Special Conditions of Contract

and

Annexure

To be read in conjunction with

Australian Standard General Conditions of Contract AS 2124⎯1992

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# CONDITIONS OF CONTRACT

# GENERAL

The Conditions of Contract shall be the Australian Standard General Conditions of Contract (AS 2124⎯1992) as amended by the Special Conditions of Contract

# INTERPRETATION

In the event of conflict or inconsistency between the provisions of the Australian Standard General Conditions of Contract (AS 2124⎯1992) and the Special Conditions of Contract, the Special Conditions of Contract shall take precedence.

References to "Annexures" in AS 2124⎯1992 shall be read as references the Special Conditions of Contract, Annexure and Attachments as follows:

|  |  |
| --- | --- |
| **AS Contract Reference** | **Special Conditions and Annexure Reference** |
| Annexure Part A | Annexure |
| Annexure Part B | Special Conditions of Contract |

References to "attached to these Conditions" shall be read as reference to attachments to the Special Conditions of Contract.

# SPECIAL CONDITIONS OF CONTRACT

# CONSTRUCTION OF CONTRACT

No amendment.

# INTERPRETATION

No amendment.

# NATURE OF CONTRACT

No amendment.

# BILL OF QUANTITIES

No amendment.

# SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

## Purpose

No amendment.

## Provision of Security

No amendment

## Form of Security

No amendment.

## Time for Lodgement of Security

No amendment.

## Recourse to Retention Moneys and Conversion of Security

Delete Clause 5.5 and substitute the following new Clause:

## “5.5 Recourse to Retention Moneys and Conversion of Security

A party may immediately (and without notice to the other party) have recourse to retention moneys and/or cash security and/or may convert into money security that does not consist of money where the party has become entitled to exercise a right under the Contract in respect of the retention moneys and/or security.”

## Substitution of Security for Retention Moneys

No amendment.

## Reduction of Security and Retention Moneys

Delete Clause 5.7 and substitute the following new Clause:

“**5.7 Reduction of Security and Retention Moneys**

If, after the issue of the Certificate of Practical Completion and in the opinion of the Superintendent it is reasonable to reduce the Principal’s entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal shall, within 14 days of the Superintendent making such a determination, release security and retention moneys in excess of the entitlement.”

## Release of Security

No amendment.

## Interest on Security and Retention Moneys

No amendment.

## Deed of Guarantee, Undertaking and Substitution

No amendment.

# EVIDENCE OF CONTRACT

No amendment.

# SERVICE OF NOTICES

No amendment.

# CONTRACT DOCUMENTS

No amendment.

# ASSIGNMENT AND SUBCONTRACTING

## Assignment

No amendment.

## Subcontracting

Delete Clause 9.2 and substitute the following new Clause:

“**9.2 Subcontracting**

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a subcontractor to assign or subcontract any of the work under the Contract.

If the value of work under the Contract subcontracted to a subcontractor exceeds $50,000, the subcontract for that work shall incorporate AS 2545⎯1993 as the general conditions of subcontract, subject only to such amendments and annexure entries as are necessary to reflect the conditions of this Contract.

If the value of work under the Contract subcontracted to a subcontractor is less than $50,000, the subcontract for that work shall incorporate:

1. payment provisions with the same times for payment as the payment provisions in AS 2545⎯1993; and
2. security provisions as in AS 2545⎯1993;

subject only to such amendments and annexure entries as are necessary to reflect the conditions of this Contract.

The Superintendent may require Selected Subcontract Work to be undertaken by trade/subcontractors registered in the Department of Planning, Transport and Infrastructure Building and Construction Project Prequalification System (DPTI Prequalification System).

With a request for approval under this Clause 9.2, and at any time during the construction of the Works when directed, the Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor and include DPTI Prequalification System registration details as required.

The Contractor shall provide to the Superintendent other information that the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

The Superintendent may give approval subject to conditions including any of the following:

(a) a condition requiring that the subcontract must include provision that the subcontractor may not assign or subcontract without the consent in writing of the Contractor;

(b) a condition that the subcontract must include provisions stipulated by the Superintendent which the Superintendent considers reasonably necessary to enable the Contractor to fulfil the Contractor’s obligations to the Principal;

(c) if the subcontract price for the work to be subcontracted exceeds $50,000 a condition that the subcontract must incorporate AS 2545⎯1993 as the general condition of subcontract, subject only to such amendments as are necessary to reflect the conditions of this Contract;

If the Superintendent’s approval is given subject to any conditions, including the requirement for a subcontractor to be registered in the DPTI Prequalification System, the Contractor must not subcontract the work except in accordance with the conditions of the approval.

Where the contract requires certain parts of the work to be undertaken by subcontractors registered in the DPTI Prequalification System, the refusal of the Superintendent to approve a subcontractor shall not be deemed to have been unreasonably withheld if the subcontractor proposed is not registered in the DPTI Prequalification System.

Each component of the Works is to be limited to one subcontractor as far as practicable.”

## Contractor’s Responsibility

No amendment.

# SELECTED AND NOMINATED SUBCONTRACTORS

## Definitions

No amendment.

## Selected Subcontract

No amendment.

## Nominated Subcontract

No amendment.

## Provisions Applying Generally to Selected Nominated Subcontract Work

No amendment.

## Direct Payment of Nominated Subcontractor

Deleted.

## Termination of Nominated Subcontract

Delete Clause 10.6 and substitute the following new Clause:

“**10.6 Termination of Nominated Subcontract**

The Contractor shall not unreasonably terminate a subcontract for Nominated Subcontract Work and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. If a Nominated Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent in writing and the Superintendent shall proceed under Clause 10.3 to nominate a Nominated Subcontractor to complete the subcontract work. Alternatively, the Contractor may notify the Superintendent that the Contractor elects to complete the subcontract work without the use of a further Nominated Subcontractor.

Clause 11(b) shall apply only where the Contractor has terminated the subcontract due to insolvency of the subcontractor for any of the reasons listed in Clause 44.11(a) to (l). In all other circumstances the Contractor shall be paid only the amount which the Contractor would have been paid pursuant to Clause 11(b) if the subcontract had not been terminated.”

# PROVISIONAL SUMS

No amendment.

# LATENT CONDITIONS

Insert a new definition – “Latent Conditions” means physical conditions on the Site or its surroundings in respect of which the Superintendent has determined that Clauses 12.1 applies.

Clause 12.1 to 12.4 of the General Conditions of Contract is deleted and replaced with the following:

**12.1      Notification**

If during the execution of the work under the Contract, the Contractor encounters on the Site or its surroundings physical conditions (other than climatic conditions or conditions arising from climatic conditions) including artificial obstructions, which the Contractor considers:

1. differ materially from the conditions which would have been ascertainable by the Contractor if the Contractor had:
   * + 1. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
       2. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
       3. inspected the Site and its surroundings; and
2. could not reasonably have been anticipated at the date of the Contractor’s tender by a person experienced and competent in carrying out work of the type with which the Contract is concerned,

the Contractor must, as soon as practicable and no longer than 7 days after encountering the conditions and where possible before the physical conditions are disturbed, give written notice of the conditions to the Superintendent.

**12.2        Provision of Details**

Where the Contractor provides written notice to the Superintendent pursuant to Clause 12.1, the Contractor must specify in the written notice:

1. the physical conditions encountered, in what respects they differ materially and why they could not reasonably have been anticipated;
2. the additional work and additional resources which the Contractor considers necessary to deal with the physical conditions;
3. the time the Contractor anticipates will be required to deal with the physical conditions and the expected delay in the completion of the Works; and
4. the Contractor’s estimate of the cost of the measures necessary to deal with the physical conditions.

In the event the Superintendent reasonably requires other details, those details shall be provided by the Contractor to the Superintendent.

