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Applicability

These Special Conditions of Contract will, where applicable, take precedence over the General Conditions of Contract for Consultants AS4122-2010.

All reference to clause numbers in these Special Conditions refer to the General Conditions of Contract for Consultants AS4122-2010.

Clause numbers within the Special Conditions of Contract generally correspond numerically to those of the General Conditions of Contract for Consultants, however there are some exceptions. Where no Special Conditions of Contract clause is listed, the AS4122 General Conditions of Contract for Consultants remain unchanged. Where deletions, amendments and additions exist they will be labelled as such.

1. Definitions and Interpretation

Clause 1.1 add/amend:

Annexure will be synonymous with Contract Header.

Client means the Principal.

Consultant means the entity specified in the Contract Header, including any executor, administrator, successor, assignee, Sub consultant or Consultant employee.


Contract Term means the term of the Contract as specified in the Contract Header.

Council Contract Representative ‘CCR’ means the Clients representative: the person nominated by the Client to exercise the functions of the Client relating to the Contract, as specified in the Contract Header, or other person nominated from time to time by the Client.

Fee will be synonymous with Price.

Party means each of the Client (Principal) and the Consultant.

Separable Portion means a portion of the Services identified in the Invitation to Offer: Section 4: Specifications as a Separable Portion in accordance with Clause 5.5.

Clause 1 add:

1.6 Negation of Employment and Agency

The Consultant:

• must not represent itself or allow itself to be represented as being an employee or agent of the Client
• does not by virtue of this Contract be or become an employee or agent of the Client.

2. Consultant to Perform Services

Clause 2 add:

2.2 In performing the Services:

• unless otherwise provided, remain responsible for all things, including items not expressly mentioned in the Contract necessary for satisfactory completion of the Service
• proceed with the Services with due expedition and without delay
• ensure that materials or standards of workmanship as the case may be, are of a kind which is suitable for its purpose and is consistent with the nature and character of the Service.

4. **Standard of Care**

Add new clause:

Where the Contract requires design to be carried out which would require the designer to be registered under the *Queensland Professional Engineers Act*, the Consultant must ensure that the design of the Works is supervised at all relevant times by a designer who is:

• a Registered Professional Engineer of Queensland, and
• experienced in work similar to the work under the contract.

Where the Contract requires design to be carried out the Consultant must provide certification in a form acceptable to the Client in respect of the adequacy and suitability of the design of the specified parts of the Works.

5. **Scope**

Clause 5 add:

5.5 **Separable Portions**

Separable Portions may be directed by the Client, who will clearly identify each

• Separable Portion of the Services.
• Date or the period after commencement of the Contract, by which the Separable Portion must be completed.
• Respective amounts for security deposit, bonus, liquidated damages (if applicable) and delay damages (all calculated pro-rata according to the ratio of the Client's valuation of the Separable Portion to the Fee.
• Conditions of Contract will be applied individually to Separable Portions to the extent that the context allows.

7. **Information**

Clause 7 add:

7.2 **Right to information and disclosure**

The *Right to Information Act 2009 (Qld)* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.

The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

Information relating to the Contract is potentially subject to disclosure to third parties.

If disclosure under the RTI Act, and/or general disclosure of information provided by the Consultant in connection with the Contract, would be of concern to the Consultant, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Consultant at the time of disclosing the information to the Client. The Client cannot guarantee that any information provided by the Consultant will be protected from disclosure under the RTI Act.
Despite any other provision of the Contract, the Client is entitled to publish on the City of Gold Coast website: www.goldcoast.qld.gov.au/awarded-contracts or by any other means, the following details:

- name of the person or entity awarded the Contract
- value of the Contract
- a description of the Services
- Contract approval date.

9. Variations

Clause 9 add:

9.5 The Client may have any part of the Services omitted or reduced pursuant to this Clause 9 and carried out by another party.

10. Payment

Clause 10 add:

10.11 Price adjustment

Where stipulated in the Contract Header, the Price will be fixed for the initial Contract term after which, prices may be reviewed every 12 months unless otherwise stipulated in the Contract Header.

Any price adjustment will be subject to negotiation and agreement between the Parties.

Provide documentary evidence in support of any requested price adjustment considering:

- movements in the relevant published Australian Bureau of Statistics (ABS) Index (e.g. consumer price or producer price index), as it effects the Services, if specified in Response Form: Price Submission and/or Response Form: Other pricing issues
- other factors as it effects the Services, if specified in if specified in Response Form: Price Submission and/or Response Form: Other pricing issues
- any variation in any tax, duty or charge as it effects the Services.

