial – PU/CC 4x4 Under 4,500 kg GVM	5* refer Note 2	Auto Preferred
14	Commercial – Van less than or equal to 2,500kg GVM	5* refer Note 3	Auto Preferred
15	Commercial – Van 2,501kg to 4,500kg GVM	5* refer Note 3	Auto Preferred
16	Commercial – Bus less than 20 seats	Refer Note 4	Auto Preferred
17	Commercial – Bus 20 +	Refer Note 5	Auto Preferred
18	Commercial Vehicles (Trucks)	Refer Note 6	Auto or Manual

37.5 Note 1 to Table 1: For vehicle categories 1 to 13, in addition to having a 5-star ANCAP rating, vehicles are required to have the following safety features as standard items:

- (a) Lane support systems

- (b) Autonomous emergency braking
 - (c) Electronic stability control
 - (d) Reverse Collision Avoidance Systems, such as cameras and/or monitors.
 - (e) 3-point seat belts all seats
- 37.6** Note 2 to Table 1: For vehicle categories 12 and 13, safety features listed in Note 1 should be included for all vehicles under 4.5 Tonnes. 5 stars an ANCAP rating is required for vehicles under 3.5 Tonnes however for vehicles between 3.5 Tonnes and 4.5 Tonnes, ANCAP rating may apply whenever practicable.
- 37.7** Note 3 to Table 1: For vehicle categories 14 and 15 an ANCAP rating of 5 stars subject to their availability. The additional safety features listed in Note 1 above should be included whenever practicable, subject to their availability in the class of vehicle and the vehicle's suitability for its intended role.
- 37.8** Note 4 to Table 1: For vehicle category 16, the safety features listed below must be included:
- (a) Anti-lock Braking Systems
 - (b) Electronic Stability Control
 - (c) Lane Departure Warning Systems
 - (d) Reverse Collision Avoidance Systems, such as cameras and/or monitors
- 37.9** Note 5 to Table 1: For vehicle category 17, the safety features listed below should be included whenever practicable., subject to their availability:
- (e) Anti-lock Braking Systems
 - (f) Electronic Stability Control
 - (g) Lane Departure Warning Systems
 - (h) Reverse Collision Avoidance Systems, such as cameras and/or monitors
- 37.10** Note 6 to Table 1: For vehicle category 18, the safety features listed below should be included whenever practicable, subject to their availability:
- (a) Anti-lock Braking Systems
 - (b) Front Underrun Protection
 - (c) Side Underrun Protection
 - (d) Rear Underrun Protection
 - (e) Blind Spot Monitoring Systems

- (f) Electronic Stability Control
- (g) Lane Departure Warning Systems
- (h) Autonomous Emergency Braking
- (i) Reverse Collision Avoidance Systems, such as cameras and/or monitors.
- (j) Class V and VI mirrors (Optional requirement in ADR)
- (k) Conspicuity Markings (Optional requirement in ADR)

37.11 The NSW Government is supportive of manufacturers releasing new base-model technology advancements such as improved ZEV battery capacity with greater distance travelled and in-built integration of in-car telematics.

Manufacturers must allow government agencies and eligible buyers the ability to access the data generated by in-built in-car telematics.

Such technology advancements may become standard requirements for all vehicles.

38. Emissions

38.1 The NSW Government will follow the Australian Design Rules (ADR) mandate that a progressive tightening of emission limits for all light Motor Vehicles sold in Australia. The adoption of Euro 5 and Euro 6 emission standards in Australian Design Rules represents the continued convergence of emission standards for petrol and diesel Motor Vehicles.

38.2 The NSW Government therefore will only allow Motor Vehicles onto the Scheme that are under the maximum carbon dioxide (CO₂)/grams per kilometre rating per category that is in Table 2: Minimum Motor Vehicle Requirements. Also, in this table, the projected requirements for the next five years are listed. This approach is also in line with the NSW Government Resource Efficiency Policy.

Table 2: Maximum Motor Vehicle Emission Limits.

Category Description	CO ₂ (g/km)							
	2022		2023	2024	2025	2026	2027	2028
	Max limit (i)	NSWG Observed Average ⁱⁱ	Max limit (i)	Max limit (i)	Max limit (i)	Max limit (i)	Max limit (i)	Max limit (i)
Passenger Car – Micro	105	No purchases	101	97	93	89	85	82
Passenger Car – Light	140	119	137	134	131	128	125	123
Passenger Car – Small	146	96	140	134	128	123	117	112
Passenger Car – Medium	168	119	164	160	156	152	148	145
Passenger Car – Large	187	189	178	169	160	152	144	137
Passenger Car – Upper Large	217	201	211	206	200	195	190	185
Passenger SUV – Small	155	125	150	138	130	123	116	109
Passenger SUV – Medium	170	130	170	150	140	132	123	116
Passenger SUV – Large	206	181	201	187	178	170	162	154
Passenger SUV – Upper Large	243	No purchases	237	232	226	221	216	211
Passenger - People Mover	228	171	223	218	214	209	204	200
Light Commercial – PU/CC 4x2	203	212	200	179	168	158	148	139
Light Commercial – PU/CC 4x4	229	223	225	221	217	213	209	206

