Special Conditions of Contract

Council of the City of Gold Coast

Special Conditions of Contract
AS2124-1992

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Applicability

These Special Conditions of Contract will, where applicable, take precedence over the General Conditions of Contract AS2124-1992.

All reference to clause numbers in these Special Conditions refer to the General Conditions of Contract AS2124-1992.

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

1. Construction of Contract

Clause 1 add:

Nothing in this contract shall be read so as to provide any reduction, transfer or change in the liability of the Contractor or the Contractor's employees or subcontractors that would contract out of any liability that would otherwise apply at law.

Should any part of the Contract Documents fail in Law the validity of remaining sections shall not be affected.

Contract Conditions shall be applied individually to Separable Portions to the extent that the context allows.

Document Presentation shall not affect the reading of the Contract Documents

2. Interpretation

Clause 2 is to be supplemented by the following:

Annexure will be synonymous with Contract Header

Construction Contract classification means a contract that involves taxable supply of site construction and/or maintenance works for an infrastructure asset for the Principal under AS2124 – 1992 and these Special Conditions of Contract modifying those conditions and offers limited Insurance cover to the extent of cover indicated in the Principal's Contract Works Policy. (Refer to the relevant section for details).

Non-Construction Contract classification means a contract that is not classified as a Construction Contract and provides plant, equipment, goods or services associated with the operation and maintenance (as specified) for the Principal's Infrastructure Assets under AS2124-1992 and these Special Conditions of Contract. Where the Principal's Contract Works policy does not offer any cover and the Contractor must provide the nominated insurance. (Refer to the relevant section for details).

Contract Documents means those documents included in the List of Contract Documents (together with any documents that are referred to in the Documents forming part of the Contract). Documents apply to the extent that the context reasonably indicates.

Deemed Inclusions in respect to Documents means those documents that are stated as part of the Contract and have not necessarily been physically supplied to the Contractor and as such are the responsibility of the Contractor to source for reference in executing the works.
Document Presentation means the grouping of Contract Documents under headings such that the reading of the Contract Documents are unaltered by the Document Presentation. The presentation groups Agreement Documents (i.e. contract documents generated for the period from calling of Offers to signing of the Formal Instrument of Agreement, Contract Conditions and the Contract Specification Documents for clarity of presentation.)

Contract Specification meaning includes a combination of Project Specification and Standard Specification comprised of the contract documents specifying the Contract Works and / or Project Requirements nominated for the Contract including any physical attachment(s), references, deemed inclusions in any form (eg. document, drawing, photograph or data presentation).

Project Specification meaning includes the Contract Documents nominated and / or so marked as the primary reference for the SPECIFICATIONS of the Contract requirement. The Project Specification shall specifically include the Principal’s Project Requirements as part of the Works of the contract.

Standard Specification meaning includes the Contract Documents nominated, referenced and / or so marked directly or within identified SPECIFICATIONS components and including Manufacturers and supplier’s relevant documents, as the supplementary part of the Contract Specification that is not specific to this Contract and is referenced by the Project Specification requirements directly or can otherwise be reasonably read as applicable. The Standards apply to the extent that their general intention can be applied to supplement the Project Specification as opposed to following specific detail and, where necessary shall be applied to the extent directed by the Superintendent. It also includes details for Works contained within these Special Conditions of Contract.

Principal’s Contract Works and Liability Insurance (‘the Policy’) means the Insurance Policy currently held by the Principal and deemed to be part of the Contract only for Contracts involving Construction and / or maintenance Works as defined by the terms of that Policy and offering limited cover under the terms of this Contract.

Principal’s Project Requirements meaning includes a written summary or outline of the Principal’s requirements for the Works specified and may constitute a preliminary or supplementary aspect of the nominated Contract Works in order to fully define subsequent stages of the Works. The Principal’s Project Requirements may include the stated purpose intended for the Works, Principal’s preliminary design or design elements, timing and cost objectives for the Works or other relevant information and if necessary for the undertaking of the requirements and not evident then details are to be referenced from the Superintendent during the Contract period in a timely manner.

Works or Work meaning includes any preliminary or supplementary aspects nominated in the Specification including Principal’s Project Requirements, specified goods, materials, plant, equipment and services, in reference to requirements indicated in the Contract Documents, including the taxable supply of anything required by the Scope of Works (as defined) in accordance with the terms and conditions of the contract and as indicated by a full reading of all documents forming the contract together with any subsequent works directed by the Superintendent under the terms of the Contract such that the Works meet the Standards of Works (as defined) in accordance with the terms and conditions of the contract. It may include but is not limited to such items as fees, charges, reports, drawings, documents, goods, materials, plant and / or equipment, services of any kind including management, supervision, design, demolition, construction, maintenance or any combination as necessary to address the Works indicated in the Contract Documents.

Standard of Works means, obligations and duties of the Contractor, all suppliers, subcontractors, consultants agents and contractor’s staff contributing to the undertaking of the Works indicated in the Specification and to the extent the context allows. This includes the following work compliance, quality, resources and supplies standards:
In general that required:

- In any standard specification forming part of the Contract.
- By relevant Australian Standards (AS) or if no AS then International Standards (ISO) and all with options nominated by the Superintendent where necessary.
- Or recommended by the product manufacturer for the application and with options selected by the superintendent where necessary.
- By any relevant Method Statement Schedule.
- By any relative legislation.
- By any Authorisation, Permit, Approval, Environmental Management Plan or Local Law applicable, together with the reasonable requirements of the owner / occupier of the site if relevant and as determined by the Superintendent where necessary.
- By the Principal's Policy and Procedures for work on its Public Utility Plant (PUP) or others PUP.

Quality must be that:

- Normally achieved by an experienced and competent Contractor in the Industry the work relates to.
- Normally achieved by an experienced and competent tradesman in the trade the work relates to.
- Required by ISO 9002 where specified or accepted in the Contract Documents.
- Required by ISO 9001 externally certified for any design component of the works.

Staff Resources must be:

- Qualified, experienced and competent professional and technical staff.
- Qualified, experienced and competent supervisory staff.
- Qualified, experienced and competent trades persons.
- Qualified, experienced and competent operators (licensed where required).
- Experienced and competent administrative staff.
- Experienced and competent workers.
- Inexperienced staff only under full time on site supervision by others competent to train and supervise the staff.
- Competency certified staff in accordance with any policy restrictions in place for specific Principal PUP or other PUP.

Plant and Equipment must be:

- Serviceable and fit for purpose plant and equipment.
- Legally tested and inspected plant and equipment.
- Registered plant where on public property.
- Legally serviced and maintained plant and equipment.
- Tested and certified equipment where required.
- Plant and equipment covered by minimum $10M Public Liability insurance.

General Supplies must be:

- Owned by the Contractor at the time of incorporation into the works and must not be subject to recovery by others when claimed for payment.
- New and conform to the requirements of the Contract Specification unless specifically agreed otherwise by means of a Contract Variation issued in accordance with the Contract Documents.
- Tested, stored and protected from deterioration prior to incorporation into the works in accordance with the manufacturers standards.
- Undamaged when incorporated into the works and when handed over to the Principal.
• Fit for purpose if Contractor nominated or selected materials.

Standards of Service must be consistent with:

• Those detailed in the 'Water and Wastewater Customer Service Charter and Standards' publication available from the Principal's website. In particular reference is made to address the Target Response Time for service requests in relation to issues involving the contract works. (All Directions in regard to this must come through the Contract Superintendent or Superintendent’s Representative).

Scope of Works

The scope of works for the Contracts is the Works as described in a full reading of the Contract Documents and includes the following general requirements only to the extent that the context allows:

