# Table of Contents

1. Applicability .......................................................................................................................... 3
2. Definitions of Terms ................................................................................................................ 3
3. Working Hours ......................................................................................................................... 3
4. Certificates and Payment .......................................................................................................... 3
5. Insurance to be arranged by the Principal ............................................................................ 4
6. Insurance to be arranged by the Contractor/subcontractor or Suppliers ......................... 5
7. Right of Principal to Recover Moneys .................................................................................. 5
8. Default Interest ....................................................................................................................... 6
9. Goods and Services Tax ........................................................................................................... 6
10. Security Deposit ..................................................................................................................... 7
11. Rise and Fall Conditions ....................................................................................................... 8
12. Contract Documents .............................................................................................................. 11
13. Cancellation of the Construction Phase ............................................................................... 12
14. Legislative Requirements ..................................................................................................... 12
15. Work Health and Safety Act 2011 ....................................................................................... 12
16. Work Health and Safety Audit ............................................................................................. 13
17. Right to Information and Disclosure ................................................................................... 13
18. Termination for Convenience ............................................................................................... 14
19. No Guarantees ....................................................................................................................... 14
20. Changes to the number of Pre-qualified Suppliers ............................................................ 14
21. Assessment and Performance Monitoring .......................................................................... 15
22. Cancellation to Registration ................................................................................................. 15
23. Termination of the Register ................................................................................................. 15
24. Effect of Termination ............................................................................................................ 15
25. Intellectual Property .............................................................................................................. 16
27. Risk and Indemnity ................................................................................................................. 17
28. Complaint Management ....................................................................................................... 17
1. **Applicability**

These Special Conditions of Contract will, where applicable, take precedence over the General Conditions of Contract: NPWC3 - 1981.

All reference to clause numbers in these Special Conditions refer to the General Conditions of Contract: NPWC3 – 1981. Where deletions, amendments, supplementations and additions exist they will be labelled as such.

2. **Definitions of Terms**

Clause 2 is to be supplemented by the following:

- **Annexure** will be synonymous with **Contract Header**.

- **Separable part** will be synonymous with **separable portion**. Contract Conditions shall be applied individually to separable portions to the extent that the context allows.

- **Site** shall be as generally described in the Specification.

- **week** means a period of seven calendar days.

3. **Working Hours**

Clause 32 add;

When work is carried out outside the customary working hours or on other than ordinary working days by permission in writing of the Superintendent, the Contractor will be liable for all extra expenses incurred by the Principal by reason of such work, and such extra expenses will be deducted from progress payment certified under the Contract.

4. **Certificates and Payment**

The Contractor will be entitled to receive payment at the rate of 90 per cent of the sum certified by the Superintendent. The Principal may retain the remaining 10 per cent. The Contractor, as soon as the total retention moneys equal five per cent of the Contract sum, will be entitled to receive the progress payments paid in full. If the Contractor, at any time, submits to the Principal retention in the form of unconditional undertakings or certificates (both also known as unconditional bank guaranties), the cash retention no greater than the value of the unconditional bank guaranties will be returned to the Contractor. At no time will the Principal retain, in cash or in security, more than five per cent of the contract sum. Alternatively, the Contractor may, prior to submission of the first progress claim, lodge with the Principal unconditional bank guaranties in an amount equal to five per cent of the contract sum, in which case no retention will be deducted.

All unconditional bank guaranties must be given by a bank (as defined by the Australian Banking Act, approved in writing by the Principal, and having a credit rating, given by an ASIC licensed credit rating agency, of not less than that equivalent to Standard and Poor’s BBB). The Principal reserves the right to withdraw its approval of the bank as a guarantor, should the equivalent credit rating fall below BBB. In such a case, the Contractor must, if the Principal does not elect to retain a cash retention, provide replacement unconditional bank guaranties at no cost to the Principal.
When the Certificate of Practical Completion is issued, the Principal may hold security and retention totalling no more than 2.5% of the Contract Sum. Any excess retention must be returned to the Contractor. Where an unconditional bank guarantee has been submitted in lieu of cash retention, and security is also held, the Principal must return such an unconditional bank guarantee and security to the Contractor upon delivery by the Contractor of a substitute unconditional bank guarantee in an amount equalling 2.5% of the Contract Sum.