Table 2: Maximum motor vehicle emission limits

- (i) Maximum limit sets the highest CO₂ emission figure for any vehicle in each segment, to be eligible to enter the Prequalification Scheme
- (ii) Observed average of vehicles delivered in 2022.

38.3 The NSW Government reserves the right for any future development of air quality requirements for NSW Government, to utilise national Green Vehicle Guide methodology for assigning air pollution scores to Motor Vehicles, found here: <https://www.greenvehicleguide.gov.au/>. The Motor Vehicles on the Scheme will be reviewed on an annual basis and any developments in relation to air quality requirements, and consideration of pricing differentiation for Motor Vehicles using petrol and diesel fuel, will be considered for inclusion on the Scheme.

39. Additional mandatory requirements for all motor vehicle model variants

39.1 Australian Design Rules (ADRs): All motor vehicle model variants in all categories (including any modifications) must comply with current ADRs.

39.2 Registrable in NSW: All motor vehicle model variants in all categories must be registrable in the state of NSW.

40. Fuel to be supplied on delivery

40.1 The Approved Provider must supply or must ensure the Nominated Vehicle Dealer supplies to the Customer not less than ten (10) litres of fuel in the fuel tank (and 80% battery charge for electric vehicles) of each Motor Vehicle.

41. Registration and insurance

41.1 The Approved Provider must arrange or must ensure the Nominated Vehicle Dealer arranges for the registration of the motor vehicle where this is specified in the Order and use the nominated CTP insurer.

41.2 No costs shall be separately payable for the costs associated with registration of the Motor Vehicle.

42. Delivery and acceptance of motor vehicles

42.1 The Approved Provider must deliver or must ensure the Nominated Vehicle Dealer delivers the Motor Vehicle/s to the place/s and within the Guaranteed Delivery Time as detailed in the Customer Order.

42.2 Title in the Motor Vehicles shall pass to the Customer on satisfactory delivery of the Motor Vehicles in accordance with the Customer Order.

42.3 Delivery and receipt of the Motor Vehicle shall not be taken to be an acceptance of the Motor Vehicle by the Customer.

42.4 The Approved Provider must certify or must ensure the Nominated Vehicle Dealer certifies that the Motor Vehicle supplied is in accordance with that specified in the Customer Order including the provision of all accessories.

42.5 The Customer may reject Motor Vehicles which are not in accordance with the Customer Order.

42.6 Receipt of delivery, acceptance or payment shall not prejudice the right of the Customer to maintain an action for breach of condition or warranty should the Motor Vehicle prove to be of inferior quality or contrary to the requirements of the Customer Order.

43. Business use only

43.1 The following relates to the practice of reverse novations to individuals.

- 43.2** Whilst the Scheme arrangement is to provide discounts for business use Motor Vehicles for Government, there are occasions where Motor Vehicles will be purchased with some business private usage and Approved Providers are to allow the discount on these purchases. However, these Motor Vehicles are in the ownership/title of the Customer and if the officer who may have some private usage leaves the Customer, the Motor Vehicle remains in the Customer ownership/title. The use of novation or reverse novation where the government owned Motor Vehicle transfers in ownership/title to the employee at some time in the future by direct transfer is not supported by the NSW Government. Under no circumstances is the NSW Government pricing available for the purchase of any novated lease product.
- 43.3** AVL includes Passenger and Light Commercial vehicles only. Heavy Commercial vehicles will be listed on the Heavy Commercial Pricing List accessible to the Eligible Buyers. The Heavy Commercial Pricing List link is available and found at [Motor Vehicles Scheme - SCM0653 | NSW Supplier Price Guide | Unimarket](#).
- 43.4** For the avoidance of doubt, Heavy Commercial Vehicles refers to all vehicles over 4.5 tonnes of Gross Vehicle Mass defined by the National Heavy Vehicle Regulator (the “NHVR”).
- 43.5** AVL will generally only include base models. Second level variants and base plus safety pack variant will be included where required.
- 43.6** The AVL will not include any sports or performance vehicles. NSW Government applies the definition used by Roads and Maritime Services (RMS) for restriction of Provisional drivers from driving high performance vehicles. This means no vehicles with a power-to-mass ratio of greater than 130kW per tonne (based on tare mass) are available on the AVL.