• Works as generally described in the Title of the Contract and the Invitation to Tender.
• Works items identified for payment purposes.
• Works nominated specifically in the Specification Scope.
• Works subsequently issued by Direction of the Superintendent in accordance with the terms of the Contract.
• Comply with all legislative requirements.
• Comply with all administrative requirements.
• Undertake all safety obligations and duties nominated including, as applicable, to those of a Person Conducting a Business or Undertaking (PCBU), Principal Contractor for Contracts involving Construction Sites, and as an Independent Contractor responsible for management and control of the workplace for contracts involving works in a Workplace.
• Be advised of the presence of asbestos or asbestos related products in the Principal’s sites and works and take into account any involved in the contract works including any identified by reference to the Principal’s asbestos register by contacting the Principal’s Customer Service Centre, and then by putting in place an appropriate asbestos management procedure involving prior notice to the Principal of any disturbance to asbestos.
• Confirm all safety obligations and duties of care have been met prior to commencing work and throughout the contract period.
• Meet all required standards.
• Undertake responsibilities.
• Pay and submit securities, fees, deposits.
• Insure and Indemnify.
• Investigate and inform yourself fully.
• Identify risks and hazards.
• Survey and research the Area, Site and Ground Conditions.
• Plan for material, resources, quality compliance, environmental and safety aspects.
• Program the works for timely completion.
• Manage and supervise the works and rectify non compliances.
• Accept appointment as Principal Contractor under Work Health and Safety (WHS) legislation on construction / maintenance works contracts or where this is not applicable accept responsibility for supervision of compliance with all safety requirements, obligations and duties as a PCBU and an Independent Contractor in management and control of the workplace involved in the contract unless directed otherwise by the Superintendent in writing.
• Obtain Permits and Authorisations required to the extent allowed by the law applicable.
• Clarify Requirements with the Superintendent as required.
• Plan for Manufacturer and Ordering.
• Obtain approval to proceed following submission of any preliminary design, design, construction and / or manufacturing drawings necessary.
• Pay all Fees to demolish, remove and dispose of works to be removed.
• Record and supply the ‘as-constructed’ details of the Works in the format required by the Superintendent in writing.
• Train Operation and Maintenance Staff including supply of design overview details where relevant.
• Locate the works in accordance with the description in the Title and the Site Plan.
• Undertake the works to the details, extent and lines indicated in the Contract Drawings.
• Examine the site for environmental aspects and plan works accordingly.
• Obtain the owners approval and conditions to interfere with any PUP.
• Examine the site for any interference with PUP or other physical interference involved in the works or other proposed works identified on the Contract Documents.
• Physically locate line and level of any apparent conflict of existing works or PUP with the Contract Works in accordance with the authorisation and any precautions nominated by the owners.
• Report in writing to the Superintendent any Conflict not identified in the Contract Specification and allow a nominal float of two weeks in the programming of the works following this phase of the works prior to commencement of any interference with existing works to allow revised ‘For Construction’ documents to be issued. Provide for cost of this two weeks float in the Contract Amount.
• Advise the Superintendent in advance of any interference with PUP.
• Immediately report to the owner any PUP damage.
• Examine the site for any interference with existing works.
• Obtain the owners approval and any conditions to interfere with any existing works.
• Advise the Superintendent in advance of any interference with existing works.
• Immediately report to the Superintendent any existing works damage.
• Arrange necessary access, services and facilities for the works and their construction.
• Fence and protect the site from interference.
• Provide reasonable access, amenity and operation of the site.
• Provide alternative access, amenity and closedown of operation of the site.
• Allow for and protect other works on the site.
• Allow for and accommodate any concurrent site works and control interference.
• Obtain, store and protect materials and works.
• Survey, set out and control tolerances.
• Clear, strip, de-water, shore and secure excavations.
• Warn, sign and detour traffic and public from the worksite.
• Construct and / or undertake the Works.
• Test the Works and remove and rectify compliance failures.
• Establish the Works.
• Protect, the Works and personnel.
• Commission the Works; Hand over the Works.
• Maintain the Works throughout the Defects Liability period.
• Service the Works throughout any Maintenance Period nominated.
• Ensure the establishment of any Landscaping, planting or restoration including watering and maintenance for a minimum of three months following Practical Completion.
Maintenance of the Works means maintaining the standard and value of the works of the Contract including the following aspects and conditions:

- The Maintenance of the Works is deemed to be valued at a minimum of five per cent of the Contract Sum for this Contract. (The Progress Payment(s) are to be adjusted accordingly for the value of this item of supply if not specifically identified in the schedule at the five per cent value or higher, at the discretion of the Superintendent during the term of the Contract).
- Itemised Payment of Maintenance of the Works applies only where the Project Specification or Payment Schedule includes an item for Maintenance and there is no Security Deposit required for the full period of the Contract.
- Maintenance of the works is deemed to be supplied at Final Acceptance of the works.
- The Maintenance of the works includes maintaining the works in good order and condition in accordance with the Manufacturers recommendations and any Maintenance Manual specified for the Works and includes repair of any defects developing in the works during the contract period.
- The Maintenance of the Works is only complete when all works of the Contract are complete including supply of any outstanding As Constructed information, Operation and Maintenance Manuals and Guarantees, Design Quality certifications by the Design Engineers.
- Establishment and maintenance of any landscaping, planting or restoration works for the nominated period or if none is nominated for the full period of the contract.
- A Security Deposit to the value of five per cent of the Contract Amount is acceptable for the security of the Maintenance of the Works to be prepaid.

Management of the Works for contracts involving Construction includes the management of the works by the Contractor in accordance with a specific Construction and Environmental Management Plan for the Works prepared by the Contractor.

Construction and Environmental Management Plan means a plan in accordance with the aims and objectives of ISO 14001 in minimising the impact of the works on the environment such that the Plan complies with all relevant legislation and successfully address at least the following aspects of the Works:

- Plan and maintain a program for the works for the Superintendent.
- Manage the Requirements of Principal Contractor where appointed as such otherwise manage and supervise safety requirements of the Workplace as an Independent Contractor in possession of the site.
- Maintain access and minimise disruption to residents and owners.
- Locate and avoid PUP conflict with Works and obtain owners permission and conditions for interference with PUP.
- Backfill trenches each day and remove spoil from site.
- Control soil erosion and prevent sediment in run off.
- Manage Acid Sulfate Soil as necessary and as advised (including a minimum requirement meeting the Principal’s policy).
- Identify and manage any asbestos product involved in the works by contacting the Superintendent and implementing a plan in compliance with applicable legislation.
- Contain and treat any contamination of run off.
- Minimise disruption to flora and avoid spread of any noxious weeds and disruption to fauna habitat.
- Restore habitat following works.
- Identify fauna species and arrange relocation.
- Manage collect and dispose of legally, all waste from the works.
- Manage air quality emissions from all equipment within legal limits.
- Manage noise level emissions from all equipment and works within legal limits and times.
- Manage materials handling and store dangerous goods off site and handle safely on site.
• Manage social impact by consulting with and informing affected residents / owners of works.
• Consult with traditional landowners and preserve cultural heritage sites and items if applicable.
• Undertake site induction training for safety and environmental aspects of the works.
• Manage full compliance with construction requirements.
• Maintain an incident register for non-compliance reporting and provide a copy to the Superintendent following any significant incidents during the Works.

The plan must be managed on site by an experienced and competent Project Manager to the satisfaction of the Superintendent. The Management of the Works must demonstrate ongoing compliance with requirements of the Contract. Failure to do so requires prompt revision of the plan and / or replacement of staff responsible for the non-compliance to rectify the situation.

**Date of Delivery** for a Non-Construction contract shall be synonymous with Date of Practical Completion unless indicated otherwise in the Annexure.

**Time** will be synonymous with **Date**.

**Supply** in respect to any materials, goods, equipment or services to be provided by the Contractor as the Work, or part of the Work, is deemed not to be supply for the purpose of the Contract unless the works supplied are conforming to requirements under the Contract to the satisfaction of the Superintendent and are in accordance with any other applicable conditions required for inclusion in a Progress Certificate for payment purposes.

**Principal's Materials and / or Equipment** shall refer to any materials or equipment, the property of the Principal, required to be used for or incorporated into the Works by the Contractor that are in the custody of the Contractor. As such they are deemed subject to a requirement to be covered by a Security Deposit provided by the Contractor to the value of any Materials or Equipment not permanently incorporated into the Works.

**Principal Nominated Materials, Plant or Equipment** shall refer to such items of supply forming part of the Works and conforming with that nominated in the Contract Documents.

**Contractor Nominated Material, Plant or Equipment** shall refer to any such items of supply forming part of the Works where the type or brand or model is nominated and supplied by the Contractor for the Works either at time of tender of during the contract period.

**Week** shall mean seven calendar days.

Clause 2 add the following additional **new costing / specification** terms.

**Full Cost** means, directly related cost associated with all work for Contractor nominated Material, Plant or Equipment necessary in the opinion of the Superintendent to maintain the full functionality specified in association with other works had the Contractor nomination not been included in the Works.

The Superintendent must include in this term all work necessary for the satisfactory completion and performance of the Works that are necessary and evident to an experienced and competent Contractor in enabling the incorporation of Contractor Nominated Materials, Plant or Equipment into the Works.

Where the Contractor has been given reasonable notice to undertake the Works indicated as necessary by the Superintendent and fails to undertake the work then the Principal shall be reimbursed to the value determined by the Superintendent where the Contractor has failed to fully provide the works necessary. This may be by deductions from moneys owing, security or otherwise at the Principal's option.

**Detail** work under the Contract shall mean work clarified to a greater extent than aspects of work not so referenced elsewhere in the Contract Specification, and if the applicable detail is unclear to the contractor or does not match the interpretation of the Superintendent then the applicable detail is as directed by the Superintendent.
Optional Detail shall mean where the Contract Documents refers to (or reasonably infers) more than one alternative or detail requirement for the same part of the work that is evident to an experienced and competent Contractor and those details, when read in context, cannot reasonably supplement each other. The Optional Detail included in the Contract Amount awarded is deemed to be that assessed by the Contractor at time of tender as the most expensive option. Optional Details require a request for a Direction from the Superintendent as to the selection of the actual requirements to be delivered. (Note that Optional Details are not a Discrepancy under AS2124 Clause 8.1 of the General conditions of contract).

Approved or Permitted shall mean approved or permitted by the Superintendent in writing, subject to the requirements of the Contract.

Submitted shall mean submitted to the Superintendent for review, subject to the requirements of the Contract.

Inspected, directed, required, reviewed or the like shall mean that function is to be by the Superintendent where the context reasonably infers involvement by an administrative authority, subject to the requirements of the Contract.

Engineer, Architect, Coordinator, Supervisor, Manager or other similar administrative authority referenced in respect to the administration of the Contract shall be synonymous with the contract Superintendent appointed by the Principal, subject to the requirements of the context.

3. Nature of Contract

3.1 Performance and Payment

Clause 3.1 add:

a) Items indicated as Provisional in the Contract may have quantities which vary from nil to substantial amounts irrespective of the quantity indicated in the item and payment shall be made only for the quantity ordered by the Superintendent at the rate accepted, if ordered to be supplied under the Provisional Item.

b) The previous clause does not preclude the provision of all or some of the supply under a variation provision of the contract at the Principal's sole option.