The Contractor will be entitled to receive the balance of all moneys due or payable to him under or by virtue of the Contract upon the issue of the Final Certificate which must be given by the Superintendent to the Contractor when the Contractor has fulfilled the requirements of Clause 37 of Conditions of Contract; provided always that no completion or other certificate is to relieve the Contractor from his liability under the provision of Clause 37, whether or not the same be notified by the Superintendent at the time of, or subsequently to granting any such Certificate. If the cost of rectification of defects or plant modifications necessary to meet the specified requirements, appears likely to exceed the retention amount retained by the Principal, the whole or part of the security deposit lodged under Clause 5 of Conditions of Contract, may be applied to this purpose.

If the Defects Liability Period is ‘nil’, no moneys other than the Security Deposit (if required) will be retained by the Principal.

5. **Insurance to be arranged by the Principal**

The Principal will arrange in the names of the Principal and the Superintendent and the Contractor and all subcontractors, a Contract Works Material Damage and Public Liability Insurance policy (hereinafter called the Policy) covering the works to be carried out under this Contract. Such insurance will cover the work to be carried out at the construction site and will extend to cover materials, etc, for incorporation into the Works whilst in course of inland transit (but excluding any sea transit) to the site from anywhere within Australia while in temporary storage off-site. Such insurance will not apply to Contractors plant, machinery, tools, equipment, temporary buildings, motor vehicles or personal effects of employees.

The Policy will be obtained and maintained by the Principal as herein provided at its own cost and expense, and the Principal will make available to the Contractor evidence as to the currency of the Policy, prior to commencement of work by the Contractor and / or at any time thereafter if requested. For a copy of the Principal Controlled Contract Works Insurance please refer to the Principals internet website at [www.goldcoast.qld.gov.au/council/tenders.html](http://www.goldcoast.qld.gov.au/council/tenders.html).

The Principal will be entitled at any time and from time to time during the currency of the Policy, to arrange or agree to such alterations to the amount thereof or cover provided therein or any of the terms and conditions thereof as the Principal in its absolute discretion thinks fit, provided always that no such alteration which has the effect of reducing the nature or extent of the protection afforded by the Policy of insurance to the Contractor or his subcontractors, will be arranged or agreed to by the Principal without the prior consent in writing of the Contractor.

The Contractor must at all times observe and perform the appropriate procedures and requirements, specified or implied, in relation to any claim made by the Contractor under the Policy. The Contractor will be responsible for ensuring that all claims or potential claims under the Policy are reported as laid down in the claims section of the Policy.

The Contractor will be responsible for the amount of the excesses specified in the Policy, and must indemnify the Principal against all losses claims and demands up to the amount of such excesses.

All moneys received in settlement of any claim under the Policy in respect of damage to the Works must in the first instance be payable to the Principal who will pay to the Contractor such amounts as become due for repair or reinstatement of the loss or damage to the Works.

The Contractor hereby acknowledges and agrees that he has, prior to executing this contract, satisfied himself as to the provisions of the Policy taken out by the Principal and that he accepts the same.
6. **Insurance to be arranged by the Contractor/subcontractor or Suppliers**

The Contractor must obtain and pay premiums for and ensure that their subcontractors obtain insurance in respect of vehicles, construction plant, machinery, tools, equipment, temporary buildings, etc, being used in the performance of the Contract. Such insurance must be for the full value of such property and any potential damage that may be caused by use of such property.

The insurance which the Contractor is required to obtain as aforesaid must:

- be arranged with an insurer and upon terms acceptable to the Principal whose approval shall not be unreasonably withheld
- include the interest of the Principal as an additional insured
- be maintained in full force and effect during the performance of the contract and contain a clause whereby the policy cannot be cancelled during the currency of the contract without one month's notice prior being given to the Principal.

The Contractor must obtain and pay premiums for overseas marine strikes and war risks insurance in respect of any goods, materials, etc, imported from places outside Australia. Such insurance must be arranged for full CIF (Cost Insurance Freight) value plus 10 per cent thereof or as otherwise nominated by the Principal under I.C.C. (A) (Institute Cargo Clauses - All Risks).

Where the Contractor has submitted an alternative design to that detailed in the plans and specification of the Principal, the Contractor must provide evidence of the existence of Professional Indemnity insurance for each of the professional consultants / contractors staff engaged in the alternative design.

