



# Special Conditions of Contract



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Council of the City of Gold  
Coast

Operational Works

Version 4 – November 2015

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## 1. Definitions and Interpretation

1.1 Read these Special Conditions of Contract in conjunction with the Conditions of Contract: Provision of Goods and/or Services, these Special Conditions of Contract, where applicable, will take precedence over the Conditions of Contract.

1.2 In these Special Conditions of Contract, unless the context otherwise requires, the following definitions will apply:

**Arrangement** means a legally binding contract as agreed between the Principal and the Contractor constituted by the Documents specified in the Conditions of Contract Clause 3.1.

**Certificate of Completion** means the notification in writing given by the Superintendent after completion of the supply of the specified services or services and materials.

**Contract sum** has the same meaning as is that of Price defined in the Conditions of Contract.

**Completion** is that stage in the carrying out and completion of the work under contract when:

- the services are complete except for minor defects:
  - which do not prevent the Works from being reasonably capable of being used for their stated purpose
  - which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying
  - the rectification of which will not prejudice the convenient use of the Works.
- Those tests which are required by the Contract to be carried out and passed before the Works reach completion have been carried out and passed.
- Documents and other information required under the Contract which, in the Superintendent's opinion, are essential for the use, operation and maintenance of the Works have been supplied.

**drawings** means the drawings, plans or maps referred to in the Specification including any modifications of such drawings notified to the Contractor.

**excepted risk** means the excepted risks causing loss or damage, for which the principal is liable for.

**fixed price** means the Contract sum is not subject to Rise and Fall.

**Intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right.

**item** means an item in the Schedule of Rates.

**labour** includes all cartage and haulage and work done or to be performed by machinery.

**progress certificate** means a certificate evidencing the Superintendent's opinion of the moneys due from the Principal to the Contractor pursuant to the progress claim.

**provisional sum** (including monetary sum, contingency sum and prime cost item) means a provisional sum made in the Contract which is not itself payable by the Principal, but where pursuant to a direction to work or item to which the provisional sum relates is carried out on the written instruction of the Superintendent by the Contractor, the work or item will be priced by the Superintendent and paid to the Contractor. The difference should be added to or deducted from the contract sum.

**Separable portions**, where not predefined, may be directed by the Superintendent, who shall clearly identify each, the:

- Portion of the works.
- Date of completion of each.

- Respective amounts for security, bonus, liquidated damages and delay damages (all calculated pro-rata to the ratio of the Superintendents valuation of the separable portion to the Contract Sum.

**Superintendent** means the person from time to time appointed by the Principal to be the Superintendent and notified as such in the Contract Header to the Contractor by the Principal for the purposes of the Contract.

**Superintendent’s Representative** means the person appointed in writing by the Superintendent to act on the Superintendent’s behalf.

**temporary works** means work used in carrying out and completing the work under the Contract, but not forming part of the works.

**the works** means the whole of the work or service to be carried out and completed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

**work** means the work or service and includes the provision of materials equipment and labour.

**WUC (‘work under the contract’)** means the work or service which the Contractor is or may be required to carry out and complete under the Contract and includes variations, remedial work or service, equipment and temporary works, and like words have a corresponding meaning.

### 1.3 Interpretation

In these Special Conditions of Contract, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Special Conditions of Contract.

1.4 The documents included in the Contract are to be read and construed together as one document.

1.5 All measurements of physical quantities will be in Commonwealth legal units of measurement within the meaning of the *Weights and Measures (National Standards) Act 1960* as amended from time to time.

## 2. Security Deposit

2.1 Notwithstanding the provisions of Clause 17 of the Conditions of Contract, where stipulated in the Contract Header as applicable, the Contractor must lodge with the Principal, a security deposit in accordance with the following scale:

| <b>Contract Sum</b>                   | <b>Amount of Survey</b>  |
|---------------------------------------|--|
| Not above \$20,000                    | 5% of the Contract Sum   |
| Over \$20,000 but not above \$100,000 | \$1,000 plus 2.5% of the amount by which the Contract Sum exceeds \$20,000 |
| Over \$100,000                        | \$3,000 plus 1% of the amount by which the Contract Sum exceeds \$100,000  |

2.2 Within one month of the date of issue of Certificate of Completion (or the final determination of any proceedings under this clause) the original security, less any portions retained under the Contract, will be returned to the Contractor.