3.2 Quantities

Clause 3.2 delete reference to ‘Bill of Quantities’

3.3 Adjustment for Actual Quantities – Schedule of Rates

Clause 3.3 (b) add:

Limits of accuracy applying to quantities for which the Principal accepted a rate or rates are nil to double the quantity nominated in a schedule of rates contract and any reasonable quantity where ‘rate only’ is nominated.

Clause 3.3 add:

If a Schedule of Rates omits an item which should have been anticipated by a prudent, experienced and competent contractor at the time which the Contractor submitted its tender, to be necessary for the satisfactory completion and performance of the Works, the Contractor shall be deemed to have allowed for that item within other items of the Schedule of Rates. The Superintendent may, in its discretion, nominate an item in the Schedule of Rates in which the item shall be deemed to have been allowed.
4. Bill of Quantities/Warranties

Delete Clauses 4.1, 4.2, 4.3 and 4.4

Add new Clause 4.1 Work Warranties

4.1 Work Warranties

The Contractor shall ensure that all warranty entitlements required for the components of the Works by the Contract or available as a result of the Works include the Principal and Contractor as named beneficiaries. The form of warranties shall be to the approval of the Superintendent and shall be submitted prior to the granting of Final Completion. Failure to comply with this requirement shall render the Contractor deemed responsible for provision of equivalent warranties to meet any loss to the Principal, as a result.

Add new Clause 4.2 Schedule of Quantities and Prices

4.2 Purpose for the Schedule of Quantities and Prices

A Bill of Quantities shall not form part of the Contract where the Principal accepts a Lump Sum and is hereby replaced with a Schedule of Quantities and Prices.

Where the Principal accepts a Lump Sum amount or Lump Sum with rates and / or Principal nominated provisional items / amounts for the Works then the Contractor agrees that:

a) it was supplied with a ‘schedule of quantities and prices’ in draft form at tender time.

b) it adjusted and completed that schedule where appropriate to accurately reflect the value and extent of work involved in the contract.

c) it accepts responsibility for allowing for all of the work included in the schedule of quantities and prices that make up the lump sum.

d) it is responsible for the degree of accuracy of all items, quantities and rates included in a schedule of quantities and prices.

Where the context permits, any reference to the contract ‘Bill of Quantities’ elsewhere throughout the Contract Documents shall be read as reference to the ‘Schedule of Quantities and Prices’ qualified in its interpretation if appropriate to take into account the Contractor’s full responsibility for the quantities and prices contained therein to the extent that the context allows.

4.3 Pricing and Lodgement

Where there is a Schedule of Quantities and Prices:

a) all items included in the Schedule of Quantities and Prices shall be priced and extended by the Contractor and the prices as extended, shall on addition, equal the sum accepted by the Principal for the execution of the whole of the work to which the Schedule of Quantities and Prices relates.

b) the Contractor shall lodge the Schedule of Quantities and Prices so priced and extended with the submission of the Tender for the Contract.
4.4 Errors in Quantities or Pricing

The Contractor may, prior to Practical Completion, request in writing that the Superintendent correct a specific error in a quantity or in pricing of an item in the Schedule of Quantities and Prices. The Superintendent must be satisfied that the error exists, is significant in relation to the value of the Lump Sum and would result in a fair outcome in the administration of the Contract if addressed otherwise no change is to be made. The Superintendent may adjust the quantities and / or values of the item(s) of the schedule at the Superintendent’s sole discretion however the Lump Sum value of the Contract is to remain unaltered by accommodating the adjustment into other scheduled items or a new adjustment item, other than any provisional or rate only items or amounts in the schedule. The Superintendent must respond within a reasonable time and the Contractor must provide any substantiation asked for by the Superintendent in relation to the request.

This request may relate to any errors in rates, quantities, extension or addition, or both, or correction of incorrect or inconsistent quantities, rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) in the Schedule of Quantities and Prices but shall exclude requests in relation to any change in the value of any Provisional Items or amounts and / or any rate only items.

Where the Superintendent agrees to value an item in accordance with this clause the value (but not any adjustment to the Lump Sum value of the contract) is to be determined as though it were a variation in accordance with Clause 40.5 of the General Conditions and the valuation shall be based on the Superintendent’s understanding of the works reasonably likely to have been allowed for in that item.

The Superintendent shall rely on the specification and methods of measurement evidenced by the contract where considered relevant by the Superintendent to the implementation of this clause.

Nothing in this clause shall prevent the deletion or addition of works by a Variation in accordance with the terms of the contract or for the fair valuation of a variation based on items of the Schedule of Quantities and Prices as determined by the Superintendent.

5. Security Retention Moneys and Performance Undertakings

5.2 Provision of Security

Clause 5.2 add:

All Security nominated for the Contract must comply with the Form of Security indicated in the Special Conditions of Contract.

Unless nominated otherwise in the Annexure the following initial Security is required to be provided by the Contractor:

a) For Non-Construction Contracts:

b) Nil dollars unless stated otherwise in the Annexure.

c) For Construction or Design and Construction Contracts under $200,000.

d) Nil dollars unless stated otherwise in the Annexure.

e) For Construction or Design and Construction Contracts $200,000 and over:

f) Five per cent of the Contract Sum (including any Provisional Amounts) unless stated otherwise in the Annexure.
Where the works under the Contract are allocated pursuant to a Procurement arrangement such as Panel of Providers and Register of Pre-qualified Suppliers or similar contractual arrangement where the value of work is not defined then the amount of any Security required shall not be calculated on the nominal Contract Sum but rather to the value of individual allocations of work issued calculated on the stipulated basis above, unless stated otherwise in the Annexure.

At the Principal's sole discretion, and where a nominated Security Deposit under AS2124 Clause 5.2 has not been paid by the due date, then the Contractor agrees and Warrants that payments due to the contractor under the Contract up to the value of the unpaid Security may be applied on behalf of the Contractor to the Principal for the purpose of Security.

5.3 Form of Security

Clause 5.3 delete and replace with the following clause:

Where the Contractor is to provide security, the security shall be in the form of either:

a) cash

b) an unconditional undertaking in the form approved by the Principal given by a financial institution approved by the Principal; or

c) some other form approved by the Principal.

The Contractor shall provide the security in two amounts of 2.5% of the Contract Sum, each amount being in a form in which security is permitted to be provided.

If the Contractor is required to provide any other security under the contract, the security must be in a form and otherwise meet the requirements of the initial Security as indicated above.

Other security arrangements offered by the Contractor as a consequence of concurrent contracts where the overall risks to the Principal may be diminished by the circumstances may, at the Principal's sole discretion be considered and if not acceptable the nominated security for the contract will prevail. Where such arrangements represent a reduction in cost to the Contractor the Principal may require the Superintendent to value any such proposal as a variation under the Contract if implemented and adjust the value of the Contract accordingly.

5.4 Time for Lodgement/Provision of Security

Clause 5.4 delete and replace with:

The Contractor shall provide the security required by this clause to the Principal before the first to occur of 14 days of the date of this Contract or seven days prior to the date that the Contractor is given possession of the Site under Clause 27.1 of AS2124. The Contractor shall not be entitled to make a claim for payment until the security to be provided by it has been lodged in accordance with the Contract.

5.7 Reduction of Security and Retention Moneys

Clause 5.7 replace:

In the last paragraph, replace ‘14 days’ with ‘28 days’

5.8 Release of Security

Clause 5.8 replace:

In the first paragraph replace ‘14 days’ with ‘28 days’

5.9 Holding on and Interest on Security Retention Moneys

Clause 5.9 add:

Alternative 2 applies. (The Principal owns the interest)
6. Evidence of Contract

6.2 Formal Instrument of Agreement

Clause 6.2:

Add at the start of the clause:

The Principal may at its sole discretion:

a) rely on the agreement evidenced by the Acceptance of Offer letter and documents forming the Contract as listed with the letter or as otherwise evident as applicable

b) require a meeting at the office of the Principal for the mutual execution of the Agreement

c) may pre-sign the Agreement Document and require the return of its copy of the executed Agreement.

The Principal may nominate the timing of any of the above arrangements and the Contractor shall comply within 14 days.

Replace the first paragraph of the clause with the following:

At any time prior to the issue of the Final Certificate, if the conditions of offer required a Formal Instrument of Agreement, the Principal may prepare in duplicate a Formal Instrument of Agreement and forward it to the Contractor with a request that it be executed in the manner directed in writing by the Principal.

8. Contract Documents

8.1 Discrepancies

Clause 8.1 add to the start of the clause:

The following are not discrepancies or ambiguities which are required to be valued under AS2124 Clause 40.5 for the purposes of interpretation of the Conditions of Contract:

 Detail work (as defined) required by the Superintendent and prevailing over less detailed references in the Contract Specification.

 Optional Detail (as defined) required by the Superintendent and selected for inclusion in the works as opposed to other optional details evident in the Contract Specification.

 Full Cost (as defined) of works deemed necessary by the Superintendent to implement conforming functionality evident in the Contract Specification for any Contractor Nominated Equipment (as defined).

When construing the documents which form the Contract the following rules of construction apply:

a) in the event of any inconsistency between the documents which form the Contract, the documents comprising the Contract shall be construed in the following order of precedence:

- the Contract Header (including agreed deviations)
- the General Conditions of Contract as modified by these Special Conditions of Contract (modifying standard conditions)
- the Project Specification (including Project Drawings) supplemented by the Standard Specification
- other documents forming part of the Contract.
b) Not withstanding the previous paragraph (a):
   • where inconsistent levels of quality are required, the higher level of quality shall apply
   • figured dimensions shall take precedence over scaled dimensions and
   • drawings made to larger scale shall take precedence over drawings made to smaller scale.

c) where the requirements of quality or any aspect of the work under the Contract is not expressly
   specified or depicted, the quality shall be consistent with the intended purpose of the Works and

d) drawings showing particular parts of the work under the Contract shall take precedence over
   drawings for more general purposes

e) detail references in the Specification shall take priority over less detailed or conflicting references.