**12.3        Superintendent’s Direction**

After receipt from the Contractor of a notice under Clause 12.1 the Superintendent must determine whether it is satisfied that the physical conditions are physical conditions to which Clauses 12.1 applies.  If the Superintendent determines that the physical conditions are physical conditions to which Clauses 12.1 applies and:

1. the Superintendent considers that a variation to the work under the Contract is necessary, the Superintendent must, upon making the determination, order a variation under Clause 40 of the General Conditions of Contract;
2. the Superintendent does not consider that that a variation to the work is necessary but is satisfied that the physical conditions have or will cause the Contractor to unavoidably incur more cost than the Contractor could reasonably have anticipated at the time of tendering, the Superintendent must determine that a valuation must be made under clause 40.5.

**12.4        Time Bar**

In making a valuation for the purposes of a variation ordered by the Superintendent under Clause 12.3 or a determination under clause 12.3(b), regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 28 days before the date on which the Contractor gives the written notice required by Clause 12.1."

# PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

No amendment.

# STATUTORY REQUIREMENTS

## Complying with Statutory Requirements

At end of clause 14.1 insert new paragraph as follows:

“Nothing in this Contract derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987*.”

## Payment Where There is No Variation

No amendment.

## Notices and Fees

No amendment.

## Documents Evidencing Approvals of Authorities

No amendment.

# PROTECTION OF PEOPLE AND PROPERTY

No amendment.

# CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

No amendment.

# DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORKS

No amendment.

# INSURANCE OF THE WORKS

No amendment.

For inclusion only when the project is housing

At end of clause 18.1 insert new paragraph as follows:

“Before commencing work under the Contract, the Contractor shall effect a Building Indemnity Insurance policy in the joint names of the Principal and the Contractor and covering the Works in accordance with the *Building Work Contractors Act 1995* and Regulations 1996. A separate policy for each semi-detached house in any duplex housing will be effected and maintained.”

# PUBLIC LIABILITY INSURANCE

No amendment

# INSURANCE OF EMPLOYEES

Delete Clause 20 and substitute the following new Clause:

**“20 WORKERS COMPENSATION**

The Contractor must comply with all of its obligations under the *Workers Rehabilitation and Compensation Act 1986* (in this clause referred to as ‘the Act’) in relation to all employees of the Contractor, and in particular and without limiting the generality of this obligation must:

* + 1. be registered by the Workcover Corporation (‘Workcover’) as required under the Act;
    2. pay any levy required to be paid to Workcover under the Act;
    3. furnish monthly returns to Workcover as required under the Act;
    4. pay compensation to any injured worker in accordance with the Act.

The Contractor must comply with all of its obligations under any corresponding law as defined in the Act (being a law of the Commonwealth, a State, a Territory of the Commonwealth or of another country that provides for compensation for disabilities arising from employment.

The Contractor must ensure that any subcontractor complies with its obligations under the Act and any corresponding law in relation to all employees of the subcontractor employed in the work under the Contract.

The Contractor must provide, on request by the Superintendent, evidence of its compliance with this clause, including evidence that it is an exempt employer under the Act.”

# INSPECTION AND PROVISIONS OF INSURANCE POLICIES

## Proof of Insurance

Delete Clause 21.1 Proof of Insurance and substitute the following new Clause:

**“21.1 Proof of Insurance**

The Principal has effected a policy of insurance in relation to the work under the Contract to cover insurance obligations under Clauses 18 and 19 and having regard to Clauses 16 and 17 except as the policy of insurance may differ.

The Contract Works Material Damage (Material Damage) and Public (Third Party) Legal Liability (Public Liability) Insurance Policy is included in the Contract. Details are provided in an attachment to these Special Conditions of Contract. Details provided are a guide only and do not detail all terms, conditions and exclusions, nor do they provide a substitute for the policy of insurance. The Contractor and all subcontractors shall fully inspect the policy to ascertain the level of protection afforded and the obligations imposed.

The effecting of insurance by the Principal shall not limit the liabilities or obligations of any party under other provisions of the Contract.”

## Failure to Produce Proof of Insurance

No amendment.

## Notices from or to the Insurer

No amendment.

## Notices of Potential Claims

Delete Clause 21.4 and substitute the following new Clause:

**“21.4 Notices of Potential Claims**

The Contractor shall comply with the provisions of the policy of insurance required by Clause 18 or 19, compliance with which is a precondition to entitlement to make a claim under the policy. In particular, in the event of any occurrence for which a claim under the policy may be made the Contractor shall -

1. in all cases, take immediate action to avoid loss of life or damage to property;
2. as soon as practicable, inform:

(i) the Superintendent, if the person making a claim is the Contractor or a subcontractor or an employee, agent or person under the control of the Contractor or subcontractor; and

(ii) the Principal’s Insurance Broker, Aon Risk Services Australia Ltd;

1. take all reasonable steps to prevent further loss or damage;
2. provide full details of the occurrence giving rise to the claim as required by the Insurer(s);
3. issue a signed claim statement;
4. may proceed immediately if the estimated loss is less than $10,000 in addition to the amount of the applicable excess, promptly report the incident and preserve all evidence required to substantiate a claim;
5. defer repairs if the estimated loss exceeds $10,000 in addition to the amount of the applicable excess and preserve all evidence required to substantiate a claim; and
6. make no admissions of liability to any potential claimant in respect of the occurrence.”

## Settlement of Claims

No amendment

## Cross Liability

No amendment.

After Clause 21.6 Cross Liability insert the following new Clause:

## “21.7 General

The premium for the Construction Risks (Contract Works) and Public (Third Party) Legal Liability (Public Liability) Insurance Policy shall be paid by the Principal, however the Principal reserves the right to charge additional premium to the Contractor should such charge be levied by the Principal’s Insurer(s) as the result of the Contractor not executing the work under the Contract to Practical Completion by the Date for Practical Completion or for any other reason such premium charge is the direct result of the Contractor’s action or inaction in breach of Contract.

The provision of insurance by the Principal does not derogate in any way from the Contractor’s obligations hereunder, nor shall the Principal be liable in respect of any loss suffered by the Contractor as the result of refusal by the Insurer(s) to pay any claim (save for the reason that the policy has lapsed for non-payment or default by the Principal).

The Contractor shall bear the cost of any loss or liability the subject of a claim under the Material Damage or Public Liability sections of the policy to the extent that such loss or liability is not covered by reason of ‘Excess’ provisions in the policy and or noted exclusions to the policy.

The policy of insurance effected by the Principal in no way affects the contractual responsibilities of the Contractor and the Contractor should become fully acquainted with the scope of insurance provided and purchase any additional cover deemed to be appropriate.”

# CLERK OF WORKS AND INSPECTORS

No amendment.

# SUPERINTENDENT

No amendment.

# SUPERINTENDENT’S REPRESENTATIVE

No amendment.

# CONTRACTOR’S REPRESENTATIVE

No amendment.

# CONTROL OF CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS

No amendment.

# SITE

No amendment.

# SETTING OUT THE WORKS

No amendment.

# MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

No amendment.

# MATERIALS AND WORK

## Quality of Materials and Work

No amendment.

## Quality Assurance

After clause 30.2(b) insert the following new paragraph:

“Within 28 days of the Date of Acceptance of Tender, the Contractor must prepare, submit to the Superintendent, and implement a Quality Plan, which is specific to the Contract and not generic. The ‘Quality Plan’ is a plan that must indicate how the quality processes of the Contractor are to be applied to achieve the requirements of the Contract, without reference to other documents except such other standard Contractor documentation that is relevant to the Contract and readily available to the Superintendent and Principal. The Superintendent may undertake a ‘Quality Audit’ during the course of the Works, to measure the Contractor’s performance of the work under the Contract against the requirements of the Quality Plan.”