Information can be found at

<https://roads-waterways.transport.nsw.gov.au/roads/licence/driver/p1/prohibited-vehicle-definitions.html>.

The Roads and Maritime Services (RMS) link to identify approved vehicles for Provisional P1 and P2 drivers can be found at

<https://roadsafety.transport.nsw.gov.au/stayingsafe/drivers/youngdrivers/vehicle-restrictions.html>

Schedule 1

List of nominated vehicle dealers owned by the approved provider

The Approved Provider is to insert the details of each owned Vehicle Dealer at Schedule 1. If there are insufficient rows in the following table to complete details of all such Dealers, include additional rows if required.

Trading Name:	Site Address:	Contact Person:	Phone:

Schedule 2

List of third party/independent nominated vehicle dealers that sell approved providers vehicles

The Approved Provider is to insert the details of Third Party/Independent Nominated Vehicle Dealers that sell the Approved Providers vehicles at Schedule 2. If there are insufficient rows in the following table to complete details of all such Dealers, include additional rows as required.

Company Name:	Trading Name:	Site Address:	Contact Person:	Phone:

Schedule 3

Details of the third party/independent nominated vehicle dealer that sell the approved providers vehicles and is signing the contract.

The Third Party/Independent Nominated Vehicle Dealer signing this contract is to insert its details at Schedule 3.

Trading name: (if any)	
Company name: (Legal name)	
ACN No.:	
ABN No.:	
Registered office address:	
Postal address: (if different from above)	
Site address: (if different from above)	
Contact person:	
Position in company:	
Telephone:	
Facsimile:	
Email address:	

Attachment 1: Customer contract Terms and Conditions

1. Customer contracts

1.1 Customer contracts

- 1.1.1** The Approved Provider and Nominated Vehicle Dealer agree that the supply of Vehicles will be made either directly by the Approved Provider or by the Nominated Vehicle Dealer. The Approved Provider and the Nominated Vehicle Dealer agree to these general terms and conditions pursuant to this Scheme.
 - 1.1.2** The Approved Provider or Nominated Vehicle Dealer must not supply the Vehicles unless the Customer issues an Order and enters into a Customer Contract. Such Customer Contracts may be made by:
 - (a) Requests to the Approved Provider directly or to the Nominated Vehicle Dealer; or
 - (b) Electronic issue in accordance with the Customer's ordering system.
 - 1.1.3** When any Eligible Customer places an Order for any model variant which is on the Scheme, the Scheme conditions apply and these motor vehicle acquisition general terms and conditions govern the purchase.
- 1.2 Approved provider or nominated vehicle dealer to fulfil all customer contracts**
- 1.2.1** The Approved Provider or the Nominated Vehicle Dealer will fulfil all Orders placed by Eligible Buyers during the Term in accordance with these general terms and conditions, if the Approved Provider or Nominated Vehicle Dealer has also signed and accepted the Order.
 - 1.2.2** A Customer may place a single Order for the Vehicles to be supplied in a single delivery, or a single Order to be supplied in multiple deliveries, i.e. 'blanket orders'.

2. Vehicles: List of vehicles and categories

The Approved Provider or Nominated Vehicle Dealer must supply the Vehicles included on the Approved Vehicle List (AVL).

3. Pricing

3.1 Price

- 3.1.1** The Approved Provider or Nominated Vehicle Dealer agrees to supply the Vehicles, at a price that does not exceed the maximum specified Price.
- 3.1.2** The Approved Provider and the Nominated Vehicle Dealer agree to supply any items which are not included in the Scheme Price for the vehicle, if these items are specified in the Order.

3.2 Bulk purchase discounts

If the volume to be purchased by Customers of any Category or Vehicle increases or is anticipated to increase, NSWP may negotiate a Price reduction or an increase in the Applicable Discount from the Approved Provider.

4. Delivery

4.1 Punctual Delivery

- 4.1.1** The Approved Provider or Nominated Vehicle Dealer will deliver the Vehicles within the specified delivery conditions and by the delivery times specified in the Order.
- 4.1.2** As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Approved Provider or the Nominated Vehicle Dealer must notify the Customer in writing of the circumstances which the Approved Provider or Nominated Vehicle Dealer considers will give rise to the delay, and the extent or likely extent of the delay.

4.2 Expenses of Delivery

The Approved Provider or the Nominated Vehicle Dealer must pay for freight, insurance, and other charges in connection with the delivery of Vehicles as specified in the Order, and for freight, insurance, and other charges in connection with the return of Vehicles wrongly supplied.