2.3 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 which may be held by the Principal under this contract will not exceed five per cent of the Contract Sum. The parties agree that this condition is expressly excluded from this Contract.

### 3. Working Hours

- 3.1 Unless directed otherwise, no work will be permitted outside the working hours given in Section 4: Specifications without the written approval or direction of the Superintendent except in the case of an emergency which could not have been reasonably foreseen by the Contractor.
- 3.2 When work is elected to be carried out outside these hours by written approval 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 certificated under the Contract.
- 3.3 Working hours for the Superintendent or Principal are from 8am to 5pm on Mondays to Fridays inclusive. Where the Contractor is required to liaise with the Superintendent or the Principal, all work must be coordinated within these working hours or by special arrangement.

### 4. Intellectual Property Rights

- 4.1 Notwithstanding the provisions of Clause 20 of the Conditions of Contract or unless otherwise provided for in the Contract, all payments for Intellectual Property Rights, and all fees that become payable in connection with the WUC will be the responsibility of the Contractor and will be paid by the Contractor when they become due and payable. Any fees that are payable for Intellectual Property Rights will be deemed to be included in the scheduled rates.
- 4.2 Where information owned by the Principal is supplied:
- The ownership, copyright and intellectual property rights of such information is retained by the Principal.
  - The provision is on a one-time basis only, and does not imply or infer maintenance or the issue of updates / addenda.
  - Do not supply, use or on-sell this to any third party, either in part or in total.
  - Allow the information to be used for internal use for this contract only, by any employee in any location in any appropriate manner.
  - Take all responsible steps to maintain and safeguard the confidentiality of the information.
  - The Principal is unable to guarantee the accuracy or completeness of it for this or any other purpose.
  - This is supplied in good faith and without prejudice.
- 4.3 Where cadastral information is supplied in digital form:
- Execute a 'Standard Licence Deed for Consultants Use of Licenced Data Products' - Schedule E of the Digital Cadastral Data Standard Licence Agreement for Distribution / Value Adding between The State of Queensland and Gold Coast City Council.
  - Negotiate direct with the Department of Natural Resources to facilitate the execution of the Licence.
  - Such information will not be supplied until evidence of the above-mentioned has been provided.

### 5. Provision of the Works

- 5.1 Notwithstanding the provisions of Clause 7 of the Conditions of Contract, the Contractor carrying out the Works under this Contract is deemed to be an independent contractor and not as an employee, and will not represent itself or allow itself to be represented as the agent or employee of the Principal.
- 5.2 The Contractor must:

- commence the Works on the commencement date nominated in the letter of acceptance and or in the Contract Header
- perform the Works:
  - with the reasonable care, skill and attention expected of an organisation experienced in the WUC
  - to the highest industry standards
  - in a timely manner and complete by the Completion Date where appropriate
  - for the contract period
- comply with the Specification requirements
- act professionally and ethically at all times in the performance of the Works.

**5.3** Where the Contractor fails to perform the Works or part of the Works in accordance with the requirements of Clause 5.2, the Superintendent may direct, in writing, the Contractor to complete these Works within a reasonable period. If the Contractor fails to complete the Works within the timeframe, or provide reasonable notice as to why the Contract cannot reasonable comply, the Superintendent may remove all or part of the affected Works out of the Contractors control and the Principal or a third party may then complete these Works. The costs of completing these Works will be calculated at a rate commensurate with the contracted rates in accordance with Clause 13 and deducted from any monies due and payable to the Contractor.

## **6. Work Program**

- 6.1** The Superintendent may direct in what order and at what time the various portions of WUC must be carried out. If the Contractor can reasonably comply with the direction, the Contractor will do so. If the Contractor cannot reasonably comply, the Contractor will give the Superintendent written notice of the reasons.
- 6.2** The Superintendent may direct the Contractor to give the Superintendent a work program within the time and in the form directed.
- 6.3** A work program is a written statement showing the dates by which, or the times within which, the various stages or portions of WUC are to be carried out or completed. It will be deemed a Contract document.
- 6.4** The Contractor will not, without reasonable cause, depart from a work program.