## Defective Materials or Work

No amendment.

## Variations due to Defective Materials or Work

No amendment.

## Acceptance of Defective Material or Work

No amendment.

## Generally

No amendment.

# EXAMINATION AND TESTING

No amendment.

# WORKING HOURS

No amendment.

# PROGRESS AND PROGRAMMING OF THE WORKS

No amendment.

# SUSPENSION OF THE WORKS

No amendment.

# TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

## Time for Commencement of Work on the Site

No amendment.

## Time for Practical Completion

No amendment.

## Separable Portions

No amendment.

## Use of Partly Completed Works

No amendment.

## Extension of Time for Practical Completion

Amend the wording of lines 39 and 40 on page 29 of the General Conditions as follows:

“Notwithstanding that the Contractor is not entitled to, or has not claimed, an extension of time, the Superintendent may at any time ……”

Insert at the end of Clause 35.5, the following new paragraph:

“Where the Contract provides for Separable Portions each with a separate Date for Practical Completion, an extension of time in respect of one Date for Practical Completion shall not entitle the Contractor to an extension of time in respect of any other Date for Practical Completion, unless the Contractor satisfies the requirements of this Clause 35.5 in respect of each of the Dates for Practical Completion, as the case may be, separately.”

## Liquidated Damages for Delay in Reaching Practical Completion

No amendment.

## Limit on Liquidated Damages

No amendment.

## Bonus for Early Practical Completion

No amendment.

# DELAY OR DISRUPTION COSTS

Delete Clause 36 and substitute the following new Clause:

**“36 DELAY OR DISRUPTION COSTS**

Where:

(a) the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5(b)(i), the Principal shall pay to the Contractor extra costs by multiplying the amount stated in the Annexure by the number of days extension granted in respect of the event;

(b) the Contractor has been granted an extension of time under Clause 35.5 for any delay under Clause 35.5(b)(iv) (i.e. variations directed under Clause 40) and the variation is required to be valued under clause 40.5 (and not otherwise) the Principal shall pay to the Contractor such extra costs as are valued under clause 40.5;

(c) the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay or disruption is provided for in the Annexure or elsewhere in the Contract the Principal shall pay to the Contractor extra costs by applying the amount stated in the Annexure to the number of days extension granted in respect of the event,

subject however to the following exceptions:

(i) where the Contract provides for Separable Portions each with a separate Date for Practical Completion, an amount shall only be payable under this Clause 36 where the Contractor has been granted an extension of time in respect of the Date for Practical Completion which is latest in time (and not otherwise);

(ii) where an event causes concurrent delays to more than one Separable Portion, then to the extent the delays are concurrent, the delay rate in the Annexure shall only be applied once;

(iii) delay damages shall only be calculated for days on which the Contractor usually carries out work for the Contract; and

(iv) nothing in Clause 36 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract.

For the purposes of Clause 36, an event referred to in Clause 35.5(b)(i) shall be an event which relates solely to the Contract.

The Contractor agrees that the limit of the Principal’s liability for damages for breach of contract for any delay or disruption is limited to any sum recoverable by the Contractor pursuant to this Clause 36 and (to the extent permitted by law) the Principal shall not be liable to pay to the Contractor any other sum whatsoever, in respect of such delay or disruption, whether as damages for breach of the Contract or under any other principle of law, equity or statute.”

# DEFECTS LIABILITY

Delete the first sentence of clause 37 commencing with ‘The Defects Liability Period stated in the Annexure ...’ and substitute:

“The Defects Liability Period stated in the Annexure shall commence at 4.00pm on the Date of Practical Completion.”

# CLEANING UP

No amendment.

# URGENT PROTECTION

No amendment.

# VARIATIONS

## Variations to the Work

No amendment.

## Proposed Variations

No amendment.

## Pricing the Variation

No amendment.

## Variations for the Convenience of the Contractor

No Amendment.

## Valuation

Delete paragraphs (a), (b), (c) and (d) and substitute the following new paragraphs:

“(a) Where a Schedule of Rates is applicable, the valuation will be made:

(i) by using the Schedule of Rates, or where no rate is directly applicable, a rate calculated by inference, proportion or interpolation;

(ii) subject to Clause 36, when the variation attracts an extension of time, by applying costs for delay or disruption by applying the daily rate set out in the Annexure to the number of days extension granted, and

(iii) by applying an allowance of 5% of the schedule rate for the Contractor's administration, inclusive of all supervision and attendance.

(b) Where Priced Bill of Quantities rates are applicable, the valuation will be made:

(i) by using the Priced Bill of Quantities rates, or where no unit rate is directly applicable, a rate calculated by inference, proportion or interpolation;

(ii) subject to Clause 36, when the variation attracts an extension of time, by applying costs for delay or disruption by applying the daily rate set out in the Annexure to the number of days extension granted; and

(iii) by applying an allowance of 5% of the Priced Bill of Quantities rate for the Contractor's administration, inclusive of all supervision and attendance.

(c) Where neither a Schedule of Rates nor a Priced Bill of Quantities is applicable the valuation will be the sum of:

(i) actual value of the work calculated as the total of :

* labour at a rate not exceeding the DPTI Star Rate (the rate payable, as defined by DPTI from time to time, for the hourly cost of labour on a trade by trade basis);
* net cost of materials;
* net hiring rates for plant;
* net cost of subcontractor claim made up of labour at a rate not exceeding the DPTI Star Rate, net cost of materials, and net hiring rates of plant, plus an allowance of 10% of the net costs for the Subcontractor’s profit and overhead costs and an allowance of 5% of the net costs for the Subcontractor’ administration inclusive of all supervision and attendance;

(ii) an allowance of 10% of the labour, material, plant and subcontractor cost for the Contractor’s profit and overhead costs;

(iii) an allowance of 5% of the labour, material, plant and subcontractor cost for the Contractor's administration, inclusive of all supervision and attendance; and

(iv) in accordance with and subject to Clause 36, when the variation gives rise to an extension of time, extra costs calculated by multiplying the daily rate set out in the Annexure by the number of days extension granted;

(d) in determining the deduction to be made for work which is taken out of the Contract the deduction shall include an additional allowance for the Contractor's administration calculated as 5% of the value of the variation;”

Delete paragraph (f) and substitute the following new paragraph:

“(f) not used.”

# DAYWORK

No amendment

# CERTIFICATES AND PAYMENTS

## Payment Claims, Certificates, Calculations and Time for Payment

Delete the sixth and seventh paragraphs, commencing with: ‘Notwithstanding Clause 42.4, the Principal shall …..’, and finishing with: ‘….. free of any lien or charge.’

## Correction of Payment Certificates

No amendment.

## Retention Moneys

No amendment

## Unfixed Plant and Materials

Delete Clause 42.4 and substitute the following new Clause:

**“42.4 Unfixed Plant and Materials**

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, the Principal shall not be obliged to make payment for such plant or materials but the Principal may make payment, if the Contractor:

(a) provides additional security in one of the forms provided by Clause 5.3 in an amount equal to the payment claimed for the plant or materials; and

(b) establishes to the satisfaction of the Superintendent that ownership of such plant and materials will pass to the Principal upon the making of the payment claimed; and

(c) establishes to the satisfaction of the Superintendent that such plant or materials are properly stored, labelled the property of the Principal and adequately protected.

Upon payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Principal free of any lien or charge.”

Paragraphs above are deleted and paragraphs below are substituted **only** when the contract is for **transportable** housing or other **transportable** facilities. Not for use when smaller components of the Works are ‘modular’ or assembled off-site – in these instances additional security is required. If deleting clause below, ensure that the related authorities listed in Clause 52 are also deleted.