4.3 Delivery and Acceptance of vehicles

- 4.3.1** The Approved Provider or Nominated Vehicle Dealer must deliver the Vehicles to the place or places and within the guaranteed delivery time as detailed in the Order.
- 4.3.2** Title in the Vehicles shall pass to the Customer on satisfactory delivery of the Vehicles to the Customer.
- 4.3.3** Delivery and receipt of the Vehicles shall not be taken to be an acceptance of the Vehicles by the Customer.
- 4.3.4** On or before the day of delivery of a Vehicle the Customer will submit the Vehicle to such inspections and tests as the Customer thinks fit to ensure it conforms with the Order. The Customer shall not damage the Vehicle when carrying out any such inspection or test. If the Customer is satisfied with the checks it will issue a certificate of acceptance.
- 4.3.5** Receipt of delivery, acceptance or payment shall not prejudice the right of the Customer to maintain an action for breach of condition or warranty should the Vehicles prove to be of inferior quality or contrary to the requirements of the Order.
- 4.3.6** If the Approved Provider or Nominated Vehicle Dealer is unable to provide the Vehicles for any reason, the Customer may:
 - (a) purchase from another Approved Provider or Nominated Vehicle Dealer substitute Vehicles of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another Approved Provider substitute Vehicles of the kind and quality ordered, the Customer may purchase Vehicles of a superior kind and quality to the Vehicles under this Scheme.

- 4.3.7** The Approved Provider or the Nominated Vehicle Dealer must supply to the Customer not less than ten (10) litres of fuel in the fuel tank of each Vehicle, on delivery of the Vehicle.

4.4 Rejection of Vehicles

- 4.4.1** The Customer may reject Vehicles which are not in accordance with the Order.
- 4.4.2** Upon rejection of any Vehicles the Customer shall notify the Approved Provider or Nominated Vehicle Dealer and may direct that the rejected Vehicles be removed and replaced or rectified, at the risk and expense of the Approved Provider and/or Nominated Vehicle Dealer within such reasonable time as the Customer may direct.
- 4.4.3** If the Approved Provider or Nominated Vehicle Dealer fails to remove or rectify the rejected Vehicles within the time directed, the Customer may have the rejected Vehicles re-delivered at the risk and expense of the Approved Provider and Nominated Vehicle Dealer.
- 4.4.4** Where the Approved Provider or Nominated Vehicle Dealer fails to deliver the Vehicles within the guaranteed delivery time, or such other time agreed by the Customer, or where Vehicles are rejected and the Approved Provider or the Nominated Vehicle Dealer fail to replace the rejected Vehicles, the Customer may:
- (a) purchase from another Approved Provider or Nominated Vehicle Dealer substitute Vehicles of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another Approved Provider substitute Vehicles of the kind and quality ordered, the Customer may purchase Vehicles of a superior kind and quality to the Vehicles under this Scheme.

5. Payment

5.1 Payment of Contract Price

The Customer shall pay to the Approved Provider (or to the Nominated Vehicle Dealer if the Nominated Vehicle Dealer supplies the Vehicles under the Customer Contract), the Contract Price within the Payment Period.

5.2 Invoices and Time for Payment

- 5.2.1** All claims for payment made by the Approved Provider or Nominated Vehicle Dealer must be in the form of a Tax Invoice and must be substantiated by an itemised account. The Approved Provider or Nominated Vehicle Dealer must provide any further details in regard to the account that are reasonably requested by the Customer, including consolidated monthly invoicing on behalf of its branches/business units.
- 5.2.2** If the Customer disputes an invoice amount the Customer shall discuss this situation with the Approved Provider or Nominated Vehicle Dealer and where appropriate obtain a credit or an amended invoice.
- 5.2.3** The Approved Provider or Nominated Vehicle Dealer will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by any Customer of money becoming due for the supply of the Vehicles.

6. Warranties of approved provider and nominated dealer

6.1 Warranties for the Vehicles

6.1.1 In relation to the Vehicles, the Approved Provider and Nominated Vehicle Dealer, warrant that they will ensure:

- (a) at the time title to a Vehicle passes to the Customer, the Vehicle will be free from any charge or liability;
- (b) during the Warranty Period, each Vehicle:
 - (i) shall be new and shall conform with the Order
 - (ii) shall conform to the description, and sample (if any) approved by NSWSP or Customer (except that if a sample is inconsistent with the Order, the latter must prevail)
 - (iii) shall be free from defects; and
 - (iv) it will provide the associated services in accordance with the Customer Contract and with due care and skill.

6.1.2 The Approved Provider and Nominated Vehicle Dealer warrant:

- (a) that the Vehicles do not infringe the Intellectual Property rights of a third party
- (b) the Vehicles shall conform to any legally applicable Australian Design Rules
- (c) they have capacity to enter into a Customer Contract and perform the obligations imposed on them; and
- (d) they have not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede their performance of the Customer Contract.
- (e) the Vehicles are registrable in NSW.