The contract document shall comprise the following:

a) The Contract Header (including agreed deviations).

b) Acceptance of Offer.

c) The Conditions of Contract and Special Conditions of Contract.

d) The Specifications.

e) The Offer (to the extent accepted under the Contract Header).

f) Any other Document, in whole or in part, forming part of the Contract, as agreed in writing between
   the Principal and Contractor.

8.3 Supply of Documents by the Principal

Clause 8.3 add:

Contract Documents in part or full may be made available as data for the convenience of the Contractor,
Principal or Superintendent at the sole discretion of the Principal and if issued shall not form part of the
Contract unless the data representation reproduced in any form is unaltered in content from the original
master held by the Principal.

8.4 Supply of Documents by the Contractor

Clause 8.4 add:

Further to the above where the Superintendent is required to respond as to the suitability of documents
submitted for use in the contract the Superintendent may alternatively respond by offering no objection to
the Contractor proceeding subject to the requirements of the Contract and the Contractor shall retain full
responsibility for the compliance of the works with the specification or any varied specification issued by
the Superintendent.

The Contractor may be required by the Principal to provide some documents or data in a specified
common format and / or hard copy for the efficient administration of the Contract and the cost of meeting
this requirement for the following is deemed to be included in the Contract Sum to the extent that the
context allows:

a) Design and Documentation.

b) Design Overviews.

c) Quality System Documentation.

d) Progress Claims.

e) Drawings and documents to be submitted to the Superintendent.

f) As Constructed drawings and Documents.
g) Owners and Operators manuals.

File data is to be provided in a version and format acceptable to the Principal. The Contractor shall provide files saved in previous formats or nominated formats available from the current software when nominated by the Superintendent. Datum required is as advised or confirmed by the district Principal’s Survey Office via the Contract Superintendent.

The Contractor must check all data files supplied under the Contract for viruses with a current commercial, industry standard virus checker prior to submission.

11. Provisional Sums

Clause 11 (a) delete and replace with:

a) Contractor, the work or item shall be valued, at the Principal’s discretion either:
   • under Clause 40.5; or
   • using reasonable rates or prices as determined by the Superintendent.

12. Latent Conditions

12.1 Definition

Clause 12.1 (a) replace the word:

‘materially’ with ‘materially and substantially’

12.2 Notification

Clause 12.2 (a) replace as follows:

a) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially from the physical conditions which a prudent, experienced and competent contractor should have anticipated at the time the Contractor submitted its tender.

12.3 Extension of Time and Cost

Clause 12.3 replace the first word:

‘Delay’ with ‘Delay which an experienced and competent Contractor could not reasonably have anticipated at the time of tendering,’

replace the words ‘the Contractor could not have reasonably anticipated at the time of tendering’ with the following:

‘a prudent, experienced and competent Contractor could not have anticipated at the time the Contractor submitted its tender,’

12.4 Time Bar

Clause 12.4

Replace the words ’28 days’ with ‘seven days.’
13. Patents Copyright and other Intellectual Property Rights

13.1 Intellectual Property

Title to and ownership of Intellectual Property Rights (including copyright) in all Contract material shall
upon its creation vest in the Principal.

The Contractor shall retain the Intellectual Property Rights in any original ideas, equipment, processes or
systems created outside the terms of the Contract and used in carrying out the service. The Contractor
shall grant to the Principal an irrevocable license to use such Intellectual property rights for any purpose
for which the service is provided.

To the extent that Intellectual Property Rights in or relating to the Contract material are not capable of
being vested in the Principal because the Contractor does not own that Intellectual Property Right, the
Contractor shall ensure that the Principal is irrevocably licensed to use that Intellectual Property Right.

The Principal grants to the Contractor a paid up, non-exclusive, irrevocable license to use the Intellectual
Property Rights in Contract material vested in the Principal pursuant to this clause.

Prior to the Contractor, including any servant or agent of the Contractor, commencing any work on or in
connection with the provision of the service, the Contractor must use its best endeavours to obtain from
all such persons a consent to infringement of Moral Rights in a form approved by the Principal in respect
of Moral Rights that may be possessed under the Copyright Act 1968.

In this clause 'Moral Rights' has the meaning as conferred by the Copyright Act 1968 (Commonwealth).

This clause survives the termination or expiration of the contract.

13.2 Disclosure of Information, Records and Contract Material

The Contractor must not use Records for any purpose other than in the performance of the service and
must not allow unauthorised persons to have access to the Records while in the Contractor’s possession
or control during or after the completion of the service.

Without limiting the Principal's rights or obligations in connection with disclosure of information, the
Principal may publish on the Gold Coast City Council Marketplace website or by any other means,
information including:

a) The name and address of the Principal and the Contractor.
b) A description of the services to be provided pursuant to the Contract.
c) The date of award of the contract (including the relevant stages of the Contract, if any)
d) The Contract value (including the value for each stage, if any, and advice as to whether any non-
price criteria were used when evaluating the Contractor’s offer).
e) The procurement method used to engage the Contractor.

14. Statutory Requirements

Clause 14 add:

Consider and implement these and any relevant Acts and regulations.

- Environmental Protection Act 1994.
- Environmental Protection and Biodiversity Conservation Act 1999.
• Codes of Practice.

Prior to tender acceptance, the Principal will, in respect of the lawful requirements of public and other authorities applicable to the Works, have given the notices, paid the fees, and obtained the approvals for all development applications.

At the time of tender acceptance, and as applicable, the Principal will lodge a ‘Building and Construction Industry Notification and Payment Form’ with the Building and Construction Industry Authority (in respect of portable long service leave / work health and safety) and will pay the fees.

15. Protection of People and Property

Clause 15 add:

15.1 Safety Reporting Obligations to the Principal

The Contractor shall provide the following Safety Reporting data progressively to the Principal relative to the Contract at the following stages:

Quarterly throughout the Contract period and at Practical Completion and Final Completion. The Contractor agrees that it is a pre-condition to the Contractor being able to provide a final payment claim or to the Principal becoming obliged to return any security or retention money, that the Contractor shall supply the data. The data is to be reported with progressive totals relative to the reporting dates and in the format required by the Principal.

15.2 Significant Injury Frequency Rate (SIFR)

The purpose of the reporting obligation to the Principal is to record the number of work related injuries suffered by employees per million hours worked by the Principal’s employees and contractors. The SIFR is calculated by the Principal and includes the data from Contractors for each Contract.

The data required in the Contractors report is:

• Total hours worked on the Contract by the Contractor and any Subcontractors engaged.
• Lost Time Injuries (LTI’s) i.e. A work related injury that resulted in a loss of one full shift or more and also resulted in an approved Workers’ Compensation Claim. (A maximum of 220 days applies to any individual’s claim for reporting purposes).
• Medical Treated Injury (MTI’s) i.e. A work related injury that does not result in the loss of a full shift and complies with the following definition of medical treatment and also results in an approved Workers’ Compensation Claim.

A type of Injury resulting in any of the following:

• Restricted work supported by a Workers’ Compensation Certificate.
• Issue of a prescription only medicine.
• Cut or laceration requiring stitching.
• Physician’s removal of foreign bodies or dead skin from a wound or eyes.
• Treatment of fractures and use of casts, splints or other professional immobilisation.
• Any burn exceeding superficial partial thickness.
• Treatment of bruising by drainage.
• Referral by a medical practitioner for a course of treatment (eg. physiotherapy, acupuncture, chiropractor or massage).
• Any dentistry treatment.
• Hospitalisation for observation only.

Also on a quarterly basis (or upon request by the Principal) provide evidence of compliance with relevant WHS legislation or contractual commitments through WHS compliance audit reports prepared by an external accredited WHS auditor acceptable to the Principal.
The Principal also reserves the right at its sole discretion to undertake itself or through its agent or representative a WHS audit at any time, with the Contractor to reasonably cooperate with and facilitate this activity.

17. **Damages to Persons and Property other than the Works**

Delete Clause 17.2

18. **Insurance of the Works**

Clause 18 add:

*Alternative 1*

*Alternative 1* applies to Contracts where any of the work under the Contract for which the Contractor is responsible under AS2124 Clause 16.1 is not covered by the Principal's Contract Works Insurance Policy. For a copy of the Principal's Contract Works Insurance Policy please refer to the 'Supplier information' section of the Principals internet website located at [www.goldcoast.qld.gov.au](http://www.goldcoast.qld.gov.au).

*Alternative 1* also applies where the Principal's Contract Works Insurance Policy terms exclude part or all of the cover required under the terms of the Contract.

*Alternative 2*

*Alternative 2* applies to Contracts where all of the work under the Contract for which the Contractor is responsible under AS2124 Clause 16.1 is covered by the Principal's Contract Works Insurance Policy.

The Contractor warrants that, on the date the Contract was created, it obtained from the Principal sufficient details in respect of the Principal's Contract Works Insurance Policy to determine whether *Alternative 1* or *Alternative 2* applies. For a copy of the Principal's Contract Works Insurance Policy please refer to the 'Council Suppliers' section of the Principals internet website located at [www.goldcoast.qld.gov.au](http://www.goldcoast.qld.gov.au). Any Insurance or Liability that is the responsibility of the Contractor under the Terms of the Contract must allow for the reimbursement of the value of any GST applicable to a claim.