The Principal reserves the right to determine the adequacy of limit of indemnity of the Professional Indemnity insurance.

The Contractor must, at all times when required by the Principal, produce the policy for each insurance and the receipts for the last premium paid in respect thereof.

Where insurance is required by virtue of any legislation, evidence that such insurance has been arranged will satisfy the requirements of this clause.

7. **Right of Principal to Recover Moneys**

The Principal will not be entitled to exercise any of the rights under Clause 46 of Conditions of Contract: unless the Principal has, within 28 days after the Principal becomes or ought reasonably to have become aware of the right to exercise those rights, given to the Contractor a written notice advising of both of the following:

- The proposed set off and the amount to be so set off.
- The Principal’s intention to have recourse to the Security and the amount to which recourse will be had.

If at the time of giving this notice, the Principal is not able to quantify the amount of the claimed set off or the amount of the Security to which recourse is to be had, the Principal will give a further written notice to the Contractor quantifying these amounts within three business days after the Principal becomes able to quantify those amounts.
8. **Default Interest**

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, interest will be payable thereon from but excluding the date upon which, or the expiration of the period within which they should have been paid, to and including the date upon which the moneys are paid. The rate of interest will be the rate of 10 per cent per annum plus the annual rate published from time to time by the Reserve Bank of Australia for 90 day bills. Interest will be compounded at six monthly intervals.

9. **Goods and Services Tax**

Notwithstanding any other provisions in this Contract, the following are applicable:

- Expressions used in these Conditions that are defined in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* or if not defined in that Act then in the *Competition and Consumer Act 2010 (Cth)* will have the same meaning in these Conditions to the extent that the context allows.
- Supply of works between the Contractor and the Principal under the terms of the Contract is a Taxable Supply. Any amounts, rates and considerations applicable to or resulting from the Contract are a taxable supply and are deemed to be subject to payment of GST.
- The Contractor must adjust the Fee for a supply under this Contract having regard to the direct and indirect impact on the New Tax System and any guidelines made under that Act, whether or not that Act and the guidelines would otherwise apply to the Contractor.
- Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.
- Where the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including but not limited to:
  - an amendment to the GST Legislation
  - the issue of a ruling or advice by the Commissioner of Taxation
  - a refund of GST to the Contractor in respect of any supply made under the Contract; or
  - a decision of any tribunal or court.

then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.

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

Recipient created tax invoices

- The Contractor and the Principal agree that the Principal may issue recipient created tax invoices ("RCTIs") pursuant to Sections 29-70 of *A New Tax System (Goods and Services Tax) Act 1999 ("GST Act")* and in accordance with GST ruling 2000-10.
- The Principal may issue tax invoices in respect of the supplies made in accordance with the Contract, by the Contractor to the Principal. The Principal will retain the original of any tax invoice issued pursuant to this clause, and issue a copy to the Contractor. The Contractor may not issue tax invoices in respect of the supplies made by the Contractor to the Principal.
- The Contractor warrants and acknowledges that it is registered under the GST Act for GST at the time of entering into this Contract.
- The Contractor warrants and acknowledges that it will notify the Principal immediately if the Contractor ceases to be registered for the GST, and will quote the contract number for the subject supplies in the notification.
- If the Contractor ceases to be registered for the GST the Contractor will be deemed to be in fundamental breach of the Contract to which the supplies relate unless, at the Principal’s sole discretion, the Principal and the Contractor enter into alternative arrangements satisfactory to the Principal for the issue of a tax invoice by the Contractor, or the Principal withholds an amount pursuant to Sections 12-190 of Schedule 1 of the *Taxation Administration Act 1953*.
- The Contractor acknowledges that the Principal is registered under the GST Act for GST at the time of entering into this Contract, and the Australian Business Number of the Principal is 84 858 548 460.
- The Principal acknowledges that it will notify the Contractor if the Principal ceases to be registered or if the Principal ceases to satisfy any of the requirements of the determination by the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- The Principal will 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 by the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- The Contractor must supply all such information as may be reasonably required by the Principal to allow the Principal to prepare RCTIs under this Contract.
- The Contractor will do all such things as may be necessary on its part from time to time, to enable the Principal to issue RCTIs.