Any price adjustment must be in the format prescribed by the Client.

10.12 PAYG Withholding

Whenever the Client reasonably considers itself bound by law to do so, the Client will be entitled to withhold from any payment otherwise due, amounts calculated and to be withheld in accordance with the law.

The Parties agree to exchange with each other such information as may be necessary to enable each Party to accurately assess its rights and obligations under this clause.

11. GST

Clause 11 add:

11.2 Tax Invoices (*Alternative 1 applies for all Contracts unless otherwise advised by the Client)

Alternative 1 - Supplier Created Tax Invoices:
Issue to the Client a tax invoice or adjustment note (as the case may require) within five business days after each of the following occurring in relation to that taxable supply:

- submitting a claim for payment that is not in the form of a valid tax invoice
- the Client certifying an amount for payment different to the amount claimed
- the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.

Alternative 2 – Recipient Created Tax Invoices:

- tax invoices and adjustment notes required must be issued by the Client (and not the Consultant)
- notify the Client immediately it becomes aware of an adjustment event occurring
- each Party acknowledges it was registered for GST when it entered into the Contract and agrees it will notify the other immediately it becomes aware of it ceasing to be registered for GST.

11.3 Recipient created tax invoice (RCTI)

This clause applies where the Consultant is registered for GST and Alternative 2 has been identified in the Contract Header.

- The Consultant and the Client agree that the Client may issue recipient created tax invoices (‘RCTIs’) in accordance with Section 29-70 of A New Tax System (Goods and Services Tax) Act 1999 (‘GST Act’) and in accordance with GST ruling 2000-10.
- The Client may issue tax invoices in respect of the services provided in accordance with the Contract by the Consultant to the Client. The Client will retain the original of any tax invoice issued in accordance with this clause and issue a copy to the Consultant.
- The Consultant may not issue tax invoices in respect of the supplies made by the Consultant to the Client and referred to in the preceding clause.
- If the Consultant ceases to be registered for the GST the Consultant will be deemed to be in fundamental breach of the Contract to which the Services relate unless, at the Clients sole discretion, the Client and the Consultant enter into alternative arrangements satisfactory to the Client for the issue of a tax invoice by the Consultant, or the Client withholds an amount in accordance with Section 12-190 of Schedule 1 of the Taxation Administration Act 1953.
- The Client must not issue a document that would otherwise be an RCTI, on or after the date when the Council or the Consultant has failed to comply with any of the requirements of the determination by the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- The Consultant will supply all such information as may be reasonably required by the Client to allow the Client to prepare RCTIs under this Contract.
- The Consultant will do all such things as may be necessary on its part from time to time, to enable the Client to issue RCTIs.

12. Time

Add Clause 12.4

The Contract Term may be extended at the full discretion of the Client for the period stipulated in the Contract Header, if applicable, by notice prior to the expiration of the initial Contract Term.
13. Law and Approvals

Clause 13 add:

13.4 Work Health and Safety Act 2011

For the purposes of this clause:

- ‘Act’ means the Work Health and Safety Act 2011, as amended from time to time.
- ‘Consultancy Service’ means the Service performed, or to be performed, by the Consultant as part of the Contract.
- ‘Regulation’ means the Work Health and Safety Regulation 2011, as amended from time to time.
- ‘Workplace’, ‘Inspector’, ‘Notifiable Incident’, ‘Principal Contractor’ and ‘Regulator’ have the same meaning as in the Act.

In relation to the services to be executed under this Contract, the Consultant must:

- comply with and discharge all obligations imposed on the Consultant by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking
- accept that it is the person having management and control of the workplace at which the services is being undertaken in relation to the services being undertaken.
- discharge the duties of a person who conducts a business or undertaking under the Regulation.

16. Adverse Event

Clause 16 add:

16.2 A Party affected by a matter which may adversely affect or has adversely affected the performance of the Services must act reasonably to mitigate the effects of such adverse event including mitigating any costs or expenses it incurs by reason of an adverse event.

17. Cooperation with Others

Clause 17 add:

17.2 The Consultant must when on the premises occupied by the Client and when using the Client’s facilities, comply with all directions, procedures and policies relating to occupational health, safety and security requirements which are in effect at those premises and facilities and have been notified to the Consultant without limiting the consultant’s responsibilities under the Work Health and Safety Act 2011.