**“42.4 Unfixed Plant and Materials**

With regard to the nature of work under Contract, the Contractor may construct a significant portion of the Works at a place under the ownership of the Contractor other than the Site, (‘Contractor’s Site’) and transport work under Contract to the Site for incorporation into the Works.

The Principal may approve that any or all of the Works are constructed at the Contractor’s Site which does not derogate in any way from the Contractor’s obligations under the Contract, nor shall the Principal be liable in respect to loss or damage.

If the Contractor claims payment for plant or materials intended for incorporation in the Works but not incorporated, the Principal shall not be obliged to make payment for such plant or materials but the Principal may make payment, if the Contractor:

1. has provided security in accordance with Clause 5 of the General conditions of contract;
2. establishes to the satisfaction of the Superintendent, including written evidence from any relevant subcontractor, that ownership of completed work under Contract on the Contractor’s Site will pass to the Principal upon the making of the payment claimed;
3. establishes to the satisfaction of the Superintendent that such work completed is properly stored and adequately protected, including the provision of proof of separate insurance for materials and work on the Contractor’s Site and inland transit insurance in accordance with Clauses 18 and 19 Alternative 1.
4. ensures that such work is in a clearly identified area at the Contractor’s Site and all work, plant or materials are labelled the property of the Principal;
5. provides a written statement with each claim for payment, of work completed on the Contractor’s site for which ownership will pass to the Principal upon payment by the Principal;
6. provides unconditional licence for the Principal to enter upon the Contractor’s Site with vehicles, other persons or equipment to inspect and or remove the Principal’s property at all times and provides to the Principal a key to the Contractor’s Site for access by the Principal.

Upon payment to the Contractor of the amount claimed, the plant or materials the subject of the claim shall be the property of the Principal free of any lien or charge.”

## Certificate of Practical Completion

No amendment.

## Effect of Certificates

No amendment.

## Final Payment Claim

No amendment.

## Final Certificate

Delete the first paragraph, commencing with: ‘Within 14 days after receipt …..’, and finishing with: ‘….. or any alleged breach thereof.’, and substitute the following new paragraphs:

When the last of the following occurs:

(a) the expiration of 14 days after receipt of the Contractor’s Final Payment Claim;

(b) where the Contractor fails to lodge such claim, the expiration of the period specified in Clause 42.7 for the lodgement of the Final Payment Claim by the Contractor; and

(c) all work under the Contract has been finally and satisfactorily executed and the Contractor has fulfilled all the Contractor’s other obligations under the Contract,

the Superintendent shall issue to the Contractor and to the Principal a final payment certificate endorsed ‘Final Certificate’. In the certificate the Superintendent shall certify the amount which in the Superintendent’s opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.

## Interest on Overdue Payments

No amendment.

## Set Offs by the Principal

No amendment.

## Recourse for Unpaid Moneys

Delete Clause 42.11 and substitute the following new Clause:

“**42.11 Recourse to Unpaid Moneys**

Where a party fails to pay the other party an amount due and payable under the Contract within the time provided by the Contract or a party fails to pay the other party any money due otherwise than under the Contract, the other party may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.”

# PAYMENT OF WORKERS AND SUBCONTRACTORS

Add the following to clause 43 (a) (i).

The statutory declaration must be substantially in the form of the DPTI Statutory Declaration Template for Payment Claims, available from: <http://www.dpti.sa.gov.au/contractor_documents/guidelines_and_miscellaneous>.

# DEFAULT OR INSOLVENCY

No amendment.

# TERMINATION BY FRUSTRATION

No amendment.

# TIME FOR NOTIFICATION OF CLAIMS

## Contractor’s Prescribed Notice

In the second paragraph, delete the expression “42 days” and insert “28 days”.

## Time for Disputing Superintendent’s Direction

Delete Clause 46.2 and substitute the following new Clause:

## “46.2 Time for Disputing Superintendent’s Direction

If the Superintendent:

1. has given a direction (other than a decision under Clause 47.1) pursuant to the Contract; and
2. has served a notice in writing on each party that if a party wishes to dispute the direction then that party is required to do so under Clause 47,

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by a party to the Superintendent and a copy of the notice of dispute is given to the other party within 28 days after the date of service on that party of the notice pursuant to Clause 46.2 (b).”

# DISPUTE RESOLUTION

Delete Clause 47 and substitute the following new Clause:

“**47 DISPUTE RESOLUTION**

**47.1 Dispute Procedure**

It is the intention of this clause to provide a procedure to enable the parties to ensure that a dispute is dealt with, and to encourage the parties to explore the possibilities for resolving a dispute before considering legal proceedings.

Except in the case of genuine urgency requiring immediate interlocutory or interim relief or remedy, or where a party seeks to enforce payment due under a certificate issued under Clause 42, neither party may commence legal proceedings in relation to any dispute, or other matter arising out of the Contract, including, without limitation, a dispute as to a determination, decision or direction of the Superintendent, (‘a disputed matter’) without first doing everything in that party’s power to comply with the procedure set out in this Clause 47.1.

In this clause, Dispute Representative means, each of the persons nominated in the annexure or otherwise nominated by the Principal as the Principal’s Dispute Representative and by the Contractor as the Contractor’s Dispute Representative.

A disputed matter must first be referred to the Superintendent by delivering to the Superintendent a notice of dispute. The notice of dispute must be in writing, setting out full particulars of the subject of the dispute including information establishing the factual and legal basis of the matter and a detailed quantification of the claim. The notice of dispute must also be supported by evidentiary material. A copy of the notice of dispute and supporting evidentiary material must be delivered to the other party to the dispute.

The other party to the dispute may provide submissions and evidentiary material relating to the disputed matter to the Superintendent.

The Superintendent must make enquiry as to the facts of the matter as necessary, and either:

(a) make a written determination as to the rights of the parties; or

(b) if the Superintendent considers there is insufficient evidence for the Superintendent to make a determination, in a written notice, decline to make a determination,

as soon as possible and in any event no later than 42 days from receipt of the notice of dispute. The Superintendent’s written determination or notice must be delivered to the Contractor and the Principal.

Following a Superintendent’s determination, or a notice declining to make a determination, if the Principal or Contractor is dissatisfied with the determination or the lack of a determination, the Principal or the Contractor (‘disputing party’) may send to the other party (‘other party’) and to the Superintendent a written notice by Certified Mail, requiring the implementation of dispute resolution procedures under this Clause 47.1 (‘a dispute resolution notice’).

Despite any other provision of this Clause 47, the other party is not obliged to proceed with the dispute resolution procedures under this Clause 47.1 unless the disputing party has fully particularised the claim by providing information establishing the factual and legal basis of the claim, a detailed quantification of the claim and supporting evidentiary material as required in this Clause 47.1.

Within 21 days after receipt of a dispute resolution notice by the other party, the other party must provide a written response to the disputing party and to the Superintendent, such response addressing the matters set out in the dispute resolution notice (‘written response’).

Within 21 days after receipt of the written response by the disputing party (or such longer period as the parties may agree), the Dispute Representatives must meet and attempt to resolve the disputed matter.

Each of the Dispute Representatives must be sufficiently authorised by the relevant party to meet and endeavour to resolve the dispute without detailed reference to another person. In so doing they may be supported (at their election) by legal, financial, technical or other experts.

**47.2 ADR**

Nothing in this Clause 47 is intended to either:

(a) require a party to be involved in any form of arbitration or alternative dispute resolution (other than the procedures set out in Clause 47.1) before commencing legal proceedings; or

(b) preclude the parties from agreeing at any time to use any form of arbitration or alternative dispute resolution at their mutual discretion.