6.2 Warranty Period

6.2.1 The Approved Provider and the Nominated Vehicle Dealer shall rectify any error or defect in a warranted Vehicle that has been notified to it by a Customer during the Warranty Period at the Approved Provider's and Nominated Vehicle Dealer's sole cost and expense.

6.2.2 If the Approved Provider or the Nominated Vehicle Dealer fail to rectify an error or defect in a Vehicle within a reasonable period after notification by the Customer, the Customer may arrange for performance of the necessary remedial work by a third party at the Approved Provider's and the Nominated Vehicle Dealer's expense.

6.3 Third Party Warranties

6.3.1 Where the Approved Provider or Nominated Vehicle Dealer supplies Vehicles that have been procured from third parties, the Approved Provider and Nominated Vehicle Dealer agree to assign to the Customer, to the extent permitted by law, the benefits of any warranties given by the third parties.

6.3.2 The parties agree that the assignment of any third-party warranties is in addition to the warranties offered by the Approved Provider and the Nominated Vehicle Dealer under this Customer Contract and does not relieve the Approved Provider or the Nominated Vehicle

Dealer from the obligation to comply with the Approved Provider's and Nominated Vehicle Dealer's own warranties.

7. Indemnity and liability

7.1 Indemnity

7.1.1 The Approved Provider indemnifies NSWP and the Customer, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with: (a) a default or any unlawful, malicious or negligent act or omission on the Approved Provider's part, its officers, employees, agents or subcontractors; or (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or moral rights, that are enforceable in Australia; subject to:

Liability being reduced to the extent that any unlawful, malicious or negligent act or omission of NSWP or Customer or their officers, employees or contractors contributed to the loss, damage, cost, compensation or expense;

NSWP and the Customer using reasonable efforts to mitigate any loss;

To the extent permitted by law, liability is capped at the greater of \$150,000 or two times the Contract Price, except where that liability arises from

- (a) bodily injury (including sickness and death)
- (b) loss of, or damage to, tangible property
- (c) infringement of a third party's intellectual property rights; or
- (d) breach of the Approved Provider's obligations of confidentiality

for which there is no financial cap on the Approved Provider's liability:

In calculating the cap on liability, any amounts payable as performance rebates, liquidated damages or refunds are included in determining whether the limitation on liability has been reached;

Neither party is liable to the other for any Consequential Loss (including under an indemnity).

7.1.2 The Nominated Vehicle Dealer indemnifies NSWP and the Customer, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with: (a) a default or any unlawful, malicious or negligent act or omission on the Nominated Vehicle Dealer's part, its officers, employees, agents or subcontractors; or (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged

infringement of that third party's Intellectual Property Rights or moral rights, that are enforceable in Australia; subject to:

- (a) Liability being reduced to the extent that any unlawful, malicious or negligent act or omission of NSWV or Customer or their officers, employees or contractors contributed to the loss, damage, cost, compensation or expense
- (b) NSWV and the Customer using reasonable efforts to mitigate any loss

To the extent permitted by law, liability is capped at the greater of \$150,000 or two times the Contract Price, except where that liability arises from

- (a) bodily injury (including sickness and death);
- (b) loss of, or damage to, tangible property;
- (c) infringement of a third party's intellectual property rights; or
- (d) breach of the Nominated Vehicle Dealer's obligations of confidentiality,

for which there is no financial cap on the Nominated Vehicle Dealer's liability:

In calculating the cap on liability, any amounts payable as performance rebates, liquidated damages or refunds are included in determining whether the limitation on liability has been reached;

Neither party is liable to the other for any Consequential Loss (including under an indemnity).

7.2 Minimum Insurance Requirements

7.2.1 The Approved Provider must hold and maintain, each of the following insurance:

- (a) Broadform Public and Products \$10 million for any single occurrence and unlimited in the aggregate as to the number of occurrences. The total aggregate liability during any one period of insurance for all claims arising out of the Approved Provider's Products shall not exceed \$20 million.
- (b) workers' compensation insurance in accordance with applicable legislation; and
- (c) such other insurances as are specified in the Order,

and must provide a certificate of currency or evidence of adequate self-insurance for each of the above insurances to the satisfaction of the Customer.

7.2.2 The Nominated Vehicle Dealers must hold and maintain, each of the following insurance:

- (a) Broadform Public and Products \$10 million for any single occurrence and unlimited in the aggregate as to the number of occurrences. The total aggregate liability during any one period of insurance for all claims arising out of the Approved Provider's Products shall not exceed \$20 million.
- (b) workers' compensation insurance in accordance with applicable legislation; and
- (c) such other insurances as are specified in the Order,

and must provide a certificate of currency or evidence of adequate self-insurance for each of the above insurances to the satisfaction of the Customer.