## **7. Terms of Payment**

- 7.1** Notwithstanding the provisions of Clause 12 of the Conditions of Contract, where Claim for payment is applicable as stipulated in the Contract Header the Principal will pay progress payments provided that the Contractor is performing its obligations in accordance with the Contract.
- 7.2** The Contractor must submit to the Superintendent a detailed statement in a form satisfactory to the Superintendent, on the last day of each month or as agreed between the Contractor and the Superintendent, showing the progressive value of the Works carried out in the performance of the Contract. Within 14 days after the receipt by the Superintendent of such a statement, the Superintendent must determine the value of the Works so carried out, and issue a progress certificate.
- 7.3** Payments of monies due under a progress certificate will be made within 21 days of the issue of that progress certificate.
- 7.4** Unless otherwise stated in the Contract Header, the Contract will not be subject to rise and fall.

- 7.5** Where the Contract is subject to rise and fall, any variation in the contract sum resulting from the rise and fall provisions of the Contract must be submitted within one month after the effective date of the variation of cost or as agreed by the Superintendent.
- 7.6** Any progress payment by the Principal to the Contractor will be payment on account only and will not imply any approval or acceptance that the Works have been carried out, or are adequate, or satisfactory or comply with the Contract.
- 7.7** The issuing of a completion or other certificate will not relieve the Contractor of his liability under the Conditions of Contract, whether or not the same be notified by the Superintendent at the time of, or subsequently to granting any such Certificate. The whole or part of the security deposit lodged under clause 2, will be applied to the cost of rectification of defects or plant modifications necessary to meet the specified requirements.

## **8. Indemnity by Contractor**

- 8.1** Notwithstanding the provisions of clause 24 of the Conditions of Contract, insofar as this Clause applies to property, it applies to property other than WUC.
- 8.2** The Contractor must indemnify the Principal against:
- loss of or damage to the Principal's property
  - claims in respect of personal injury or death or loss of, or damage to, any other property arising out of or as a consequence of the carrying out of WUC, but the indemnity will be reduced proportionally to the extent that the act or omission of the Superintendent, the Principal or its consultants, agents or other Contractors (not being employed by the Contractor) may have contributed to the injury, death, loss or damage.
- 8.3** This clause will not apply to:
- exclude any other right of the Principal to be indemnified by the Contractor
  - things for the care of which the Contractor is responsible
  - damage which is the unavoidable result of the construction of the Works in accordance with the Contract
  - claims in respect of the Principal's right to have WUC carried out.
- 8.4** The Contractor's liability is limited to the extent of the covers required for public liability and for the Works under this clause.

## **9. Insurances**

### **9.1 Insurance of Works – Contractor to insure**

Before commencing WUC, the Contractor must insure all of the Works and any material and plant used by the Contractor against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

- 9.2** Without limiting the generality of the obligation to insure, such insurance must cover the Contractor's liability and things in storage off site and in transit to the site but may exclude:
- the cost of making good fair wear and tear or gradual deterioration, but must not exclude the loss or damage resulting therefrom
  - the cost of making good faulty design, workmanship and materials, but must not exclude the loss or damage resulting therefrom

- consequential loss of any kind, but must not exclude loss of or damage to the Works
- damages for delay in completing or for the failure to complete the Works
- loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause
- loss or damage resulting from the excepted risks.

**9.3** The insurance cover must be for an amount not less than the aggregate of the:

- Contract Sum
- the costs of demolition and removal of debris
- Consultants' fees
- materials or things to be supplied by the Principal for the purposes of WUC
- additional amount of 20 per cent of the total of the items referred to in the preceding four points of this clause.

**9.4** Insurance must cover the Contractor and all subcontractors whenever engaged in WUC for their respective rights, interests and liabilities and, except where the Contract otherwise provides, must be with an insurer and in terms both approved in writing by the Principal (which approvals will not be unreasonably withheld). The Principal must be noted as an interested party.

**9.5** The insurance must be maintained until the Contractor completes the WUC.

### **9.6 Public Liability Insurance – Contractor to insure**

Before commencing WUC, the Contractor must effect and maintain for the duration of the Contract, a public liability policy.