**47.3 Continuing Obligation to Work**

Notwithstanding any dispute or proceedings, the Contractor must, if the work under the Contract has not been completed, at all times (unless otherwise provided for in the Contract) proceed without delay to continue to execute the work under the Contract and perform the Contractor’s obligations under the Contract, and in so doing shall comply with all directions given to the Contractor under the provisions of the Contract either by the Principal in writing or by the Superintendent, and the Principal must pay to the Contractor any moneys due under the Contract from time to time.”

# WAIVER OF CONDITIONS

No amendment.

**The following clauses are added to those of Australian Standard General Conditions of Contract (AS 2124-1992):**

# WORKER SAFETY

The Contractor and any subcontractor who is at any time engaged on work under the Contract shall ensure that -

(a) all workers including professional and supervisory personnel are informed of safe work practices; and

(b) policies relating to work health and safety in the workplace are maintained in accordance with the regulations of the *Work Health and Safety Act 2012*.

If the Contractor subcontracts any part of the work under the Contract, the Contractor shall include the provisions of this Clause in the subcontract.

# CONSTRUCTION INDUSTRY TRAINING LEVY

The Contractor shall comply with the *Construction Industry Training Fund Act 1993* (in this clause referred to as ‘the Act’) and pay any levy imposed by that Act in respect of the Works. Prior to the commencement of the work under the Contract the Contractor shall provide written evidence to the Superintendent that the Contractor has either paid the above levy or been exempted from paying it under the Act. Failure to provide such written evidence may result in the Contractor being refused access to the Site and will entitle the Principal to withhold any payment due and payable under the Contract until such time as the Contractor has provided written evidence of payment of the levy.

# GST

**51.1 Definitions**

In this Clause 51:

‘GST Law’ has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

‘GST’ means the tax imposed by the GST Law;

‘RCTI’ means recipient created tax invoice, as defined in the GST Law;

‘Tax Invoice’ has the meaning given to it in the GST Law; and

‘Taxable Supply’ has the meaning given to it in the GST Act, and also means any component of a Taxable Supply that is treated as a separate supply under the GST Law.

**51.2 ABN, GST Registration**

The Contractor represents that:

1. it is registered under the GST Law and that the ABN shown in the contract documents is the Contractor’s ABN; and
2. the supply of the Work is a taxable supply.

The Contractor acknowledges that should these representations be or become incorrect:

1. the Principal may be obliged under the *Taxation Administration Act 1953* to deduct a withholding from the Contract Sum and will not be obliged to gross up the Contract Sum or make any compensation to the Contractor;
2. if the supply of the work is not a Taxable Supply the Principal is entitled to reduce the Contract Sum by the amount which would have been attributable to GST had the supply been a Taxable Supply.

**51.3 Contract Sum Inclusive of GST**

The Contract Sum is inclusive of GST and not subject to adjustment except as expressly provided in this Contract.

**51.4 Tax Invoices - Recipient Created**

The Principal undertakes and represents that:

1. it is registered as a Government Entity under the GST Act; and
2. its ABN is 72 288 544 143;

and is entitled to issue RCTIs in respect of supplies under this Contract.

The Principal must inform the Contractor immediately if it ceases to be registered under the GST Act or if any undertaking given in the preceding subclause is not performed, or if any representation made in the preceding subclause ceases to be true.

The Contractor undertakes and represents that it is registered under the GST Act and that its ABN is as shown on the Tender Form.

The Contractor must inform the Principal immediately if it ceases to be registered under the GST Act.

The Principal may issue an RCTI in respect of any Taxable Supply under this Contract.

The Contractor must not issue any Tax Invoice in respect of any Taxable Supply under this Contract.

The Principal must issue a copy of any RCTI which it issues under or in respect of this Contract to the Contractor and the Principal must retain the original. Each party is responsible for keeping the original or copy of the RCTI in its possession for the period required under the *Taxation Administration Act 1953*.

The Principal must issue an adjustment note to the Contractor in relation to any adjustment event as defined in the GST Act.

The Principal must reasonably comply with its obligations under the taxation laws of Australia.

The Principal must not issue a document that would otherwise be a RCTI on or after the date when the Principal or Contractor has failed to comply with any of the requirements of the proposed determination by the Taxation Commissioner.

Only for projects not using RCTI’s, insert following clause 51.4 and delete above clause 51.4. If not using below clause, ensure that the related authorities listed in clause 52 are also deleted.

**51.4 Tax Invoice**

If any supply under the Contract is a Taxable Supply:

(a) any invoice for payment under the Contract shall be a Tax Invoice, (and any prescribed form of invoice under the Contract is amended accordingly); and

(b) the Principal is not obliged to make payment under the Contract unless the Contractor has provided a Tax Invoice in respect of that payment.

# PRINCIPAL’S REPRESENTATIVE

The Principal may from time to time appoint individuals to exercise any functions of the Principal under the Contract. The appointment of a Principal’s Representative shall not prevent the Principal from exercising any function. The appointment may allow for further authorisations by the Principal’s Representative.

Where it is a requirement that approval in writing or a notice in writing be given by the Principal or an action be taken by the Principal, for administrative purposes the powers, duties, discretions and authorities vested in the Principal under the listed clauses of the Conditions of Contract may alternatively be exercised by those authorised by the Principal as set out in the Authorities Schedules 1A, 1B, 1C and 1D in this Clause 52.

| **AUTHORITIES SCHEDULE 1A** | | | | |
| --- | --- | --- | --- | --- |
| **Principal’s Representative, Chief Corporate Officer**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 5 | SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS | 5.5 | Recourse to Retention Moneys and Conversion of Security | Recourse to retention moneys and/or security |
| 10 | SELECTED AND NOMINATED SUBCONTRACTORS | 10.3 | Nominated subcontract | Assign prior contract, novate prior contract |
| 23 | SUPERINTENDENT |  |  | Obligations regarding the Superintendent |
| 27 | SITE | 27.1 | Possession of Site | Give possession of Site or sufficient of the Site, or part of Site, advise date in writing, refuse possession of Site or part of Site |
| 35 | TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION | 35.5 | Extension of Time for Practical Completion | Give notice |
| 37 | DEFECTS LIABILITY |  |  | Have work of rectification carried out |
| 42 | CERTIFICATES AND PAYMENTS | 42.4 | **Transportable** housing or other facilities only Unfixed Plant and Materials | Approve any or all of the works are constructed at Contractor’s site |
| 42.10 | Set Offs by the Principal | Deduct moneys, recourse to retention moneys and if insufficient security |
| 42.11 | Recourse for Unpaid Moneys | Recourse to retention moneys and if insufficient security |
| 44 | DEFAULT OR INSOLVENCY | 44.2 | Default by the Contractor | Give written notice to show cause |
| 44.4 | Rights of the Principal | Take work out of the hands of the Contractor, terminate Contract, suspend payments |
| 44.5 | Procedure when the Principal Takes Over Work | Complete work taken out of the hands of the Contractor, take possession of the Contractor’s Constructional Plant. |
| 44.6 | Adjustment on Completion of the Work Taken Out of the Hands of the Contractor | Keep records, sell constructional plant or other things |
| 44.11 | Insolvency | Take work out of the hands of the Contractor |
| 46 | TIME FOR NOTIFICATION OF CLAIMS | 46.2 | Time for Disputing Superintendent’s Direction | Give notice of dispute |
| 47 | DISPUTE RESOLUTION | 47.1 | Dispute Procedure | Nominate a Dispute Representative, serve a Dispute Resolution Notice, give written response to Dispute Resolution Notice |
| 48 | WAIVER OF CONDITIONS |  |  | Consent in writing |
| 51 | GST  Delete this item 3.3 if the alternative of clause 51.4 Tax Invoice has been used | 51.4 | Tax Invoices- Recipient Created | Inform Contractor |
| 61 | AUSTRALIAN GOVERNMENT AGREEMENT |  |  | Terminate Contract |