The Principal reserves the right to alter the cover or terms and conditions provided in the Contract Works Policy from time to time. The Contractor agrees that the Principal's Contract Works Insurance Policy that was applying (if any) at the date the Contract was created shall be the Policy to be used by the Contractor to determine whether *Alternative 1* or *Alternative 2* applies.

The Contractor agrees that all moneys payable in settlement of claims for damage to the works shall be paid to the Principal who shall pay to the Contractor such amounts as become due for repair or reinstatement of the works, unless the Principal authorises direct payment.

The insured under the Policy must immediately follow the Claim Notification and other relevant procedures in the event of any incident that may result in a claim on the Policy. Failure to do so may limit any rights under the policy. The Contractor shall ensure that it follow the relevant procedures.

Clause 18 replace the words under heading *Alternative 2*

‘included in the documents on which the Contractor tendered’ with ‘which the Principal made available for inspection by the Contractor on the date the Contract was created’
19. Public Liability Insurance

Clause 19 add:

Alternative 1 applies to Contracts where the Principal’s public liability insurance policy is not in the joint names or covers the interests of the Principal and the Contractor or does not cover the Principal, the Contractor, the Superintendent and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests or cover their liabilities to third parties.

Public / Product liability cover is required to the value of $20 million for construction contracts and $5 million for non-construction contracts all with terms acceptable to the Principal.

For a copy of the Principal’s Public Liability Insurance Policy please refer to the ‘Council Suppliers’ section of the Principals internet website located at www.goldcoast.qld.gov.au.

Alternative 2 applies to Contracts where the Principal’s public liability insurance policy is in the joint names of the Principal and the Contractor or covers the interests of the Principal and the Contractor, the Superintendent and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties.

The Contractor warrants that, on the date the Contract was created, it obtained from the Principal sufficient details in respect of the Principal’s Public Liability Insurance Policy to determine whether Alternative 1 or Alternative 2 applies. For a copy of the Principal’s Public Liability Insurance Policy please refer to the ‘Council Suppliers’ section of the Principals internet website located at www.goldcoast.qld.gov.au.

Any Insurance or Liability that is the responsibility of the Contractor under the Terms of the Contract must allow for the reimbursement of the value of any GST applicable to a claim.

The Principal reserves the right to alter the cover or terms and conditions provided in the Principal’s Public Liability Insurance Policy from time to time. The Contractor agrees that the Principal’s Public Liability Insurance Policy that was applying (if any) at the date the Contract was created shall be the Policy to be used by the Contractor to determine whether Alternative 1 or Alternative 2 applies.

The insured under the Policy must immediately follow the Claim Notification and other relevant procedures in the event of any incident that may result in a claim on the Policy. Failure to do so may limit any rights under the policy. The Contractor shall ensure that it follow the relevant procedures.

21. Professional Indemnity Insurance

Clause 21 add:

21.7 Access to and Possession of the Site

The Contractor must ensure that every Consultant is insured for Professional Indemnity with a cover not less than $3,000,000 unless otherwise nominated in the Annexure.

Each Consultant’s policy and such level of cover must be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period of seven years.

21.8 Risk and Indemnity

Release, discharge and indemnify the Principal and each of its officers and employees (the Indemnified Persons) from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:

- negligent or unlawful act or omission of the Contractor, its officers, employees, agents or Subcontractors
- breach of the Contract by the Contractor
• loss of or damage to the Principal’s property
• claims by any person in respect of injury, death or loss of or damage to any property
• contravention of any legislative requirement by the Contractor, its officers, employees, agents or Subcontractors; and / or
• infringement by the Contractor, its officers, employees, agents or Subcontractors of the Intellectual Property Rights or Moral Rights of any third party
• except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

This clause survives the termination or expiration of the Contract.

27. Site

27.1 Access to and Possession of the Site

Clause 27.1 add to the start of the clause:

‘Subject to prior lodgement of any Security Deposit required under the contract and any other pre-requisite requirements specified in the Contract, the time for giving possession of the Site or portion of the Site as defined by the Superintendent to the Contractor is:

Either the date stated in the Acceptance of Offer letter or if no date is stated then the date subsequently nominated by the Superintendent in writing to the Contractor.’

Clause 27.1 add to the end of the clause:

‘Notwithstanding any other provision of AS2124 Clause 27.1, the Principal will not have any obligation to give access to the Site or give possession of the Site or give possession of sufficient of the Site to the Contractor until the Contractor has provided:

• evidence to the satisfaction and approval of the Principal of the insurance the Contractor is liable to effect or maintain under the Contract
• the security to be provided by the Contractor pursuant to AS2124 Clause 5.2 of the General Conditions of Contract
• the Contractor’s program pursuant to AS2124 Clause 33.2 of the General Conditions of Contract (as amended by the Special Conditions of Contract).
• Site specific Safety Management Plan and site specific Safe Work Method Statements.
• Site specific Construction and Environmental Management Plan.

28. Setting out the Works

28.1 Setting Out

Clause 28.1 Delete and replace with:

The Principal shall supply to the Contractor in the Specification, or otherwise, sufficient information to identify any Permanent Survey Mark (PSM) or other survey marks used in any surveys of the site. The Contractor shall confirm the location and level of the PSM or other survey mark identified by the Principal before use and ensure that any datum references are compatible with that required for the as constructed datum for the works. Where the Specification identifies State Government Bench Marks or other identified marks as the reference to set out the works then the Contractor is responsible for obtaining the necessary information from the relevant authority. The Contractor must confirm the appropriate datum in use from the plan and a Bench Mark from the relevant authority. This work must be undertaken by a professional surveyor.
The Contractor is responsible for the accurate setting out of the works and may not rely on the accuracy of any existing set out pegs on site.

Where the works are set out on an alignment relative to a RP boundary the boundary must be identified by reference to the RP pegs if evident otherwise sufficient pegs must be reinstated to establish the location of the property alignment prior to setting out the works. The reinstatement of any RP pegs must be undertaken by a Licensed Surveyor.

The completed works must be surveyed by a Professional Surveyor in respect to the information provided on the design drawings and any changes must be marked up and signed by the surveyor in the format nominated for the purpose of As Constructed Drawings of the works.

Clause 28.3

Delete the second paragraph of Clause 28.3.

29. Materials Labour and Construction Plant

29.2 Removal of Materials and Construction Plant

Clause 29.2 add:

In respect to constructional plant owned by others and used at the site and held by an agreement with the owner, the Contractor hereby agrees that in the event of imminent seizure of the plant by any person the Contractor agrees:

- to notify the Superintendent immediately in writing of the possibility of seizure, the reason for that seizure and of the name, address and contact numbers of the owner of the plant
- that the Principal may make payment of any overdue instalment or other sums owing in respect of the constructional plant and may recover the amount paid as a debt due from the Contractor or may deduct the amount paid by the Principal from any amount payable by the Principal under the Contract.

30. Equipment Services Materials and Works

Clause 30 change the heading to ‘Equipment Services Materials and Work’

30.1 Nature and Quality of Equipment Services Materials and Work

Clause 30.1 change the heading to ‘Nature and Quality of Equipment, Services, Materials and Work’

Clause 30.1 add:

Reference to Works includes any supply, disposal or maintenance or repair of Equipment, Services, Materials or other deliverables described in the scope of the works to the extent that the context allows.

Where the Works include disposal of good(s), then good(s) scheduled for disposal are purchased by the Contractor on an as is basis with all faults (if any) at the Contractor’s risk. The contractor is deemed to have inspected the good(s) prior to entering into the contract and accordingly the Principal does not expressly warrant or imply a warranty on either the condition, quality or suitability of the good(s) in excess of any legislative requirement. No allowance or refund will be made nor will the Contractor be permitted to reject any good(s) on the grounds that they were not correctly described in the Offer Documents or any collateral material.

Possession and title to the good(s) does not pass until any nominated payment has been made and the Principal has received the proceeds. In the case of any payment by cheque this shall mean the date on which the cheque is cleared. When removing the good(s) from the premises of the Principal, the Contractor shall comply with the reasonable requirements of the Principal’s staff subject to the other requirements of the Contract.
In the event of a Contractor failing to remove the good(s) within the period nominated in the contract or if no period is nominated then a reasonable period nominated by the Superintendent after the title passing to the Contractor, the Principal may, in relation to the good(s) not so removed, cancel the contract and re-sell the good(s). Any loss incurred by the Principal as a result of any action taken by the Principal as described above shall be paid to the Principal by the Contractor upon written demand or may be otherwise recovered under the provisions of the Contract.

The Contract Works (as defined) must include the Scope of the Works (as defined) undertaken to the Standard of Works (as defined) managed in accordance with a quality system capable of producing consistent results in accordance with the requirements of the contract to the satisfaction of the Superintendent.

The Quality System must include provision for full compliance with a Safety Management Plan for the Contract Works. The plan must be prepared by either a Safety Professional employed by the Contractor (and acceptable to the Principal), or a Safety Consultant practising in Queensland (acceptable to the Principal). The Quality System must provide for the person / firm preparing the plan to be available on site if required by the Superintendent in the event of safety issues to discuss the plan in conjunction with the Contractor.

31. Examinations and Testing

31.6 Results of Tests

Clause 31.6 add:

In undertaking the work under the Contract, the Contractor shall not be entitled to rely on any inspections or tests arranged or undertaken by the Principal or Superintendent for their own purposes. The Contractor must undertake its own inspection and testing to meet the requirements of the Contract

32. Working Hours

Clause 32 add:

The working hours for the Contract are 7am to 4.30pm Monday to Friday excluding public holidays.