- 7.2.3** The Approved Provider and Nominated Vehicle Dealers must, as soon as practicable, inform the Customer in writing of the occurrence of an event that may give rise to a claim under a policy of insurance in connection with this Customer Contract and must ensure that the Customer is kept fully informed of subsequent action and developments concerning the claim.
- 7.2.4** Where the Approved Provider or Nominated Vehicle Dealer, is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Approved Provider or Nominated Vehicle Dealer.
- 7.2.5** The Approved Provider or the Nominated Vehicle Dealer must arrange for the registration of the vehicle where this is specified in the Order (without charging any additional fee for this service) and use the nominated CTP insurer.

8. Dispute resolution

- 8.1** For any dispute arising under the Customer Contract:
- (a) both contact persons as notified by the parties will try in good faith to settle the dispute by negotiation;
 - (b) if unresolved, the contact person claiming that there is a dispute will give the other contact person a notice setting out the details of the dispute;
 - (c) within five Business Days, each contact person will nominate a senior representative not having prior direct involvement in the dispute;
 - (d) the senior representatives will try in good faith to settle the dispute by negotiation; and
 - (e) failing settlement within a further 10 Business Days, either party may commence legal proceedings or some form of alternative dispute resolution.
- 8.2** The Customer and the Approved Provider or the Nominated Vehicle Dealer will each bear their own costs for dispute resolution. Despite the existence of a dispute, the Approved Provider or the Nominated Vehicle Dealer will (unless requested in writing by the Customer not to do so) continue performance under the Customer Contract.
- 8.3** The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

9. Termination

9.1 Termination of Customer Contract

- 9.1.1** Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Approved Provider (or the Nominated Vehicle Dealer) ("Notice of Termination"):

- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Approved Provider (or any Nominated Vehicle Dealer) including for corrupt conduct or for collusive pricing;
- (b) where the Approved Provider (or any Nominated Vehicle Dealer) commits a Substantial Breach that is not capable of remedy;
- (c) where the Approved Provider (or any Nominated Vehicle Dealer) commits a Substantial Breach in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
- (d) where the Approved Provider (or any Nominated Vehicle Dealer) assigns its rights and/or obligations, or subcontracts Customer Contract otherwise than in accordance with a Customer Contract; or
- (e) in the case of the Insolvency of the Approved Provider (or any Nominated Vehicle Dealer).

9.2 Effect of Termination of Customer Contract

9.2.1 In the event of termination as set out in the clause above, the Customer:

- (a) may procure from any other source a reasonably similar alternative to the Vehicles suitable to the Customer and the Approved Provider (or the Nominated Vehicle Dealer) shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) may, by notice in writing to the Approved Provider (or the Nominated Vehicle Dealer), require the Approved Provider (or the Nominated Vehicle Dealer) at its expense to remove the specified Vehicle not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
- (c) shall be liable under the Customer Contract to pay only for the Vehicles delivered and accepted by the Customer or performed to the reasonable satisfaction of the Customer, in accordance with the Customer Contract;
- (d) may recover from the Approved Provider (or the Nominated Vehicle Dealer) the amount of any loss or damage suffered by the Customer as a result of the termination;
- (e) may deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Approved Provider (or the Nominated Vehicle Dealer) and/or from the financial security (if any); and
- (f) may recover from the Approved Provider in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Approved Provider (or the Nominated Vehicle Dealer) to the Customer.

9.2.2 This clause will survive the termination of the Customer Contract.

- 9.2.3** Any termination by the Customer is without prejudice to any accrued rights or remedies of the parties under the Customer Contract.

9.3 Termination of Customer Contract by Customer for Convenience

- 9.3.1** The Customer may in its absolute discretion at any time terminate the Customer Contract, in whole or in part, by notifying the Approved Provider (or the Nominated Vehicle Dealer) in writing. If the Customer issues such a notice, the Approved Provider (or the Nominated Vehicle Dealer) must cease all work in accordance with the notice; comply with any reasonable directions given by the Customer; and mitigate all loss, costs (including the costs of compliance with any directions) and expenses in connection with the termination.
- 9.3.2** If the Customer terminates this Customer Contract for convenience, the Customer will be liable for payments to the Approved Provider (or the Nominated Vehicle Dealer) only for Vehicles accepted before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any unavoidable reasonable costs incurred by the Approved Provider (or the Nominated Vehicle Dealer) that are directly attributable to the termination, if these amounts are substantiated to the reasonable satisfaction of the Customer.