17.3 The Client must:

- provide the Consultant with such access to premises or sites of the Client as are reasonably necessary for the Consultant to carry out the Services
- ensure that the Consultant, when on the Client’s premises or sites, and when using the Client’s facilities, has been notified of requirements relating to occupational health and safety, applicable codes of conduct and security which are in effect at those premises, sites and facilities
when on the Consultant’s premises, comply with all directions, procedures and policies relating to occupational health, safety and security requirements which are in effect at those premises and facilities and have been notified to the Client without limiting the Client’s responsibilities under the Work Health and Safety Act 2011.

18. Key Personnel

Clause 18 add:

18.2 The Client may require the Consultant to have removed from performing work on or in connection with the Services any person performing work on or in connection with the Services who, in the reasonable opinion of the Client, has acted contrary to law or a policy or procedure of the Client that the Consultant was required by the Contract to comply with. The Consultant must promptly remove any such person and arrange a replacement of that person with a person acceptable to the Client at no additional cost to Client.

21. Copyright and Other Intellectual Property Rights

Clause 21 amend:

21.4 by adding ‘subject to any rights of the Client at law including without limitation any right of set-off,’ after ‘stated in Item 20’.

Clause 21 add:

21.7 Where information owned by the Client is supplied:

- the ownership, copyright and intellectual property rights of such information is retained by the Client
- the Consultant agrees not to supply, use or on-sell this to any third party, either in part in total
- the information is to be used by the Consultant only during and for this contract and by any employee in an appropriate manner
- take all responsible steps to maintain and safeguard the confidentiality of the information
- the Client is unable to guarantee the accuracy or completeness of it for this or any other purpose
- this is supplied in good faith and without prejudice.

21.8 Title to, and Intellectual Property Rights in, all Contract Material will, upon its creation, vest in the Party specified in the Contract Header. If not stated in the Contract Header, title to, and Intellectual Property Rights in, New Contract Material vests in the Client. If the Contract Header specifies that this clause applies, or if this Clause applies, title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest in the Client, and:

- the Consultant must ensure that during the Contract term the New Contract Material and records are used, copied, supplied or reproduced only for the purposes of the contract
- after the expiration or sooner termination of the Contract, the Consultant must deliver to the Client, in a format specified by the Client, all New Contract Material and Records.
If the Contract Header specifies that this clause applies, title to, and Intellectual Property Rights in, New Contract Material will, upon its creation, vest in the Consultant and the Consultant grants, and will ensure that relevant third parties grant, to the Client a paid-up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the New Contract Material (and any future development of that New Contract Material), without additional cost to the Client to:

- use, exploit and otherwise exercise all Intellectual Property Rights, for any purpose of the Client
- use or exploit (whether commercially or otherwise) for any purpose, if specified in the Contract Header.

The Contract does not affect Intellectual Property Rights in Existing Contract Material but the Consultant grants, and will ensure that relevant third parties grant, to the Client a paid up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the Existing Contract Material but only as part of the Contract Material (and any future development of the Contract Material), without additional cost to the Client to:

- use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Client
- use or exploit (whether commercially or otherwise) for any purpose, if this Clause applies.

Intellectual Property Rights in Records will remain vested in the Client.

If the Consultant is an individual, the individual consents to any act or omission done by the Client in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the individual’s Moral Rights and without limiting this, the individual consents to:

- the Client determining in its entire discretion whether or not the individual will be attributed as author of the Contract Material comprised in a Deliverable and if the individual will be attributed, that attribution will occur in a manner acceptable to the Client
- any amendments, deletion, destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the entire discretion of the Client
- the publication or communication, in whole or in part of the Contract Material
- any other acts or omissions as specified in the Contract Header

If the Consultant engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Consultant must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:

- all consents, permissions and assignments necessary to enable the Client to exercise the Intellectual Property Rights granted under the Contract in full, without impediment or cost to the Client
- without limiting this Clause, a consent from the individual to any act or omission by the Client in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the person’s Moral Rights, including a consent to the acts or omissions specified in this Clause.
23. Confidentiality

Clause 23 add:

23.5 Upon the expiration or termination of this Contract, if requested by the Client, the Consultant must deliver to the Client all information treated as confidential in accordance with Clause 23.1, all Client Information and Deliverables except in that the Consultant may keep copies of the Deliverables such as it desires for its own records and for use in accordance with Clause 21 of these Conditions of Contract, and copies of the Client Information may be retained by the Consultant if required by law, provided that the Consultant must keep that information confidential until it is permanently destroyed.

23.6 If required by this Contract or otherwise requested in writing by the Client, the Consultant must execute, and procure from each of its employees, officers, agents and sub consultants/subcontractors engaged in the performance of the Services and having access to information treated as confidential in accordance with Clause 23.1, Client Information and Deliverables, a Conflict of Confidentiality Undertaking.