The Superintendent may not approve any variation to the working hours or working days which is in conflict with Local Laws or any legislative requirement (including Environmental Protection Act) without approval being obtained from any relevant authority. The Contractor will reimburse to the Principal any costs incurred by the Principal which are attributable to the variation in the hours which are approved by the Superintendent. The Superintendent is not obliged to approve varied hours if it appears in the Superintendent’s absolute discretion inappropriate to do so.

The Principal may deduct the amount of any additional costs incurred by the Principal from the amount payable pursuant to any Progress Certificate under the Contract or at the Principal’s sole discretion may recover the amount of any additional costs from the Contractor as a debt due and owing to the Principal.

Where the nature of the work required under the contract interferes with services to the public, residents or businesses such that the work reasonably has to be undertaken outside working hours and the work is directed by the Superintendent to be undertaken at a time or times nominated by the Superintendent then the works are to be undertaken as and when directed. The Contractor shall not be entitled to recover any amount associated with performing the work outside working hours. In so doing the Contractor must ensure that all legislative requirements are met prior to commencing the work.

Delete the second paragraph of Clause 32.
33. Progress and Programming of the Works

33.2 Construction Program

Clause 33.2 add:

The Program must allow for at least a minimum of four weeks lead time for approvals which are not the responsibility of the Contractor to obtain or the supply of any materials, services or equipment required to undertake the work under the Contract which are not the responsibility to supply or such longer time as the Contractor should reasonably have allowed. The Contractor shall be responsible for obtaining all approvals and supply all materials, services or equipment unless the Project Specification specifies to the contrary.

Clarification is available during the Contract period from the contract Superintendent. Any clarification of detail is to be sought prior to commitment of any expenditure on that detail and in sufficient time so as not to incur delay to the critical path of the Program of Works based on a seven day response time to a clarification request.

35. Time for Commencement and Practical Completion

35.2 Time for Practical Completion

Clause 35.2 add:

The Time for Practical Completion, including for any Separable Portions, shall be as stated in the Contract. If no date is identified in the Contract then the Time for Practical Completion shall be a date as determined and advised by the Superintendent which the Superintendent considers to be reasonable.

35.5 Extension of Time for Practical Completion

Clause 35.5

In the third paragraph, replace ‘28 days’ with ‘seven days’.

In the second last paragraph, insert after the words ‘the Superintendent may’ the following:

‘in the Superintendent’s absolute discretion and without being under any obligation to do so,’

Clause 35.5 (a) (ii) and delete the words:

‘inclement weather’ and replace with

‘inclement weather conditions which differ from the conditions stated in the contract or, in the absence of such a statement, inclement weather conditions which differ materially and substantially from those conditions which could have been anticipated by a prudent, experienced and competent Contractor’

35.6 Liquidated Damages for Delay in Reaching Practical Completion

Clause 35.6 add:

Liquidated Damages payable by the Contractor to the Principal under the contract including each Separable Portion of the Contract where applicable, shall be as nominated in the Annexure or if there is no amount nominated then identified costs incurred by the Principal up to 0.1% of the Contract Amount per day.
37. **Defects Liability**

Clause 37 add:

Where the Contract provides for Separable Portions, the Defects Liability Period is 12 months for each Separable Portion.

40. **Variations**

Clause 40.1 add:

Insert after the second paragraph:

Notwithstanding anything to the contrary in the Contract:

a) the Principal shall only be liable to the Contractor for an amount calculated under Clause 40.5 or for an extension of time for Practical Completion for a variation where either:

- the direction to perform the variation given by the Superintendent is in writing and expressly states that the direction constitutes a direction for a variation and identifies the work the subject of the direction or
- before performing the variation and in any event within seven days of receiving the direction to perform the variation, the Contractor has given the Superintendent a notice in writing which identifies:
  - the date the direction was given
  - whether the direction was given orally or in writing
  - the substance of the direction (if it was in writing a copy should be attached)
  - the approximate cost of the variation including a detailed breakdown calculated in accordance with Clause 40.5 and
  - whether a claim will be made for an extension of time as a consequence of the variation and if so, an estimate of the period

b) except where the Contractor is entitled to make a claim under this clause, the Contractor shall have no entitlement to:

- any adjustment to the Contract Sum or valuation under Clause 40.5; or
- an extension of time
- a declaration to the effect that time is at large
- recover any loss, cost, damage or expense of any kind arising:
  - under the Contract or
  - out of or in connection with the work under the Contract or the performance of the work under the Contract (including on a quantum meruit).

Add new Clause 40.6 Work by Others.

40.6 **Work by Others**

The Superintendent may, under AS2124 Clause 40.1, give a direction to the Contractor which has the effect of deleting from the work to be performed by the Contractor the whole or any part of the work under the Contract. The Superintendent may give such a direction in circumstances where the Principal either intends to or does carry out that work itself or engages another contractor to carry out that work (whether or not the work is carried out as part of the other work which the other contractor has been or is engaged to carry out or is the only work for which the other contractor has been engaged).
41. **Daywork**

Clause 41 delete.

‘In determining the value of daywork regard shall be had to –’ and replace with ‘In determining the value of daywork, to the extent that the Contract includes relevant rates for daywork regard shall be had for those rates otherwise regard shall be had to –’

Clause 41(f) add:

The charge to apply to daywork to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit is 10 per cent or where any of the above items covered by this charge are considered by the Superintendent on examination of the amount to be reasonably included in the Rates for Daywork, then a reasonable charge determined by the Superintendent.

42. **Certificates and Payments**

42.1 **Payment Claims, Certificates, Calculation and Time for Payment**

Clause 42.1 add to the start of the clause:

A Payment Claim from the Contractor that, in the opinion of the Superintendent, represents a value at or near the value associated with the stage of Practical Completion and / or Final Acceptance must be accompanied by a valid Statutory Declaration from the Contractor. The Declaration must be in the form required by the Principal certifying payments due to others as a consequence of the Contract Works have been made. Failure to supply the Declaration shall extend the period for issue of a Progress Certificate in response to the claim such that the date of the claim shall be deemed to be the date the completed Declaration is received in the format required.

Subject to any other overriding provisions of the Contract Documents restricting a payment claim or alternative arrangements nominated in the Annexure, the arrangements for Payment Claims is as follows:

**Schedule of Rates Contracts** are eligible for progress claims to be submitted once a month except where Work Milestones are specified to be reached prior to lodgement of a claim in which case a claim may be lodged when the Milestone is reached.

**Lump Sum Contracts** are eligible for progress claims to be submitted when a Work Milestone represented by any item identified in the item column of the Schedule of Quantities and Prices is reached.

An exception for both Schedule of Rates and Lump Sum Contracts is where alternative requirements are specified.

All Claims are subject to the following requirements: The submission of a claim must follow a claim meeting with the Superintendent to discuss the proposed claim. This is to facilitate full understanding and enable prompt processing of the claim once submitted.

The format of the claim must match the payment schedule provided by the Principal. (At the Principal’s sole discretion the payment schedule may be reformatted to facilitate improved processing and cashflow and format may be hardcopy or electronic at the discretion of the Superintendent).
**Work Milestone** are those stages of works nominated in the Annexure as Milestones otherwise as follows:

Work Milestones are identified as a stage of the Works at or near which the Contract provides for lodgement of a Progress Claim. Unless specified otherwise for a Lump Sum Contract it is the items indicated in the Schedule of Quantities and Prices as Items for Payment Purposes by the Principal in the Schedule of Quantities and Prices and include as items in their own right any Provisional Items or Amounts, variations or adjustments subsequently issued by the Superintendent. If no items are indicated then the Lump Sum is the Milestone. Unless specified otherwise for a Schedule of Rates Contract it is the stage(s) of the Works described as interpreted and valued by the Superintendent based on the rates agreed for the Contract and include as items in their own right any Provisional Items or Amounts, variations or adjustments subsequently issued by the Superintendent.

Each Progress Claim Milestone is initially claimable for 80 per cent of its value unless specified otherwise. Each Progress Claim Milestone Item is then claimable only for the full 100 per cent of its value unless specified otherwise.

Any residual amounts excluded from the milestone(s) as a result of specific terms of the Contract may be claimed when fully complete and due. (eg. nominated maintenance, outstanding documentation, additionally issued variation work).

Milestone item value may be discounted or divided as appropriate for any short term Security lodged for materials supplied to site (paid separately as an additional item), other works such as Maintenance Works, outstanding documentation etc due during the defects liability period included within an item and any unused Provisional items / amounts. The 80 per cent stage of the Milestone may only be certified by the Superintendent when satisfied that the value is reached and includes (but is not limited to) supply and installation of major components of the milestone (eg. materials) and includes all nominated or directed items, testing or certifications required by the Superintendent necessary, in the opinion of the Superintendent, to reasonably approximate and represent the value of the Works claimed. The 100 per cent stage of the Milestone is only certified when full value is reached for the Milestone(s). Any residual amounts are certified when deemed due by the Superintendent.

Progress Payments for Work Milestones are subject to certification of the value by the Superintendent. The Superintendent may not certify value for incomplete Works in response to the 100 per cent Milestone claims.

Work Milestone Payment values are made without prejudice to the actual value or stage of the works and any obligations of the Contractor to complete, rectify or maintain the Works.

(This arrangement of Work Milestone based payments for Lump Sum Contracts establishes known targets important to the Principal and alerts the Contractor to the necessary financing of the variations in cash flow to be provided for prior to achieving the Work Milestones for Payment Purposes).