10. General

10.1 No Assignment or Novation

- 10.1.1** The Approved Provider and the Nominated Vehicle Dealer must not assign or novate a Customer Contract without first obtaining the prior written consent of the Customer, which consent may be withheld at their absolute discretion. NSWP agrees that a change in the list of Nominated Vehicle Dealers does not constitute a novation or assignment for the purposes of this clause.
- 10.1.2** The Approved Provider and the Nominated Vehicle Dealer acknowledge that NSWP and/or the Customer may make financial checks and due diligence checks on the entity proposing to take over this Customer Contract before determining whether or not to give consent to the assignment or novation.

10.2 Conflicts of Interest

- 10.2.1** The Approved Provider and the Nominated Vehicle Dealer, promise that, to the best of their knowledge, no conflict of interest of theirs, its employees or agents exists or is likely to arise in the performance of its obligations under the Scheme and under Customer Contracts.
- 10.2.2** The Approved Provider and the Nominated Vehicle Dealer must:
- (a) notify in writing, and consult with, NSWP and the Customer immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (b) comply with any reasonable direction given by NSWP and the Customer in relation to those circumstances designed to manage that conflict of interest.

- 10.2.3** For the purposes of this clause, a “conflict of interest” includes engaging in any activity, or obtaining any interest, likely to conflict with or to restrict, the Approved Provider or Nominated Vehicle Dealer in performing its obligations under the Customer Contract.

10.3 Records and Access to Records

The Approved Provider and Nominated Vehicle Dealer must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.

10.4 Notification Obligations

- 10.4.1** The Approved Provider and Nominated Vehicle Dealer must immediately notify in writing, NSWSP and any Customers under an existing Customer Contract, of any change in control or transfer of ownership including any action to reconstruct or amalgamate itself.
- 10.4.2** The Approved Provider and Nominated Vehicle Dealer must immediately notify in writing NSWSP and any Customers under an existing Customer Contract, of the Insolvency of the Approved Provider or any Nominated Vehicle Dealer and disclose the details of any:
- (a) Action taken in relation to the Insolvency in so far as it affects this Scheme and any Customer Contracts;
 - (b) Existing Customer Contracts entered into under this Scheme.
- 10.4.3** The Approved Provider and Nominated Vehicle Dealer warrant that all personnel engaged by it in the provision of the Vehicles are appropriately qualified and competent.

10.5 Compliance with Laws and Guidelines

- 10.5.1** The Approved Provider and the Nominated Vehicle Dealer in carrying out a Customer Contract must comply with all applicable laws and all applicable NSW Government codes, policies and guidelines.
- 10.5.2** The Approved Provider and the Nominated Vehicle Dealer must collect, use, access, retain and disclose personal information in connection with the Customer Contract in accordance with the requirements of the Privacy and Personal Information Protection Act 1998 (NSW).

10.6 Severability

If any part of the Customer Contract is void or voidable, then that part is severed from the Customer Contract but without affecting the continued operation of the remainder of the Customer Contract.

10.7 Notices

- 10.7.1** Notices must be sent to the other party at the address last notified to the other party in writing, or in the case of the Approved Provider or any Nominated Vehicle Dealer, at their registered office.
- 10.7.2** All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 10.7.3** If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

10.8 Applicable Law

The laws of New South Wales apply to the Customer Contract.

10.9 Variations

No agreement or understanding varying or extending the Customer Contract, is legally binding upon either party unless in writing (includes an exchange of emails confirming the agreed variation).

10.10 Confidentiality

- 10.10.1 The Approved Provider and Nominated Vehicle Dealer must not disclose to any person, other than the Customer, any Confidential Information relating to the Customer Contract, without the prior written approval of the Customer.
- 10.10.2 The Approved Provider and Nominated Vehicle Dealer must take all reasonable steps to ensure that all personnel supplying the Vehicles do not disclose to any person the Customer's Confidential Information or use the Confidential Information other than for the purposes of this Customer Contract.
- 10.10.3 This obligation will not be breached where the Approved Provider or Nominated Vehicle Dealer is required by law or a Stock Exchange to disclose the relevant information.
- 10.10.4 The Customer must not disclose any of the Approved Provider's or Nominated Vehicle Dealer's Confidential Information to any person without prior written approval, unless disclosure of this information is required by law or by Parliament.
- 10.10.5 The Customer is not bound to keep any information in connection with the Customer Contract confidential except for the Approved Provider's or Nominated Vehicle Dealer's Confidential Information.
- 10.10.6 This clause will survive the termination of the Customer Contract.

10.11 Government Information (Public Access)

NSWP and the Customer may disclose certain information in connection with the Scheme and this Customer Contract, in accordance with the Government Information (Public Access) Act (NSW) 2009.