- Each party must give the other an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply by that party under this Contract, within seven days after the date that party becomes aware of the adjustment event.
- The Contractor’s obligations under this clause in respect of GST do not necessitate a variation under the Conditions of Contract: NPWC3 - 1981 or give rise to any adjustments of the Contract Sum or reimbursement under the General Conditions of Contract.

10. Security Deposit

Clause 5 is to be supplemented by:

- If applicable the amount of security is fixed in accordance with the following scale:

<table>
<thead>
<tr>
<th>Total Tendered Amount/Lump Sum</th>
<th>Amount of Security</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to and including $20,000</td>
<td>5% of total tendered amount/lump sum price</td>
</tr>
<tr>
<td>$20,000 to $100,000</td>
<td>$1,000 plus 2.5% of (total tendered amount/lump sum price less $20,000)</td>
</tr>
<tr>
<td>Over $100,000</td>
<td>$3,000 plus 1% of (total tendered amount/lump sum price less $100,000)</td>
</tr>
</tbody>
</table>

• The Principal shall not have any responsibility for the amount of security until an official receipt for it is issued to the Contractor.
• The Principal shall not be bound to accept any security which is not covered or secured by adequate assets in Australia.
• Insurance Bonds are not an acceptable form of security.
• Without prejudice to the rights of the Principal as set out in Clause 5 of the General Conditions of Contract, failure to lodge the security or to sign the Contract within the time prescribed under the General Conditions of Contract, may cause all moneys deposited by the Contractor in connection with the Contract, to be forfeited to the Principal at the sole discretion of the Principal.

• Section 67K of the Queensland Building and Construction Commission Act 1991 implies into this contract a condition to the effect that the maximum amount of security and retention combined which may be held by the Principal under this contract shall not exceed 5 per cent of the total tendered amount or lump sum. The parties agree that this condition is expressly excluded from this Contract.

11. Rise and Fall Conditions

Where indicated in Conditions of Contract or Contract Header, the following items of the contract will be subject to Rise and Fall adjustments.

11.1 Rise and Fall in cost of Australian items

For all tender options where the tender price is submitted subject to variation for Rise and Fall, the Contract Amount will be adjusted to compensate for the variation in prices of materials and cost of labour of the Australian content and changes to importation tariffs, currencies and Government charges associated with the imported goods, which may occur after the date of closing of tenders and prior to the due date for completion of the works of the Contract.

The Rise and Fall formula proposed calculates such labour and material fluctuations by requiring each tenderer to proportion the total work involved in the Contract (excluding the imported major equipment items only) into labour and material percentages.

These two percentages (totalling 100 per cent of the Australian Content) shall then be used to proportion the Australian content of each progress claim into its labour and material content with each then being adjusted separately for the percentage variation for materials and for labour, as set out in the following clauses.

Payment for variation in these allowances will be limited to employees of the Contractor and approved Subcontractors and suppliers of materials, where they are on site solely and specifically for the purposes of the Contract.

11.2 Rise and Fall in cost of imported items

The Contract Amount shall be deemed to be based on the relevant rates and methods of assessment of customs duty, dumping duty and the rate of overseas exchange in force on the twenty-eighth prior to the closing date of tenders. If a change in any such rate or method of assessment shall occur after such twenty-eighth day and the amount properly paid by the Contractor in respect of any of the aforementioned items or expenses shall, as a result thereof, be in excess of or less than the amount which would have been payable by the Contractor in respect of that item, had no change occurred, then such excess shall be added to the moneys otherwise payable under the Contract to the Contractor, or such decrease shall be deducted from the moneys otherwise payable under the Contract to the Contractor.