**9.7** The policy must:

- be in the name of the Contractor, noting the Principal as an interested party
- cover the:
  - rights and interests
  - liabilities to third parties
- of the parties, the Superintendent and subcontractors from time to time, whenever engaged in WUC
- cover the Contractor's liability to the Principal for loss or damage to property (other than property required to be insured by Clause 9.1 and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy)
- be endorsed to cover the use of any equipment not covered under a comprehensive or third party motor vehicle insurance policy
- provide insurance cover for an amount in respect of any one occurrence of not less than \$10,000,000
- be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals will not be unreasonably withheld).

### **9.8 Insurance of employees**

Before commencing WUC, the Contractor must insure against liability for death of or injury to persons employed by the Contractor, including liability by statute and at common law. The insurance cover must be maintained until completion of all WUC.

**9.9** Where permitted by law, the insurance policy or policies must be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.

**9.10** The Contractor must ensure that all subcontractors have similarly insured their employees.



**9.11 Construction/trade plant and equipment**

The Contractor must obtain and pay premiums for and ensure that his Subcontractors obtain insurance in respect of 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.

**9.12 Comprehensive motor vehicle**

The Contractor must effect and maintain comprehensive motor vehicle insurance in respect of any vehicle which will be used in and necessary to the works to be carried out under this contract. The interpretation of motor vehicle must be self-propelled vehicle whether registered or not.

**9.13 Inspection and provisions of insurance policies**

Before commencing WUC and whenever requested in writing at any time and from time to time thereafter to do so by the Principal, the Contractor must produce evidence to the satisfaction and approval of the Principal of the insurance effected and maintained by the Contractor.

**9.14** Such evidence must include a statement from the Insurer that:

- the Contractor has the specified cover
- the policies are current until (the date to be stated by the Insurer)
- the Contractor's past history of insurance cover suggests a stable business / insurance cover situation
- the full contractual situation of this Contract is acknowledged (Principal, Contractor, Contract name and number, names of the insured parties, contract value, insured value(s) and anticipated period(s) of the required cover).

**9.15** The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected in accordance with clauses 9.1 to 9.12 and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.

**9.16** The effecting of insurance in accordance with clauses 9.1 to 9.12 must not in any way limit the liabilities or obligations of the Contractor under other provisions of the Contract.

**9.17 Payment of GST**

Notwithstanding any other provision of this agreement, the payment due to the Consultant in respect of any claim made under the required insurance policies must, after payment of GST by the Consultant, be such that the Consultant retains the amount that would have been received if GST were not payable.

**10. Urgent Protection**

**10.1** If urgent action is necessary to protect WUC, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Superintendent may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the Superintendent must certify the cost incurred as moneys due from the Contractor to the Principal.

**10.2** If time permits, the Superintendent must give the Contractor prior written notice of the intention to take action pursuant to this clause.

**11. Payment of workers and subcontractors**

**11.1 Workers and subcontractors**

The Contractor must give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- workers of the Contractor and of the subcontractors
- subcontractors.

in respect of WUC the subject of that claim.

**11.2** If the Contractor is unable to give such documentary evidence, the Contractor must give other documentary evidence of the moneys so due and payable to workers and Subcontractors.

**11.3** Documentary evidence, except where the Contract otherwise provides, must be to the Superintendent's satisfaction.

**11.4 With holding payment**

Subject to the next clause the Principal may withhold moneys certified due and payable in respect of the progress claim until the Contractor complies with clauses 11.1 to 11.3.

**11.5** The Principal will not withhold payment of such moneys in excess of the moneys evidenced pursuant to clauses 11.1 to 11.3 as due and payable to workers and subcontractors.

**11.6 Direct payment**

Before final payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations law) may pay unpaid moneys the subject of clauses 11.1 to 11.3 directly to a worker or a subcontractor where:

- permitted by law
- given a court order in favour of the worker or subcontractor
- requested in writing by the Contractor.

**11.7** Such payment and a payment made to a worker or subcontractor in compliance with a legislative requirement will be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to clause 7.

**12. Provisional Quantities**

**12.1** The Provisional Quantities, if any, in the schedule are to be used in arriving at the Contract Amount, but are subject to on site re-measure with payment made at the Scheduled Rate only on the finally agreed quantity.