| **AUTHORITIES SCHEDULE 1B** | | | | |
| --- | --- | --- | --- | --- |
| **Principal’s Representative, Manager Strategic Sourcing**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 5 | SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS | 5.3 | Form of Security | Approve or disapprove the form of security |
| 5.6 | Substitution of Security for Retention Moneys | Release retention moneys |
| 5.7 | Reduction of Security and Retention Moneys | Release security and retention moneys |
| 5.8 | Release of Security | Release additional security |
| 6 | EVIDENCE OF CONTRACT | 6.2 | Formal Instrument of Agreement | Prepare Formal Instrument of Agreement, direct in writing, execute copies |
| 7 | SERVICE OF NOTICES |  |  | Notify change of address |
| 8 | CONTRACT DOCUMENTS | 8.1 | Discrepancies | Notify in writing |
| 8.3 | Supply of Documents by Principal | Supply copies, demand in writing, give written approval |
| 8.5 | Availability of Documents | Approve in writing |
| 18 | INSURANCE OF THE WORK UNDER THE CONTRACT |  |  | Effect policy of insurance |
| 19 | PUBLIC (THIRD PARTY) LIABILITY INSURANCE |  |  | Effect policy of insurance |
| 42 | CERTIFICATES AND PAYMENTS | 42.8 | Final Certificate | Release Security, Retention Moneys or both |
| 45 | TERMINATION BY FRUSTRATION | 45(d) |  | Release Security, Retention Moneys or both |

| **AUTHORITIES SCHEDULE 1C** | | | | |
| --- | --- | --- | --- | --- |
| **Principal’s Representative, Principal Cost Manager**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 3 | NATURE OF CONTRACT | 3.1 | Performance and Payment | Pay Contractor |
| 4 | BILL OF QUANTITIES | 4.3 | Errors in Pricing | Notify errors |
| 10 | SELECTED AND NOMINATED SUBCONTRACTORS | 10.3(e) (ii) | Nominated subcontract | Pay contractor |
| 11 | PROVISIONAL SUMS |  |  | Pay Contractor |
| 14 | STATUTORY REQUIREMENTS | 14.3 | Notices and Fees | Reimburse fee or charge |
| 21 | INSPECTION AND PROVISIONS OF INSURANCE POLICIES | 21.2 | Failure to Produce Proof of Insurance | Pay premiums, refuse payment |
| 21.7 | General | Pay premium |
| 31 | EXAMINATION AND TESTING | 31.7 | Costs of Testing | Pay Contractor |
| 35 | TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION | 35.6 | Liquidated Damages for Delay in Reaching Practical Completion | Repay Contractor |
| 35.8 | Bonus for Early Practical Completion | Pay Contractor |
| 36 | DELAY OR DISRUPTION COSTS |  |  | Pay Contractor extra costs |
| 40 | VARIATIONS | 40.2 | Proposed Variations | Reimburse Contractor |
| 40.5 | Valuation | Pay Contractor |
| 42 | CERTIFICATES AND PAYMENTS | 42.1 | Payment Claims, Certificates, Calculations and Time for Payment | Pay Contractor |
| 42.3 | Retention Moneys | Deduct amounts |
| 42.4 | Unfixed Plant and Materials | Make payment |
| 43 | PAYMENT OF WORKERS AND SUBCONTRACTORS |  |  | Withhold payment, pay worker or subcontractor, pay amount of order |
| 45 | TERMINATION BY FRUSTRATION | 45(a),45(b),45(c),45(e) and 45(f) |  | Pay Contractor |
| 51 | GST  Delete this item 3.3 if the standard clause 51.4 Tax Invoice has been used | 51.4 | Tax Invoices - Recipient Created | Issue RCTI, issue copy of RCTI, issue adjustment note |
| 61 | AUSTRALIAN GOVERNMENT AGREEMENT |  |  | Pay for services rendered |

| **AUTHORITIES SCHEDULE 1D** | | | | |
| --- | --- | --- | --- | --- |
| **Superintendent, Director Contracting**  **Department of Planning, Transport and Infrastructure** | | | | |
| **Clause** | | **Subclause** | | **Function** |
| 8 | CONTRACT DOCUMENTS | 8.7 | Media Releases | Give approval |
| 13 | PATENTS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS |  |  | Give direction |
| 15 | PROTECTION OF PEOPLE AND PROPERTY |  |  | Perform obligation on Contractor’s behalf |
| 30 | MATERIALS AND WORK | 30.3 | Defective Materials or Work | Have work carried out by other persons |
| 31 | EXAMINATION AND TESTING | 31.8 | Access for Testing | Assert material or work not in accordance with Contract |
| 39 | URGENT PROTECTION |  |  | Take necessary action |
| 54 | WORKFORCE PARTICIPATION AND SKILLS DEVELOPMENT | 54.3 | Reporting | Approve in writing another form, agree to generate report |
| 54.6 | Definitions  ‘Contract Value’ and ‘Contract Price’ | Agree sum, price, fees and overheads |
| Definitions  ‘Total Contract Hours’ (a) | Approve in writing number of hours |
| Definitions  ‘Total Contract Hours’ (b) (iii) a. and b. | Agree Building Work Value and Civil Construction Work Value |

# DISCLOSURE AND CONFIDENTIALITY

The Contractor agrees to disclosure of this Contract in accordance with Premier and Cabinet Circular PC027, a copy of which is exhibited in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request;

Nothing in this clause derogates from:

(a) the Contractor’s obligations under any other provision of this Contract; or

(b) the provisions of the *Freedom of Information Act 1991*.

# WORKFORCE PARTICIPATION AND SKILLS DEVELOPMENT

**54.1 General**

This clause 54 applies where the Contract Value is more than $150,000.

An objective of this Contract is to increase the employment and training of Apprentices and Trainees, Cadets, Aboriginal people and Local Persons with Barriers to Employment (the ‘Target Group’) and to Upskill people engaged directly in connection with the performance of the Contract.

The Contractor formally declares its intent to work in conjunction with the South Australian Government to meet the South Australian Government’s policy targets by employing and training people from the Target Group, including through on-site work by subcontractors and Upskilling people engaged directly in connection with the performance of the Contract.

Without limiting other remedies available to the Principal, the Contractor acknowledges that failure to comply in part or in whole with the requirements of this clause may be a factor that will be taken into account in the award of future contracts by the South Australian Government.

**54.2 Targets**

If this Contract is a Tier 1 Contract or a Tier 2 Contract, the Contractor must, subject to this clause 54, ensure that:

1. the number of On-site Hours performed by people in the Target Group (engaged by either the Contractor or its subcontractors) (the ‘Target Group Component’) is no less than 11% of the Total Contract Hours; and
2. the sum of:
3. the Target Group Component; and
4. the number of hours of Upskilling provided to people engaged directly in connection with the performance of the Contract (engaged by either the Contractor or its subcontractors) (the ‘Upskilling Component’),

is no less than 15% of the Total Contract Hours (the ‘Target Hours’); and

1. the On-site Hours performed by Aboriginal people is equivalent to up to 2% of the Total Contract Hours.

In reporting performance against this clause, and in calculating whether the Contractor has met the targets in clause 54.2 (a) – (c), the following provisions apply:

* hours cannot be double counted;
* On-site Hours performed by Aboriginal people must be reported separately but also contribute to the Target Group Component;
* Upskilling provided up to 6 months prior to the date of commencement of the Contract and within the Contract Duration can be included in the Upskilling Component;
* on-Site Upskilling provided to people in the Target Group should be included in the Target Group Component, rather than in the Upskilling Component. On-Site Upskilling provided to all other categories of worker engaged directly in connection with the performance of the Contract can be included in the Upskilling Component; and
* off-Site Upskilling hours provided to all categories of worker (other than Cadets) engaged directly in connection with the performance of the Contract can be included in the Upskilling Component.