11.3 Rise and Fall in cost of labour

a) Due to non-site-specific award variations

If, after the date of the Contractor's tender there be, by reason of a decision by the Industrial Court or Commonwealth Conciliation and Arbitration Commission, an increase in:

• The wages or rates of wages; or

• Any allowance which is regarded as part of the employee's wage rate for all purposes (in this regard allowances restricted to the specific construction site shall be excluded); or
Costs associated with changes to terms and conditions of employment; or

The number of award hours of work.

then the increase or decrease in cost arising therefrom shall be determined by the following formula:

\[ A = \frac{B}{100} \times \frac{C}{D} \times E \]

Where:

- **A** = Increase or decrease in the cost of labour for the period
- **B** = The percentage of the Australian labour content of the Contract, as nominated in the annexed Cost Variation Schedule
- **C** = Variation in the Basic Gang Weekly rate since the date of tender
- **D** = The Basic Gang Weekly Rate at the date of tender
- **E** = Value of Work completed since the particular variation in labour costs occurred

- The value of ‘C’ in the formula will be the variation from the original basic gang weekly rate at the date of tender due to variations to the Award rates of pay or variation to any allowance which is regarded as part of the employees' wage rate for all purposes not restricted to the specific construction site which variations have been declared by the Industrial Court of Commonwealth Conciliation and Arbitration Commission to any of the component classifications making up the basic gang.

- Basic gang weekly rate shall mean the weighted average at the date of tender, of the minimum weekly on-site award wage or minimum on-site guaranteed wage plus allowances that are regarded as part of the employees' wage rate for all purposes but not restricted to the particular construction site as prescribed by the appropriate Awards for the several kinds and numbers or proportions of workmen making up a representative gang to be employed on the works, as agreed and listed in the Cost Variation Schedule for a 40 hour week, or whatever other number of hours is applicable under the Award for each classification of labour; and all other allowances shall be excluded from the formula.

- The value of ‘E’ will not include negotiated variations to the Contract or payment for work executed by day labour, but will include value of materials on site, if these are included in the progress payment.

b) Due to site-specific award variations

If, after the date of the Contractor's tender there be, by reason of a decision by the Industrial Court of Commonwealth Conciliation and Arbitration Commission, any allowance which is restricted to the specific construction site and which has the effect of increasing or decreasing the cost of the work under the contract, then an adjustment shall be made equal to the actual cost of saving to the Contractor which results from the decision.

The actual cost of saving shall comprise:

- Any sum of money per time period per head, exclusive of any on-cost, overhead, margin, administration charge or the like; together with;
- The nett cost, calculated as a rate in the same terms as in the point above, of any goods, services or facilities forming part of the decision.

The adjustment to be made shall be calculated from the sum of the rates calculated under the two points above multiplied by the product of the number of site persons subject to the decision and a factor equal to 1.05, which factor shall be deemed to fully compensate for all on-costs, overheads, margins, administration charges and the like.

Prior to assessing the actual cost or saving incurred under the second point above, the Contractor shall submit verification to the satisfaction of the Superintendent of the nett cost.

It shall be the Contractor's responsibility to provide weekly to the Superintendent, a Statutory Declaration listing the names and classifications of all persons subject to the decision.
11.4 **Rise and Fall in the cost of materials**

If, after the date of the Contractor’s tender, there occur increases or decreases in the costs of performing the Contract, arising from variations in the cost of materials, adjustment to the Contract Amount shall be determined by the Superintendent in accordance with the following formula:

\[
F = \left( \frac{G}{100} \right) \times \left( \frac{H}{J} \right) \times E
\]

Where:

- **F** = Increase or decrease in the cost of materials for the period;
- **G** = The percentage of the Australian material content of the Contract, as nominated in the annexed Cost Variation Schedule;
- **H** = Variation in the Average Material Index of the Nominated Group for Brisbane since the month prior to the closing date for tender;
- **J** = Average Index of the Nominated Group for Brisbane for the month prior to the closing date for tenders;
- **E** = Value of Work completed since the particular variation in labour costs occurred.

- The ‘Nominated Group’ consists of indices extracted from the ‘Index Numbers for Selected Major Building Materials’ (Table 4) and ‘Index Numbers for Special Combinations of Building Materials’ (Table 5), published by the Australia Bureau of Statistics - Catalogue No. 6407.0. The index numbers shall be chosen from any of the groups listed in that publication.

- Adjustments to the Contract Amount shall be based on the final index figures published for the month prior to the Contractor’s claim and up to date adjustments will be made progressively as final indices become available.

For the purpose of Progress Payments, the last published index figures for the month preceding the cut-off date for the Contractor’s claim shall be used. Final adjustments for the Contract will be made at the completion of the works and paid in the final payment.