**Claims at Financial Milestones for Lump Sum Contracts** apply where nominated in the Annexure and must follow a claim meeting with the Superintendent’s Representative to discuss the status of the Milestone(s) being claimed. The claim is to be delivered to the Superintendent’s Representative at the meeting or alternatively delivered to the Office of the Superintendent following a claim meeting. The format of the claim must match the payment schedule provided by the Principal. (At the Principal’s sole discretion the payment schedule may be reformatted to facilitate improved processing and cashflow equivalent to or in excess of those nominated in the Contract. Format may be hardcopy or electronic at the discretion of the Superintendent).

**Financial Milestones** are those stages of value of works nominated in the Annexure as Financial Milestones for payment purposes otherwise as follows:

Financial Milestones are identified as works valued at multiples of $20,000 for Contracts valued under $250,000 and multiples of $100,000 for Contracts valued at $250,000 and above.
If the Lump Sum is less than the Financial Milestone then the Lump Sum is the Financial Milestone. If the Lump Sum is not a multiple of the Financial Milestone then the Final Milestone is the residual value of the Lump Sum Amount owing. (Financial Milestones exclude the value of any variations, adjustments, maintenance works, unused provisional rates / amounts etc as they are valued for payment independently of the Financial Milestones).

Financial Milestones and other amounts may be claimed when the Contractor believes they are due. If any short term Security is lodged for materials supplied to site in accordance with the terms of the contract then the value may be claimed as part of a Financial Milestone claim.

Payments are subject to certification by the Superintendent. The Superintendent may not certify value for the final two Financial Milestones if incomplete works remain.

Financial Milestone Payment values are made without prejudice to the actual value of the works and any obligations of the Contractor to complete, rectify or maintain the Works.

(Note: This arrangement of Financial Milestone based payments for Lump Sum Contract progress payments establishes known amounts for most payments and this is aimed at assisting in cashflow management and administration of payments).

Claims at Monthly Intervals for Lump Sum Contracts apply where nominated in the Annexure and must follow a claim meeting with the Superintendent’s Representative to discuss the status of the works being claimed. The claim is to be delivered to the Superintendent’s Representative at the meeting or alternatively delivered to the Office of the Superintendent following a claim meeting. The format of the claim must match the payment schedule provided by the Principal. (At the Principal’s sole discretion the payment schedule may be reformatted to facilitate improved processing and cashflow equivalent to or in excess of those nominated in the Contract. Format may be hardcopy or electronic at the discretion of the Superintendent).

(Note: This arrangement of Monthly based payments for Lump Sum Contract progress payments establishes variable amounts for most payments and this requires the Contractor to provide the necessary financing to address the variations in the cashflow of the contract.).

Rise and Fall applies where indicated in the Annexure then monetary values applicable to the Contract for the purpose of preparing Payment Certificates will be changed in value in accordance with the provisions of this schedule. i.e. the application of rise and fall to the contract. Rise and fall will only be applied to work actually occurring during the period that the change to the contract value applies.

All values nominated in the payment schedule shall remain fixed up to the nominated review date of two years from the date of the Acceptance of Offer letter and then for a further period of 12 months following any subsequent adjustment.

Where the contract is extended beyond the first review date, the tendered values will be adjusted for all work undertaken during the extended period by an annual adjustment to apply for the following 12 month period. Thereafter annually the values will again be adjusted for work undertaken during these further periods of extension, based on the previous adjusted values. This arrangement will continue throughout the term of the Contract.

Basis of calculation for the change to the value of Payment Certificates under the Contract is based on the change in the Consumer Price Index (CPI), all groups, for Brisbane as published by the Australian Bureau of Statistics (reference no. 6401.0), as applied in the formula below and to the extent nominated in the Submission on this schedule.

Where any change of GST occurs in the period represented by the two Bureau of Statistics CPI figures in use in any annual calculation, then the calculation will be adjusted to effectively remove the impact of the GST change on the calculation since GST impact is dealt with elsewhere under the terms of the Contract. The extent of the GST on the Bureau of Statistics CPI figure will be determined solely by the Contract Principal.
Rise and Fall Calculation for any Change to Contract Lump Sum or Rates Values,

\[
\text{Change in $ Value} = \text{Current $ Value} \times \text{CPI Change \%}.
\]

The CPI Change is defined as the difference between the CPI, applicable to the Financial Quarter immediately preceding the proposed change date of the contract value, less one day and the same Financial Quarter 12 months prior (to clarify if the change in contract value is set for 1 July 2012 the CPI Change will be the difference between the March 2012 CPI Quarterly figure and March 2011 Quarterly figure).

Clause 42.1 delete from the clause:
‘or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor’s claim.’
And replace with:
‘or if no payment certificate has been issued, the Contractor shall lodge a claim for payment directly with the Principal and the Principal shall process the claim, with or without access to a Superintendent’s Certificate’

Clause 42.1 add following paragraph (ii):

However the item referred to in (i) and (ii) above must be covered by security as detailed under Clause 5.3 until incorporated into the works unless specifically authorised otherwise at the sole discretion of the Principal.

42.3 Retention Moneys

Clause 42.3 add:

Unless detailed otherwise in the Annexure no retention applies to Contract Payment Values under this Contract.

Unless the Principal otherwise notifies the Contractor in writing, the Principal requires the Contractor to provide the security in the form required by Clause 5.3 rather than in the form of retention moneys.

42.4 Unfixed Plant and Materials

Clause 42.4 add:

The alternative applying is Alternative 1

The additional security shall be for the purpose of ensuring that the plant and materials (for which the additional security is provided) into the Works. If the Contractor fails to incorporate the plant or materials into the Works after the Principal requests the Contractor in writing to do so, the Principal may have recourse to the additional security.

42.5 Certificate of Practical Completion

Clause 42.5

Change all reference to ‘14 days’ to ‘28 days’

42.7 Final Payment Claim

Clause 42.7

Delete the first paragraph: ‘Within…Claim’ and replace with the following:

‘Within 28 days after the expiration of the last to occur:

a) The completion of any specified new works or rectification works required by the Superintendent to be effected by the Contractor; or
b) The Defects Liability period; or
c) Where there is more than one defects liability period, the last to expire,' The Contractor shall lodge with the Superintendent a final payment claim and endorse it ‘Final Payment Claim’. The claims status as the Final Payment Claim is subject to the Payment Claim meeting the contractual prerequisites required for a Final Payment Claim.

42.8 Final Certificate

Clause 42.8

Change all reference to '14 days' to '28 days'

42.9 Interest on Overdue Payments

Clause 42.9 add:

The rate of interest on overdue payments shall be seven per cent per annum compounded at six monthly intervals if claimed by the party entitled to the payment within the Contract period.

42A Goods and Services Tax (GST)

Clause 42 add the new Clause 42A:

42A.1 Expressions

Expressions used in these Conditions that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) or if not defined in that Act then in the Competition and Consumer Act 2010 shall have the same meaning in these Conditions to the extent that the context allows.

42A.2 GST on Supplies, Considerations and Reimbursements

Supply of works between the Contractor and the Principal under the terms of the Contract is a Taxable Supply and any amounts, rates and considerations applicable to or resulting from the Contract are a taxable supply and all values of the Works for are deemed to be on a GST exclusive basis. Where considerations are not represented in monetary terms in the Contract then the beneficiary of the consideration must reimburse the value of any GST liability as a result of the consideration. Reimbursement is to be effected by adjustment of the amount due for payment on the Contract Progress Certificate if the reimbursement is debited during the Currency of the contract or otherwise as a debt due and payable within 30 days of notification.

Where costs or outgoings are reimbursed under the terms of the Contract then the value of the reimbursement made to the recipient holding the Tax Invoice for the outgoing shall be reduced by the amount of the GST component in the amount paid for the outgoing.

42A.3 Supplier Created Tax Invoice System

Where the Principal, at its sole discretion elects not to issue Recipient Created Tax Invoices (RCTI) then the Supplier shall issue the Tax Invoice at the time of submitting a claim for payment. If no claim is submitted then the Contractor agrees to issue the Tax Invoice within 14 days of a request by the Principal to submit the appropriate Tax Invoice to accompany a Payment Certificate issued by the Superintendent. Any claim not accompanied by a valid Tax Invoice appropriate to the claim is deemed not to be a valid claim until it is accompanied by the Tax Invoice.
42A.4 Alternative Tax Arrangements

Where RCTI's apply to supply under the Contract and the contractor proceeds prior to advising the Contractor's ABN or without a current ABN then the Contractor warrants that no supply occurs to the Principal under the contract and any work remains the property of the Contractor unless or until the Principal at its sole discretion has entered into alternative arrangements for issue of the Tax Invoice by the Contractor or Principal withholds an amount pursuant to section 12-190 of Schedule 1 of the Taxation Administration Act 1953.