24. Suspension by the Client

Clause 24 add new sub-clause:

24.6 Act reasonably to mitigate any costs or expenses incurred by reason of the suspension.

26. Termination without Cause

Clause 26.2 amend:

26.2 by adding the following to the end of subclause 26.2(c): ‘except that if the Consultant is re-engaged by a consultant of the Client, no such costs and expenses incurred by the Consultant by reason of termination will be payable’.

Clause 26 add:

26.5 The Client may have the Services carried out by another party in the event this Contract is terminated pursuant to this Clause 26.

29. Limitation of Liability

Clause 29.2 amend by adding further subclauses:

- deliberate breaches of statute, contract (including this Contract) or duty
- and out of which the Consultant cannot contract
- and to the extent that the Consultant is or would have been entitled to be paid or indemnified for the liability by an insurer under any policy of insurance effected under Clause 30 if the Consultant had:
  - effected and maintained the insurance policy (where it was the Consultant's obligation under this Contract to do so)
  - promptly claimed, and diligently pursued such claim, under the insurance policy; and
  - complied with the terms and conditions of the insurance policy and the Consultant’s obligations under this Contract in respect of that insurance policy
  - there had been no excess under the insurance policy; and
  - the insurer had remained solvent and able to pay or indemnify the Consultant
- and to the extent that the Consultant is entitled to be paid or indemnified for the liability by an insurer under any policy of insurance in addition to the insurance required to be effected under Clause 30; or

- and to the extent that the Consultant is entitled to recover that liability from any other third party (including the Consultant’s sub consultants), or would have been entitled to be indemnified for that liability but for any act or omission of the Consultant.

36. Standard Form Nature of Contract

Delete Clause 36 and replace with

Apart from the completed Contract Header, this Contract is AS4122-2010 in its original format as amended by these Special Conditions of Contract unless deviations are mutually agreed in writing.

The Documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.

The Contract document comprises the following, in the order of precedence listed.

- The Contract Header (including agreed deviations).
- The Conditions of Contract and Special Conditions of Contract.
- The Specifications.
- The Offer (to the extent accepted under the Contract Header).
- Invitation to offer documents and any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Client (Principal) and Consultant.

37. Status of Registers of Pre-qualified Consultant

If this clause is shown as applicable in the Contract Header:

Add new clause:

37.1 Assessment and performance monitoring

The Client will assess usage of each Register as well as the performance of each Pre-qualified Consultant with particular regard to each Contract entered into with the Pre-qualified Consultant.

Should a Pre-qualified Consultant’s performance or situation become unacceptable, the Pre-qualified Consultant will be given opportunity by the Client to submit a plan to rectify the situation. If the implementation of this rectification plan fails to provide an acceptable result, the registration of the Pre-qualified Consultant may be cancelled.

37.2 No guarantee

In appointing a Consultant to this Contract, the Client does not guarantee, promise or undertake that:

- the Client will seek quotes from this Contract at any time during the term of the Contract
- any project specific contract will be entered into with the Consultant from this arrangement
- a minimum quantity of Services will be directed to the Consultant.
37.3 Cancellation

At any time during the term of the Contract, the Client may cancel the registration of a Pre-qualified Consultant immediately and without prior notice if:

- the Client is of the opinion that the implementation of the Pre-qualified Consultant’s Service in not in accordance with the rectification plan measures
- the Pre-qualified Consultant enters into any form of insolvency administration
- the Pre-qualified Consultant has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Client
- the Pre-qualified Consultant is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any Councillor or any officer, employee or agent of the Client.

Such termination will be effected by the Client by written notice terminating the registration of the Pre-qualified Consultant and specifying the date of the cancellation. Such cancellation will not entitle the Pre-qualified Consultant to any form of compensation whatsoever, including, but not limited to, loss of prospective profits or any other form of financial compensation.

37.4 Termination

At any time the Client may terminate the Contract if it is of the opinion that the Contract either no longer satisfies the its current or future business requirements or no longer provides value for money, in relation to the provision of some or all of the Services.

Such termination will be effected by giving each Pre-qualified Consultant a written notice terminating the Contract and specifying the date of termination. Such termination will not entitle any Consultant to any form of compensation whatsoever, including, but not limited to, loss of prospective profits or any other form of financial compensation.

37.5 Effect of termination

Any termination of the prequalification of the Consultant will not effect:

- any Contract that has not been terminated; nor
- any right or entitlement which either party is entitled to claim under the provisions of the Contract conditions.