11.5 **Rise and Fall in the cost of bitumen**

If, after the date of the Contractor’s tender, there occur increases or decreases in the costs of performing the Contract arising from variations in the cost of bitumen, adjustment to the Contract Amount shall be determined by the Superintendent in accordance with the following formula:

\[
N = (M - L) \times K
\]

Where:

- **K** = the quantity of bitumen derived from:
  - The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat, or
  - The approved design binder content where the product is asphalt, or
  - The approved residual binder content where the product is a bituminous slurry surfacing;
- **L** = the price of Class 320 bitumen applicable at 9am on the Reference Date;
- **M** = the price of Class 320 bitumen on the 15th day of the month during which the work is performed; and
- **N** = the applicable cost adjustment for this payment claim.
The Reference Date shall be the 15th day of the month prior to the time for lodgement of tenders for the contract.

The price of Class 320 bitumen shall be the General Market Price from the Contractors nominated suppliers of bitumen.

Price fluctuations pursuant to this clause will not be considered until six months after the date of the Acceptance of Offer letter, and thereafter at six monthly intervals.

At the end of the initial six month period, and at the end of each subsequent six month period, provide the Superintendent with details of the prices and any fluctuations. Provide evidence of this information from the Supplier.

Within 14 days after receipt of evidence intended to verify the fluctuation of the relevant price variable, the Superintendent will consider the price fluctuation. If the fluctuation is deemed valid the Superintendent will advise the Contractor in writing of the date on which it will take effect. This will be a date not more than 28 days after receipt of evidence satisfactory to the Superintendent that the fluctuation should be implemented.

This calculation will be compared to the similar calculation for the previous six month period, or the last period at which prices were determined. If the movement in this average price is greater than AUD$10.00 per tonne, then the base Class 320 bitumen prices will move by an equivalent amount, in the same direction. These new prices then become the base prices for the purpose of future comparison. If the movement in Arab Heavy crude oil is less than AUD$10.00 then the base prices will not change. For future periods, the calculation will be compared with the similar calculation at the times prices were last varied.

In the case of a price increase or decrease as per the above calculation, a variation in price will not be considered unless there is also a movement in the same direction of the General Market Prices (GMPs) as per the BP Bitumen List Price, Brisbane and the Shell Bitumen List Price, Brisbane. Should this be the case, then the variation in price proposed to the Superintendent shall be either the average of the total of all GMP price movements for both BP Bitumen and Shell Bitumen in this period, or the movement as per the calculation in the price variation formula, whichever is the lesser.

11.6 Cost variation schedule

Tenderers shall complete a Cost Variation Schedule and submit it with their offer, together with any supporting data deemed necessary for the proper clarification of the price variation conditions.

12. Contract Documents

The contract document shall comprise the following:

- The Contract Header (including agreed deviations).
- Acceptance of Offer.
- The Conditions of Contract and Special Conditions of Contract.
- The Specifications.
- The Offer (to the extent accepted under the Contract Header).
- Any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Principal and Contractor.
13. Cancellation of the Construction Phase

In a ‘Design-and Construct’ tender, the following is applicable:

The Principal reserves the right to not proceed with the construction phase of the contract for any reason it considers appropriate. In the event that Principal decides not to proceed with the construction phase, the total payment to the Contractor will be limited to the payment due in respect of the design phase of the contract only.

14. Legislative Requirements

Clause 14, is to be supplemented with:

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. Work Health and Safety Act 2011

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.

16. Work Health and Safety Audit

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. As a minimum it is expected that quarterly audits will be conducted or as and when required by the Principal.

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.

17. Right to Information and Disclosure

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

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

Information relating to the Contract is potentially subject to disclosure to third parties.
If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Principal. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

Despite any other provision of the Contract, the Principal is entitled to publish on the City of Gold Coast website: www.goldcoast.qld.gov.au/awarded-contracts or by any other means, the following details:

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

18. Termination for Convenience

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 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.

19. No Guarantees

Add new clause

In registering a person as a Pre-qualified Supplier, if applicable, the Principal is not providing any guarantee, promise or undertaking that:

- the Principal will seek Quotes from that Pre-qualified Supplier at any time during the term of the Register
- any Contract will be entered into with that Pre-qualified Supplier
- a minimum quantity of work will be directed to that Pre-qualified Supplier; and/or
- the Pre-qualified Supplier will continue to be registered during the term of the Register; and/or
- that the Register will not be terminated prior to the expiration of its maximum term.