**13. Variations**

**13.1** Notwithstanding the provisions of Clause 30 of the Conditions of Contract, the Contractor must not vary the WUC except as directed in writing by the Superintendent.

**13.2** If at any time during the performance of this Contract, the Superintendent determines that the form, quality or quantity of the work under the Contract should be varied, the Superintendent may order the Contractor to do all or any one or more of the following things:

- increase, decrease or omit any part of the work under the Contract
- change the character or quality of any material or work
- change the levels, lines, positions or dimensions of any part of the work under the Contract
- execute additional work.

- 13.3** No variation may invalidate the Contract, but the value of the variation must be taken into account in determining the final Contract Sum. Each variation will be valued in accordance with the next clause and, unless otherwise directed by the Superintendent, such valuation must be determined before the work to which the variation relates is commenced.
- 13.4** A variation will be valued in accordance with the Schedule rates. Where the Superintendent determines that the Schedule rates do not apply to a variation, the rate or price payable for the variation will be determined by agreement between the Contractor and the Superintendent, but if the Contractor and the Superintendent fail to agree on the rate or price the Superintendent may determine such rate or price as he considers reasonable.
- 13.5** The Superintendent may order that the variation be valued and paid as Daywork.
- 13.6** No such variations may in any way extend the time for the completion of the Contractors obligations under the Contract unless such extension may have been given as provided in clause 15.
- 13.7** The Contractor will not be entitled to any other rates than the rates set out in the Schedule on any claim that the supply is in a different position, or of a different class from, or in a more difficult position than that shown on the Plan, or described in the Specification, or carried out under circumstances not contemplated in the Specification, unless they have been determined by the Superintendent.

## **14. Daywork**

- 14.1** If the Superintendent directs that work ordered as a variation be carried out as Daywork, the Contractor will record each day in a manner to be approved by the Superintendent, and submit these daily for checking and approval, the particulars of all resources used by the Contractor for the execution of the Daywork. The Contractor must submit the approved records as part of the claims for payment. The Superintendent must determine the amount to be paid to the Contractor in respect of each claim and in making his determination must have regard to the following:
- the amount of wages and allowance paid or payable by the Contractor at the rates pertaining on the site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent
  - the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under the preceding paragraph
  - the amount of hire charges in respect of constructional plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed upon between the Superintendent and the Contractor or, in the absence of such an agreement, in accordance with such rates and conditions as may be determined by the Superintendent
  - the amounts paid for services, subcontracts and professional fees
  - the actual cost to the Contractor at the site of all materials supplied and required for the work
  - a charge agreed upon between the Superintendent and the Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of such an agreement, a charge determined by the Superintendent.
- 14.2** The amounts payable for Daywork will not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

## **15. Extension of Time**

- 15.1** Should the Contractor be delayed or impeded in the execution of the Contract by reason of extras or variations, subject to the provisions of Clause 13, being ordered by the Superintendent, the Contractor may from time to time within 14 days of the happening or occurring of the inability, non-delivery, delay,

act, default or accident, ordering of extras or variations or cause referred to in this clause, apply in writing to the Superintendent for an extension of time for the completion of the Works on account thereof, setting forth the nature of the happening or occurrence on which the application is based.

## **16. Liquidated Damages**

- 16.1** If the Contractor fails to complete the Works or portions of the Works within the approved work program and / or the contract period (including any approved extensions), the Contractor will be liable to the Principal by way of pre-estimated and liquidated damages and not as a penalty, for the amount stated in the Contract Header for every day until completion is attained or the taking over or cancellation occurs, whichever is the sooner. The amount of liquidated damages will be a debt due from the Contractor to the Principal which may be deducted or recovered by the Principal from any monies due to the Contractor, including any security.
- 16.2** If WUC or a specified portion does not reach completion by the date of completion, the Superintendent must certify, as due and payable to the Principal, liquidated damages for every day after the date of completion to and including the earliest of the date of completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

## **17. Superintendent**

### **17.1 Superintendent**

Where Stipulated in the Contract Header that a Superintendent is to be appointed to the Contract, the Principal must ensure that at all times there is a Superintendent, and that the Superintendent fulfils all aspects of the role and functions reasonably and in good faith.