The Contractor will seek, but is not obliged, to achieve performance by Apprentices, Trainees and Cadets of On-site Hours equivalent to 10% of the Total Contract Hours or more.

**54.3 Reporting**

If this Contract is a Tier 1 Contract or a Tier 2 Contract, the Contractor:

1. must submit to the Principal:
2. for Tier 1 Contracts - a Workforce and Skills Development Plan no later than 10 Business Days after the Date of Acceptance of Tender and before it commences any on-Site work under the Contract;
3. for Tier 2 Contracts - a Workforce and Skills Development Strategy no later than 15 Business Days after the Date of Acceptance of Tender and before it commences any on-Site work under the Contract,

each of which must contain the information required by and be in the form set out in the Workforce Participation in Government Construction Procurement Implementation Guidelines For Contractors and Contracting Agencies from time to time which can be accessed at [www.dpti.sa.gov.au/wpgcp](file:///C:\Users\AllenB01\Local%20Settings\Temp\Temporary%20Directory%201%20for%20as2124%20annexure%20b%20p74%20v11-6.zip\www.dpti.sa.gov.au\wpgcp) (the ‘Implementation Guidelines’) (unless the Principal has approved in writing another form);

1. must submit to the Principal:
2. a Workforce Participation and Skills Development Interim Report no later than 10 Business Days after the end of each quarter (with the first quarter commencing on the date the Contractor commences on-Site work under the Contract); and
3. a Workforce Participation and Skills Development Final Report no later than 20 Business Days after the Date of Practical Completion,

each of which must contain the information required by and be generated using the Workforce Participation Reporting System (WPRS) (unless the Principal has, in writing, either approved another form or agreed to generate the report itself);

1. must (and must ensure that its subcontractors) regularly update the WPRS with:
2. details of the On-site Hours worked by people in each category of the Target Group;
3. the total labour hours for all workers;
4. the total On-site Hours for all workers;
5. details of the Upskilling provided to people engaged directly in connection with the performance of the Contract, including the hours undertaken, the name and date of the course and the name of the training organisation; and
6. any other information required by the WPRS for the reports described in clause 54.3(b);

and the Contractor must ensure that for each reporting period described in clause 54.3(b), the WPRS is updated with all such information before the report for that period is generated (or where the Principal has agreed to generate the report, before the expiration of the period for lodgement of the relevant report described in clause 54.3(b));

1. must report in accordance with the Implementation Guidelines; and
2. must (and must ensure that its subcontractors) keep records of compliance with this clause 54 and provide the Principal with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Contractor’s compliance with this clause.

**54.4 Additional requirements for Tier 2 Contracts**

If this Contract is a Tier 2 Contract, the Contractor must:

1. appoint a person to be responsible for coordination of the Workforce and Skills Development Strategy; and
2. seek to use Aboriginal owned and/or managed enterprises where possible.

**54.5 Other**

The Contractor must not (and must ensure that its subcontractors do not) contravene the *Privacy Act 1988* (Cth). This may require the Contractor (or its subcontractor) to obtain a person’s consent prior to disclosing that person’s personal information in connection with this clause.

Where this Contract has a Contract Value of more than $150,000, but is not a Tier 1 Contract or a Tier 2 Contract, the Contractor is encouraged (but is not required) to meet the obligations set out in clauses 54.2 and 54.3.

**54.6 Definitions**

For the purpose of this clause:

‘Aboriginal person’ means a person who identifies as being Aboriginal and/or is considered by members of his or her community as being Aboriginal. This definition includes Torres Strait Islander people;

‘Apprentice/Trainee’ means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract as provided for in the *Training and Skills Development Act 2008* (SA) whether on a full-time or part-time basis;

‘Building Contract’ means a contract for construction of residential, commercial, industrial or institutional facilities;

‘Building Work’ means any work required to be done by the Contractor under the Contract in connection with the construction of residential, commercial, industrial or institutional facilities;

‘Business Day’ means any day other than a Saturday, Sunday or public holiday in South Australia;

‘Cadet’ means a person undertaking tertiary or post-graduate study linked to paid employment with the Contractor (or its subcontractor), provided that both the person’s employment and study are linked to the building and civil construction industry (for example, employment and training in civil engineering, structural engineering, mechanic engineering, architecture, surveying or construction management);

‘CITB’ means the Construction Industry Training Board;

‘Civil Construction Contract’ means a contract for construction of earthworks, road works, rail works pilings, power stations, dams, drainage or other water resource management works;

‘Civil Construction Work’ means any work required to be done by the Contractor under the Contract in connection with the construction of earthworks, road works, rail works pilings, power stations, dams, drainage or other water resource management works;

‘Contract Duration’ means the period commencing on the date of commencement of the Contract and ending on the Date of Practical Completion;

‘Contract Value’ and ‘Contract Price’ both mean:

1. the lump sum price; or
2. the sum resulting from calculating the products of the rates and corresponding quantities in the Schedule of Rates; or
3. where both lump sum and schedule of rates apply, the aggregate of the sums referred to in (a) and (b); or
4. the anticipated Guaranteed Construction Sum, Guaranteed Maximum Price or Target Construction Sum together with management fees and all overheads at the time of acceptance of the tender as agreed by the parties; or
5. if none of the above is applicable, the amount agreed by the parties as the nominal price being an amount likely to approximate the total moneys likely to be payable to the Contractor under the contract,

excluding GST;

‘Implementation Guidelines’ has the meaning given to it in clause 54.3(a);

‘Local Person With Barriers to Employment’ means any person residing in South Australia who is unemployed at the time of commencing employment with the Contractor (or its subcontractor). A Local Person with Barriers to Employment includes a person who is:

1. registered with Centrelink or a Job Services Australia provider;
2. registered with the Disability Employment Network;
3. a skilled migrant job seeker holding a General Skilled Migrant visa;
4. a participant in a South Australia Works program (being the initiative of the South Australian Government which links people with skills and jobs through a range of learning, training and work programs).

A person maintains his or her status as a Local Person with Barriers to Employment for 12 months from the commencement of employment with the Contractor or subcontractor (as the case may be);

‘On-site Hour’ means an hour of work performed by a person on the Site;

‘Target Group’ has the meaning given to it in clause 54.1;

‘Target Group Component’ has the meaning given to it in clause 54.2(a);

‘Target Hours’ has the meaning given to it in clause 54.2(b);

‘Tier 1 Contract’ means a contract with a Contract Value between $5,000,000 and $50,000,000 (both inclusive) and a Contract Duration of six months or more;

‘Tier 2 Contract’ means a contract with a Contract Value greater than $50,000,000 and a Contract Duration of six months or more;

‘Total Contract Hours’ means:

1. the number of hours approved in writing by the Principal as representing the estimated total labour hours required to execute the work under the Contract; or
2. in the absence of an approval under the preceding paragraph, the estimated total labour hours required to execute the work under the Contract, determined using the following formula:
3. if the Contract is a Building Contract:

Total Contract Hours = (Contract Value x 0.3)/42;

1. if the Contract is a Civil Construction Contract:

Total Contract Hours = (Contract Value x 0.15)/42; or

1. if the Contract is both a Building Contract and a Civil Construction Contract:

Total Contract Hours = (Building Work Value x 0.3)/42

plus

(Civil Construction Work Value x 0.15)/42,

where:

* 1. Building Work Value is an amount to be agreed between the Contractor and the Principal as representing that part of the Contract Value attributable to the Building Work;
  2. Civil Construction Work Value is an amount to be agreed between the Contractor and the Principal as representing that part of the Contract Value attributable to the Civil Construction Work;
  3. if the Contractor and the Principal fail to agree on the Building Value and/or the Civil Construction Value by the date that is 5 Business Days after the Date of Acceptance of Tender, the Building Value and Civil Construction Value are to be determined by the Superintendent and notified to the Contractor;
  4. for the avoidance of doubt, the sum of the Building Work Value and Civil Construction Work Value must equal the Contract Value;

‘Upskilling’ means training where:

1. the training is:
2. on the list of courses eligible for CITB funding support;
3. provided by an organisation [approved](https://talas.citb.org.au/tlc/pages/training/public/provider/search_results.jsp?providerName=) by the CITB (a list of eligible courses and approved providers is available from the CITB; and
4. is relevant to the employment and skills required for the performance of the Contract; or
5. the training is otherwise approved by CITB as eligible to be included in the Upskilling Component.