42A.5 Recipient Created Tax Invoice System (The Default System Applicable to this Contract)

The Contractor and the Principal agree that the Principal may issue RCTI's pursuant to section 29-70(3) of A New Tax System (Goods and Services Tax) Act 1999 (GST Act) and in accordance with the GST ruling 2000-10. Where the Contractor and the Principal have not entered into other arrangements for payment of tax on supplies then the following conditions apply for RCTI's:

a) The Contractor will supply all information reasonably necessary from time to time for the Principal to efficiently and promptly prepare and issue RCTI's when the Payment Certificate is presented from the Superintendent under this agreement.

b) On taxable supply under the Contract the Principal will issue the Tax Invoice (ie. an RCTI) in respect to the supplies referred to in the Payment Schedule identified in the List of Contract Documents for the Contract to which these Contract Conditions are an annex and will include the Supplier’s ABN on the RCTI; the Principal will:

- Issue a copy of the RCTI to the Supplier within 28 days of the determination of the value of the supply.
- Retain the original of the RCTI.
- Issue a copy of an Adjustment Note RCTI to the Supplier within 28 days of an adjustment.
- Retain the original of the Adjustment Note RCTI.
- Not issue a document that would otherwise be an RCTI, on or after the date when the Principal or the Contractor has failed to comply with any of the requirements of the determination of the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- Reasonably comply with its obligations under the taxation laws.

c) On taxable supply under the Contract the Contractor agrees that the Principal will issue tax invoices (RCTI's) in respect to the supplies and accordingly the Contractor must not issue a Tax Invoice for supplies under the Contract where the Principal will issue an RCTI; The Contractor will:

- Advise the Principal of the relevant Contract Number and the Contractor's ABN in each item of correspondence throughout the Contract period while registered for GST purposes and supply to the Principal evidence of the validity of the Contractors ABN upon award of the Contract.
- Advise the Principal of any change to the current ABN of the Contractor prior to lodging each claim for payment for works under the Contract.
- Advise the Principal of any loss of registration for GST purposes immediately, quoting the Contract Number.

Warrant and Status of the main Supplier (Contractor)

- The Contractor warrants and acknowledges that its status is: A registered entity under the GST Act for GST purposes at the time of entering into this Agreement and the Contractor’s ABN is correctly recorded on the information submitted to the Principal and represents the entity indicated on the original Tender Submission Form for this Contract (or represents the entity that is the current owner of the original entity).
- The Contractor warrants and acknowledges that it will notify the Principal immediately in writing if it ceases to be registered for GST purposes under the Act and agrees to include in the notification the Contract Number relative to that advice when supplied and the extent of supplies made under the contract up to the time it ceased to be registered.
• The Contractor warrants that supply under the Contract is only made by the Contractor where the Contractor is an entity currently registered for GST purposes. The Contractor's loss of registration for GST purposes is deemed to be a major breach of Contract and the Contractor is then a Contractor not eligible to provide taxable supply under the Contract unless or until the Principal at its sole discretion has entered into alternative arrangements for taxation purposes.

Warrant and Status of the main Recipient (Principal)

The Principal warrants and acknowledges that its status is: A registered entity under the GST Act for GST purposes identified as Australian Business Number (ABN) 8485 8548 460. For the administration of this contract the Principal is a recipient of a taxable supply in a class acceptable to the commissioner of Taxation to issue RCTI's.

• The Principal warrants and acknowledges that it will notify the Contractor immediately if it ceases to be registered for GST purposes under the Act.

42A.6 Adjustment Notes

If an adjustment event occurs relative to a taxable supply under the contract then the responsible entity for the issue of the Tax Invoice, Contractor or Principal must give the other party an Adjustment Note. The Adjustment Note must accompanying any claim for payment submitted after becoming aware of the adjustment event or where no claim is submitted then within a maximum 28 days of becoming aware of the adjustment event. Where RCTI's are issued the adjustment may be represented in the RCTI.

42A.7 Changes to GST legislation

Changes to GST Legislation is a change in a legislative requirement as defined in the General Conditions for which a valuation shall be made under Clause 40.5 of the General Conditions and:

• In making the valuation the Superintendent shall: Allow the Contractor only the changed amount of GST payable directly by the Contractor under the Legislative Requirement as defined in the General Conditions; not allow the contractor any amount for overhead or profit; have regard to any indirect or direct savings of the Contractor (including without limitation any reduction in import or other taxes or the market price of goods or services procured by the Contractor in connection with the carrying out of the work under the Contract).

• Except as expressly provided by this clause, the Contractor shall have no other claim against the Principal arising from any change to GST Legislation.

The Contractor must maintain and make available to the Superintendent detailed records of the indirect or direct cost savings and costs of the Contractor arising from any change to GST legislation.

45A Termination for Convenience

Add new clause:

The Contract may be terminated, without cause, at any time by the Principal, at its sole and unfettered convenience, giving notice to the Contractor.

The Principal must pay the Contractor a fair and reasonable fee for Services carried out up to and including the date of termination together with payment of any costs and expenses reasonably incurred by the Contractor to that date.

Upon termination and payment of the amount due to the Contractor, the Contractor must, subject to any lien or other rights of the Contractor, deliver to the Principal the Contract Material including sketches, plans, designs, estimates, calculations, reports, models, computer source codes, articles, information, files and data produced by the Contractor up to the date of termination regardless of their stage of completion but without any liability in respect of the Contract Material which is incomplete by reason only of such termination.
46. **Time for Notification of Claims**

46.1 **Contractor's Prescribed Notice**

Clause 46.1 delete lines 38 to 42 and add:

The Principal shall not be liable upon any other claim by the Contractor for any extra cost or expense in respect of or arising out of any direction or approval by the Superintendent unless within 42 days after the direction or approval is given to the Contractor, the Contractor has given to the Superintendent the prescribed notice.

47. **Dispute Resolution**

47.2 **Further Steps Required before Proceeding**

Clause 47.2

The alternative required in proceeding with dispute resolution is *Alternative 2* with the following alterations:

Replace the final paragraph of AS2124 Clause 47.2 *Alternative 2* with the following:

In the event that the dispute cannot be so resolved within 30 days after the Superintendent has given a decision, the dispute may be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

If the dispute or difference is not settled within 30 days of the appointment of a mediator to conduct the mediation (unless such period is extended by agreement of the parties), either party may, by notice in writing delivered by hand or sent by certified mail to the other party, advise the other party that it intends to commence litigation and either party may then proceed to litigate the dispute.

47.3 **Arbitration**

AS2124 Clause 47.3

Delete Clause 47.3

49. **Work Health and Safety Act 2011**

Add new clause:

For the purposes of this clause:

- ‘Act’ means the *Work Health and Safety Act 2011* (Qld), as amended from time to time
- ‘construction project’ means the Works and all work under the Contract to be performed by the Contractor under this Contract
- ‘construction work’ means the work performed, or to be performed, by the Contractor as part of the construction project
- ‘Regulation’ means the *Work Health and Safety Regulation 2011* (Qld), 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 construction project and construction work to be executed under this Contract, the Contractor must:

- comply with and discharge all obligations imposed on the Contractor 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 construction project is being undertaken in relation to the construction work
• discharge the duties of a person who conducts a business or undertaking under the Regulation
• The Contractor must indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:
  - any breach of this clause by the Contractor
  - any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety
  - any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulations.

If a notifiable incident occurs at the workplace at which the construction project or any construction work is being undertaken under this Contract, the Contractor must:

• immediately notify the regulator and the Superintendent of the notifiable incident
• take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs
• Without limiting any other obligation of the Contractor under this Contract, the Act, the Regulation or any other regulation, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:
  - immediately notify the Superintendent
  - comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant regulation.

50. Work Health and Safety Audit

If and when required by the Principal (or the Superintendent in contracts utilising such), the Contractor must allow parties nominated by the Principal (which may be the Principal’s staff or external contractors) to enter and obtain all and any records and documents pertaining to WHS issues, and to audit the Contractor’s work methods and systems. The Contractor must provide those persons with all and any assistance, information and answers as may be sought.

The work performed under the preceding clause may give rise to the Principal wishing to issue corrective action notices. In addition to any other avenues available under the Contract:

• the Principal (or Superintendent) may direct the Contractor, by written notice, to carry out any required corrective action within the time specified in the notice, or
• the Principal may, if urgent action is necessary to protect people or property and the Contractor fails to take such action, take such action itself. The costs the Principal incurs will be a debt due from the Contractor.

If such a direction is given, the Contractor must inform the Principal’s Representative (or the Superintendent when the Contract appoints such) in writing immediately upon completion of the corrective actions.
51. **Information Privacy Act**

The *Information Privacy Act 2009 (IP Act)* was introduced by Queensland Parliament on 1 July 2009. All local governments are required to fully comply with the legislation from 1 July 2010.

The IP Act is designed to:

- ensure fair and lawful handling of personal information
- provide a right of access to and amendment of an individual’s personal information held by or in the control of a the Principal (the Client / Principal).

Under the IP Act, all contracted service providers who manage personal information on behalf of the Principal, must comply with the IP Act and the Information Privacy Principles (IPP’s) specifically to the following extent:

- Informing people about the personal information you hold.
- Granting people access to their personal information.
- Amending their personal information if it is inaccurate.

From 1 July 2010, if you are involved with handling personal information on behalf of the Principal, your service arrangement with the Principal must, by law, include a requirement for you to comply with the IP Act and the IPP’s.

If, after accessing the following link you have any questions about the IP Act and how it may impact on you or your business, contact the Office of the Information Commissioner ([http://www.OIC.qld.gov.au](http://www.OIC.qld.gov.au/073234 7373)) or seek independent legal advice.

For general information about the Principal’s obligations under the IP Act, refer to the Right to Information and Information Privacy Applications on the Principal’s website ([www.goldcoast.qld.gov.au](http://www.goldcoast.qld.gov.au)).

52. **Complaint Management**

If at any time during the Contract Term the Contractor considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Principal’s nominated representative, the Contractor must contact the Chief Procurement Officer, and ask for the matter to be dealt with in accordance with the Principal’s procurement complaint process. The request will need to be in writing and include the following details:

- dates and facts relevant to the complaint
- parties involved
- issues that require resolution
- outcomes the Contractor considers appropriate for resolving any issues
- Contractor’s contact details.

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