- 17.2** The WUC must be executed in accordance with the Contract and in accordance with any directions of the Superintendent pursuant to the provisions of the Contract.
- 17.3** Except where the Contract otherwise provides, the Superintendent may give a direction orally but will as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor will not be bound to comply with the direction until the Superintendent does so.

### **17.4 Superintendent's Representative**

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent's Representatives functions, provided that:

- no aspect of any function will at any one time be the subject of delegation to more than one Superintendent's Representative
- delegation will not prevent the Superintendent exercising any function
- the Superintendent forthwith gives the Contractor written notice of respectively:
  - the appointment, including the Superintendent's Representative's name and delegated functions
  - the termination of each appointment
- If the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent's will terminate the appointment.

## 18. Contractor's Representative

- 18.1 Notwithstanding the provisions of clause 9 of the Conditions of Contract, the Contractor must superintend WUC personally or by a competent representative. Matters within a Contractor's representative's knowledge (including directions received) will be deemed to be within the Contractor's knowledge.
- 18.2 The Contractor will forthwith give the Superintendent written notice of the representative's name and any subsequent changes.
- 18.3 If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor must terminate the appointment and appoint another representative.
- 18.4 The Superintendent may direct the Contractor to have removed, within a stated time, from the site or from any activity of WUC, any person employed on WUC who, in the Superintendent's opinion, is incompetent, negligent or guilty of misconduct.

## 19. Suspension of Works

- 19.1 Notwithstanding the provisions of Clause 32 of the Conditions of Contract, the Superintendent may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:
- because of an act, default or omission of:
    - the Superintendent, the Principal or its employees, consultants, agents or other contractors (not being employed by the Contractor)
    - the Contractor, a subcontractor or either's employees or agents
  - for the protection or safety of any person or property
  - to comply with a court order.
- 19.2 The Contractor will bear the cost of suspension if the act, default or omission can be attributed to the Contractor, a subcontractor or either's employees or agents.

## 20. Time and Progress

### 20.1 Progress

The Contractor must ensure that WUC reaches completion by the date of completion.

### 20.2 Notice of delay

A party becoming aware of anything which will probably cause delay to WUC must promptly give the Superintendent and the other party written notice of that cause and the Superintendent and the other party written notice of that cause and the estimated delay.

### 20.3 Extension of time

Within 14 days after receiving the Contractor's claim for an EOT, the Superintendent must give to the Contractor and the Principal a written direction evidencing the EOT as assessed. If the Superintendent does not do so, there will be a deemed assessment and direction for an EOT as claimed.

## 21. Cleaning up

- 21.1 The Contractor must keep the site and WUC clean and tidy and regularly remove rubbish and surplus material.
- 21.2 Within seven days after the date of completion, the Contractor must remove temporary Works and equipment. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.
- 21.3 If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.
- 21.4 The Principal may have that work so carried out and the Superintendent will certify the cost incurred as moneys due from the Contractor to the Principal, If:
- the Contractor fails to comply with such a direction
  - that failure has not been made good within five days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others.
- 21.5 The rights given by this clause are additional to any other rights and remedies.

## 22. Materials, Labour and Equipment

- 22.1 In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Contract, the Superintendent may direct the Contractor to:
- supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information
  - arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.
- 22.2 The Superintendent may give the Contractor a written direction not to remove materials or equipment from the site. Thereafter the Contractor must not remove them without the Superintendent's prior written approval (which will not be unreasonably withheld).

## 23. Defects Liability

- 23.1 Where stipulated in the Contract Header a Defects Liability Period (DLP) will commence at 4pm on the date on which the Superintendent issues written notice certifying that the Works (or separable portions) are complete except for minor defects which do not prevent the work from being used for their stated purpose, and without the immediate rectification of which the convenient and safe use of the works is not prejudiced.
- 23.2 The length of the DLP will be as stated in Contract Header, if applicable.
- 23.3 The Contractor will be responsible for rectifying defective or omitted items or workmanship.

## 24. Distribution of Works

- 24.1 When more than one supplier is accepted for this contract, successful Contractors must not assume that the Works are to be distributed evenly.