10.12 Goods and Services Tax

- 10.12.1 In this clause:

“Consideration”, “Tax Invoice”, “Taxable Supply” and “Supply” have the same meaning as provided for in the GST Law.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes A New Tax System (Goods & Services Tax) Act 1999 (Cth).

- 10.12.2 The Approved Provider and Nominated Vehicle Dealers must hold an Australian Business Number (ABN) and be registered for GST.
- 10.12.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.

10.13 Inconsistency between Order and General Terms and Conditions

To the extent of any inconsistency between these general terms and conditions and the order, the general terms and conditions would prevail.

11. Definitions

“Applicable Discount” means an applicable discount in the Price, as varied from time to time in accordance with the Scheme, or any other applicable discount which may be offered by the Approved Provider from time to time.

“Approved Provider” means motor vehicle manufacturers and/or importers that have been granted admission to the Scheme and includes any dealerships owned by the motor vehicle manufacturers.

“Category” means generic categories comprising of multiple Vehicles inclusive of the associated services for its supply.

“Confidential Information” means information that is by its nature confidential; or is communicated by the disclosing party to the confidant as confidential; or the confidant knows or ought to know is confidential but excludes any information which the confidant can establish was in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person, independently developed by the confidant or in the possession of the confidant without breach of confidentiality by the confidant or other person.

“Consequential Loss” means any loss recoverable at law (other than loss arising in the usual course of things) which is consequential upon other loss; a loss of opportunity or goodwill; a loss of profits; a loss of anticipated savings or business; loss of value of any equipment, or any costs or expenses in connection with the foregoing.

“Contract Price” means the total amount inclusive of GST payable by the Customer to the Approved Provider or the Nominated Vehicle Dealer for Vehicles supplied under an Order pursuant to this Scheme.

“Customer” means the Eligible Customer that places the order directly with the Approved Provider or with a Nominated Vehicle Dealer for the supply of a Vehicle or Vehicles.

“Customer Contract” means the contract that is made between a Customer and an Approved Provider directly or between a Customer and a Nominated Vehicle Dealer, when the Customer places an order.

“Delivery Time” means the time for the supply of the Vehicles as set out in the Order.

“Eligible Customer” means:

- (a) a government agency as defined in the Public Works and Procurement Act 1912; and
- (b) a public body as defined by clause 6 of the Public Works and Procurement Regulation 2014; and
- (c) such other persons, entities or jurisdictions, which the Secretary, Treasury may from time to time in the Secretary’s discretion, specify.

“Insolvency of Approved Provider or Nominated Vehicle Dealer” means any of the following: insolvency; the Approved Provider or Nominated Vehicle Dealer indicates that it does not have the resources to perform any Customer Contract; an application for winding up is made and not stayed within 14 days; a winding up order is made; a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed; a mortgagee enters the possession of any property of the Approved Provider or of the Nominated Vehicle Dealer; notice is given of a meeting of creditors for the purposes of a deed of arrangement; or any actions of a similar effect are taken.

“Payment Period” means the period ending 30 days after the Customer receives a properly rendered tax invoice or such other period as specified in the Order.

“Price” means the Scheme price payable for a Vehicle as set out in the Scheme conditions or the price following a request for quotation process and, where relevant, means the price inclusive of any Applicable Discount.

“Nominated Vehicle Dealers” means the comprehensive list of Dealers or Distributors that the Approved Provider will use for the purposes of this Scheme as set out in Schedule 1 or Schedule 2.

“NSW Treasury (Treasury)” means the NSW Treasury.

“Order” means the order placed by the Customer for the supply of Vehicles from the Approved Provider directly or from the Nominated Vehicle Dealer and forms part of the Customer Contract. For NSW Fleet Management Providers’ orders, the order must be in the form of the attached documents Part A-G.

“Scheme” means the pre-qualification scheme for motor vehicle acquisition.

“Substantial Breach” means:

- (a) a substantial breach of a condition of this Scheme or a Customer Contract by the Approved Provider or the Nominated Vehicle Dealer and includes any breach in relation to pricing, punctual delivery without being granted an extension of time, confidentiality, minimum insurance requirements, minimal or nil sales returns, no assignment or novation; and conflicts of interests.

“Vehicle” means **“Motor Vehicle/s”** or **“Motor Vehicle Model/s”** or **“Motor Vehicle Model Variant/s”** as defined in the Scheme Conditions.

“Warranty Period” means, in relation to a particular Vehicle, the manufacturer’s warranty as set out in the price and attribute schedule in the Approved Provider’s response to the nominated RFP and/or otherwise submitted by the Approved Provider during the Scheme.

Further information and contacts

For further Information or clarification on issues raised in the discussion paper, please contact:

NSW Procurement - Fleet, NSW Treasury

Telephone: 1800 679 289.

Email: nswp_fleet@treasury.nsw.gov.au