20. Changes to the number of Pre-qualified Suppliers

Add new clause

At any time during the term of the Register, if applicable, the Principal may (in its sole and absolute discretion and for whatever reason it deems appropriate) Register additional persons as Pre-qualified Suppliers.
Cancellation of the registration of a Pre-qualified Supplier can only occur as per the conditions listed in Clause 18, the Principal must comply with its Procurement Policy pursuant to the Local Government Act 2009 in adding any additional Pre-qualified Suppliers to the Register.

21. Assessment and Performance Monitoring

Add new clause

The Principal will assess usage of each Register, if applicable, as well as the performance of each Pre-qualified Supplier with particular regard to each Contract entered into with the Pre-qualified Supplier.

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

22. Cancellation to Registration

At any time during the term of the Register, if applicable, the Principal may cancel the registration of a Pre-qualified Supplier immediately and without prior notice to the Pre-qualified Supplier if:

- The Principal is of the opinion that the implementation of the Pre-qualified Suppliers service in not in accordance with the rectification plan measures.
- The Pre-qualified Supplier enters into any form of insolvency administration.
- The Pre-qualified Supplier enters into any form of insolvency administration.
- the Pre-qualified Supplier has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Principal; or
- the Pre-qualified Supplier is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any Councillor or any officer, employee or agent of the Principal
- Such termination shall be effected by the Principal giving the Pre-qualified Supplier written notice termination the registration of the Pre-qualified Supplier and specifying the date of the cancellation. Further such cancellation shall not entitle the Pre-qualified Supplier to any form of compensation whatsoever, including (but not limited to) loss of prospective profits or any other form of financial compensation.

23. Termination of the Register

At any time during the term of the Register, if applicable, the Principal may terminate the register if:

- The Principal is of the opinion that the Register either no longer satisfies the Principal current or future business requirements or no longer provides the Principal with Value for Money, in relation to the provision of some or all of the works, goods or services covered by the category.

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

24. Effect of Termination

Any termination of the Register of Pre-qualified Supplier if applicable shall not effect:

- any Contract that has not been terminated; nor
- any right or entitlement which either party is entitled to claim under the provisions of the Contract conditions
'Assignment and subcontracting' the registration of a person or entity as a Pre-qualified Supplier is a personal matter and cannot be assigned, novated or subcontracted to any person / entity whatsoever. Therefore, if a Pre-qualified Supplier's business is sold to a third party (either in whole or part) or reconstructed (either in whole or part), the registration cannot be assigned or novated to that third party. That third party will have to apply to become registered as a person / entity as a Pre-qualified Supplier in relation to that Register.

25. 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.


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:

- The name and address of the Principal and the Contractor.
- A description of the services to be provided pursuant to the Contract.
- The date of award of the contract (including the relevant stages of the Contract, if any).
- 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).
- The procurement method used to engage the Contractor.
27. Risk and Indemnity

To the extent permissible by law, the Contractor indemnifies the Principal to an amount equivalent to the Professional Indemnity in Clause 6 from and against:

- Loss of or damage to any property of the Principal including the Contract Material.
- Claims and demands whatsoever and howsoever arising which may be brought or made against the Principal by an person in respect of personal injury or death or loss of or damage to any other property, to the extent caused or contributed to by a breach of contract or by a negligent, unlawful or wilfully wrong act or omission of the Contractor, its employees, agents or subcontractors, arising out of the performance (or attempted or purported performance or non-performance) of the service, but the Contractor’s liability to indemnify the Principal shall be reduced proportionally to the extent that an act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, death or injury.
- The indemnity in this Clause shall not apply to:
  - Exclude any other right of the Principal to be indemnified by the Contractor.
  - Damage which is the unavoidable result of the carrying out of the service in accordance with the Contract.
  - Claims in respect of the Principal’s right to have the service carried out.

With the exception of claims that may be brought against the Principal for personal injury or death, the Contractor’s liability to the Principal under the Contract is limited, per claim and in the aggregate, to the amount specified in the Schedule.

This clause survives the termination or expiration of the Contract.

28. 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.

Information regarding the City of Gold Coast and procurement complaint process can be found on cityofgoldcoast.com.au/procurement-complaints-process.