- 24.2** The Principal will distribute the Works in any proportion, to any Contractor, in any locations, to provide, in the Principal's opinion, the most advantageous outcome to its operations.
- 24.3** Ensure there are sufficient resources (staff and equipment) to perform the works in accordance with the specifications, including any temporary increase in demand due to urgent requests.

## **25. Legislative requirements**

### **25.1 Compliance**

Notwithstanding the provisions of Clause 36 of the Conditions of Contract the Contractor must satisfy all legislative requirements except those directed by the Superintendent to be satisfied by or on behalf of the Principal.

- 25.2** The Contractor, upon finding that a legislative requirement is at variance with the Contract, must promptly give the Superintendent written notice thereof.

### **25.3 Changes**

If a legislative requirement:

- necessitates a change:
  - to the Works
  - to so much of the WUC as is identified for the Contract or part of the Contract
  - being the provision of services by a municipal, public or other statutory authority in connection with WUC
  - in a fee or charge or payment of new fee or charge
- comes into effect within 14 days before the closing of the invitation to offer but could not reasonably then have been anticipated by a competent Contractor.
- causes the Contractor to incur more or less cost than otherwise would have been incurred the difference will be assessed by the Superintendent and added to or deducted from the Contract sum.

- 25.4** Further to Clauses 25.1 to 25.3, consider and implement the current versions of these and any other relevant acts and regulations.

- *Environmental Protection Act 1994.*
- *Anti-Discrimination Act 1991.*
- *Work Health and Safety Act 2011.*
- *Environmental Protection and Biodiversity Conservation Act 1999.*
- *Electrical Safety Act 2002.*
  - Electrical Safety Regulations.
  - Codes of Practice.

- 25.5** Prior to acceptance of Offer, 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 City of Gold Coast City Development Applications.

- 25.6** At the time of Contract award, 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.

## 26. Work Health and Safety

26.1 Notwithstanding the provisions of Clause 28.3 of the Conditions of Contract, within this clause the following have meaning:

- 'Act' means the Work Health and Safety Act 2011 (Qld), as amended from time to time
- 'the Works' means all work under the Contract to be performed by the Contractor under this Contract
- '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.

26.2 In relation to the 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 Works is being undertaken in relation to the works
- discharge the duties of a person who conducts a business or undertaking under the Regulation.

26.3 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.

26.4 If a notifiable incident occurs at the workplace at which the works is being undertaken under this Contract, the Contractor must:

- immediately notify the regulator, the Principal 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.

26.5 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 and/or the Principal
- comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant regulation.

## 27. Fixed Price Quotations

27.1 The Superintendent may, at the discretion of the Principal, request the Contractor to provide a fixed price quotation for services not specifically identified in Section 4 or Response Form: Price Response Forms

27.2 Submit a fixed price quotation by the date specified in the request.

27.3 The Principal is not obliged to accept any fixed price quotation that may have been requested.



**27.4** Do not proceed with the supply of Services quoted in a fixed price quotation unless the Principal issues a written instruction to do so.

**27.5** No fee shall be applicable for providing a fixed price quotation.

## **28. Status of Register of Pre-qualified and/or Preferred Suppliers**

### **28.1 Changes to the number of pre-qualified and/or preferred suppliers**

If this Clause is shown as applicable in the Contract Header, at any time during the term of the Arrangement, the Principal may (in its sole and absolute discretion and for whatever reason it deems appropriate) register additional persons as Pre-qualified or Preferred Suppliers.

**28.2** Cancellation of the registration of a Pre-qualified or Preferred Supplier can only occur as per the conditions listed in Clause 33 of the Conditions of Contract, the Principal must comply with its Procurement Policy pursuant to the *Local Government Act 2009* in adding any additional Pre-qualified or Preferred Suppliers to the Contract.

### **28.3 Assessment and Performance Monitoring**

If this Clause is shown as applicable in the Contract Header, the Principal will assess usage of the Arrangement as well as the performance of each Pre-qualified and/or Preferred Supplier with particular regard to the Contracts entered into with the Pre-qualified and/or Preferred Supplier.

**28.4** Should a Pre-qualified and/or Preferred Supplier's performance or situation become unacceptable, the Pre-qualified and/or Preferred 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 Contract with the Pre-qualified and/or Preferred Supplier may be terminated.

### **28.5 Cancellation**

If this Clause is shown as applicable in the Contract Header, at any time during the term of the Arrangement, the Principal may cancel the registration of a Pre-qualified or Preferred Supplier immediately and without prior notice to the Pre-qualified or Preferred Supplier if:

- the Principal is of the opinion that the implementation of the Pre-qualified or Preferred Suppliers service is not in accordance with the rectification plan measures
- the Pre-qualified and/or Preferred Supplier enters into any form of insolvency administration
- the Pre-qualified and/or Preferred Supplier has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Principal
- the Pre-qualified and/or Preferred 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.

**28.6** Such termination shall be effected by the Principal giving the Pre-qualified or Preferred Supplier written notice termination the registration of the Pre-qualified or Preferred Supplier and specifying the date of the cancellation. Further such cancellation shall not entitle the Pre-qualified or Preferred Supplier to any form of compensation whatsoever, including (but not limited to) loss of prospective profits or any other form of financial compensation.

### **28.7 Termination**

If this Clause is shown as applicable in the Contract Header, at any time during the term of the Arrangement, the Principal may terminate the Arrangement if the Principal is of the opinion that the Arrangement either no longer satisfies Councils current or future business requirements or no longer provides Council with Value for Money, in relation to the provision of some or all of the works, goods or services covered by the category.

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

**28.9 Effect of Termination**

Any termination of the Arrangement of Pre-qualified and/or Preferred Supplier shall not effect:

- any Contract that has not been terminated
- any right or entitlement which either party is entitled to claim under the provisions of the Contract conditions.

**28.10** 'Assignment and subcontracting' the registration of a person or entity as a Pre-qualified and/or Preferred Supplier is a personal matter and cannot be assigned, novated or subcontracted to any person / entity whatsoever. Therefore, if a Pre-qualified and/or Preferred 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 or Preferred Supplier in relation to that Contract.

## **29. Certification of Design**

**29.1** Where the Contract requires design to be carried out which would require the designer to be registered under the Queensland Professional Engineers Act, the following shall apply:

- Ensure that the design of the Works is supervised at all relevant times by a Designer who is:
  - a Registered Professional Engineer of Queensland (RPEQ)
  - experienced in work similar to the work under the Contract.
- Provide RPEQ certification in a form acceptable to the Principal in respect of the adequacy and suitability of the design of the specified parts of the Works.
- Be prepared to:
  - warrant that the Designer will in carrying out its obligations under this Contract perform the design services to a standard of care, skill, judgement and diligence commensurate with that which would be expected of an experienced professional engineer with expertise in the provision of similar services for projects of the nature of the work under the Contract
  - indemnify the Principal for any damage, loss, cost, expense or liability (whether direct, indirect or consequential, present or future, fixed or unascertained, actual or contingent) arising out of a breach of obligations under this clause.

**29.2** If the Contractor proposes to appoint an external consultant to act as Designer rather than a suitably qualified employee of the Contractor:

- obtain the Principal's prior written approval of the nominated person
- do not replace the nominated person without the Principal's prior written approval
- ensure that the terms of engagement include that the Designer provides:
  - a duly executed written deed of warranty and indemnity in favour of the Principal in a form acceptable to the Principal on the same terms as set out in this clause
  - evidence to the Principal of the existence and currency of a policy of professional indemnity insurance with a limit of cover of not less than \$2,000,000 or as specified in the Contract Header, whichever is the greater.
- accept liability for the acts and omissions of the external Designer as if they were acts or omissions
- accept any obligation under this Contract by virtue of an approval to subcontract design services

- accept that no payment under this Contract will be made until you have complied with your obligations.

### **29.3 Cancellation of the Construction Phase**

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.



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Council of the City of Gold Coast

PO Box 5042 GCMC QLD 9729

E [mail@cityofgoldcoast.com.au](mailto:mail@cityofgoldcoast.com.au)

W [cityofgoldcoast.com.au](http://cityofgoldcoast.com.au)

P 1300 GOLDCOAST (1300 465 326)

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