Notwithstanding this definition, Upskilling does not include any off-Site training undertaken by Cadets;

‘Upskilling Component’ has the meaning given to it in clause 54.2(b)(ii); and

‘Workforce Participation Reporting System’ or ‘WPRS’ means the reporting tool available at <http://www.wprs.sa.gov.au/Default.aspx> or any other reporting tool nominated by the Principal from time to time.

# NOT USED

# NOT USED

# CODE OF PRACTICE

The Contractor shall comply with the Code of Practice for the South Australian Construction Industry (the ‘Code’) during the term of the Contract. Failure to comply will be taken into account by the South Australian Government and its agencies when considering a future tender from the Contractor and may result in such tender being passed over and/or a change in the status of the Contractor on any State Government register of contractors. The Contractor shall ensure that all subcontracts contain a requirement to comply with the Code.

If an Employment Contribution Test only was applicable to the tender, select 58 NOT USED and delete all clauses below.

Where an IPP (Standard or Tailored) Plan was submitted with the Contractor’s tender select 58 INDUSTRY PARTICIPATION POLICY and either option (a) or option (b) as applicable.

# NOT USED or INDUSTRY PARTICIPATION POLICY

**Option (a)** where an IPP (Tailored) Plan was submitted with the Contractor’s tender. Delete option (b) below.

**58.1 Industry Participation Plan**

The Contractor must implement the Contractor’s Industry Participation Plan as submitted as part of its tender and accepted by the Principal, which is attached to the Contract.

**58.2 Industry Participation Reports**

The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the IPP (Tailored) Plan Implementation Report template which is attached to the Contract, including all the information indicated in that template.

The Industry Participation Reporting Period is:

1. the period between the date of commencement of the Contract and the date six (6) months after the date of commencement;
2. each subsequent six (6) month period during the term of the Contract;
3. if the date of expiry of the Defects Liability Period is a date that is not an anniversary of the date of commencement of the Contract or an anniversary of the date in sub-clause 58.3(b), the period from the conclusion of the preceding Industry Participation Reporting Period until the date of expiry of the Defects Liability Period; and
4. where the term of the Contract is for a period less than six (6) months, the entire term.

**58.3 Industry Participation Meetings**

The Contractor must attend any meeting scheduled by the Industry Participation Advocate during the term of the Contract to review how the Contractor’s Industry Participation Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.

**58.4 Failure to Comply**

The Contractor’s failure to comply, in whole or in part, with the commitments contained within the Contractor’s Industry Participation Plan may be a factor taken into account in the award of future contracts for the Government of South Australia.

**58.5 General**

In this clause, ‘Industry Participation Advocate’ or ‘IPA’ means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor;

**Option (b)** where an IPP (Standard) Plan was submitted with the Contractor’s tender. Delete option (a) above.

**58.1 Industry Participation Plan**

The Contractor must implement the Contractor’s Industry Participation Plan as submitted as part of its tender and accepted by the Principal, which is attached to the Contract.

**58.2 Industry Participation Reports**

The Contractor must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the IPP (Standard) Plan Implementation Report template which is attached to the Contract, including all the information indicated in that template.

The Industry Participation Reporting Period is:

1. the period between the date of commencement of the Contract and the first anniversary of the date of commencement;
2. each subsequent 12 month period during the term of the Contract;
3. if the date of expiry of the Defects Liability Period is a date other than an anniversary of the date of commencement of the Contract, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of expiry of the Defects Liability Period; and
4. where the term of the Contract is for a period less than 12 months, the term.

**58.3 Industry Participation Meetings**

The Contractor must attend any meeting scheduled by the Industry Participation Advocate during the term of the Contract to review how the Contractor’s Industry Participation Plan is being implemented and advanced, and for this purpose, the Contractor must provide all information reasonably requested by the IPA. The IPA must give the Contractor not less than ten (10) Business Days’ notice of any such meeting.

**58.4 Failure to Comply**

The Contractor’s failure to comply, in whole or in part, with the commitments contained within the Contractor’s Industry Participation Plan may be a factor taken into account in the award of future contracts for the Government of South Australia.

**58.5 General**

In this clause, ‘Industry Participation Advocate’ or ‘IPA’ means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor;

Clauses below are to be included **only** if required under an Australian Government/State Government funding agreement. **Note** if deleting these clauses ensure that the related authorities for clause 61 listed in clause 52 are also deleted.

# NOT USED or COMPLIANCE WITH BUILDING CODE 2016

For the purpose of this clause 59, the following definitions shall apply:

‘the Building Code’ means the Building Code 2016. The Building Code can be downloaded from <http://www.fwbc.gov.au/building-code/>;

‘the Supporting Guidelines’ means the Supporting Guidelines for the Building Code 2016;

‘the Organisation’ means the State of South Australia to which the Commonwealth has directed the Program Expenditure;

‘the Program Expenditure’ mean the funding provided by the Commonwealth for the Project;

‘the Project Parties’ means all contractors, subcontractors, consultants, and employees who perform on Site work in relation to the Project;

‘the Project’ means the works to be executed through the Program Expenditure.

The Contractor must comply with the Building Code.

Compliance with the Building Code shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Building Code.

Where a change in the Contract is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor’s compliance with the Building Code will be affected.

The Contractor must maintain adequate records of the compliance with the Building Code by:

1. the Contractor;
2. its subcontractors;
3. consultants; and
4. its Related Entities (refer Section 8 of the Building Code).

If the Contractor does not comply with the requirements of the Building Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.

The Contractor must not appoint a subcontractor or consultant in relation to the Project where:

1. the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
2. the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers’ compensation law and the tenderer has not fully complied, or is not fully complying, with the order.

The Contractor agrees to require that it and its subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:

1. inspect any work, material, machinery, appliance, article or facility;
2. inspect and copy any record relevant to the Project the subject of this Contract; and
3. interview any person

as is necessary to demonstrate its compliance with the Building Code.

The Contractor agrees that the Contractor and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.

The Contractor must ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under this clause 59.

# NOT USED or AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION whs ACCREDITATION SCHEME

Subject to the exclusions specified in the Fair Work (Building Industry - Accreditation Scheme) Regulations 2005, the contractor must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Fair Work (Building Industry) Act 2012* (FWBI Act) while building work (as defined in section 5 of the FWBI Act) is carried out.

The contractor must comply with all conditions of Scheme accreditation.

# NOT USED

# MOVEMENT OF WORKERS

The Contractor must have in place appropriate policies and procedures to manage and monitor the movement of Workers on the Site and on any areas adjacent to or near the Site and to ensure compliance with the matters in this Clause 62.

The Contractor must and must ensure that each Worker, in relation to the Site and any areas adjacent to or near the Site:

(a) understands and complies with the notice and security requirements and any other conditions of entry applicable to any area upon which a Worker is required to enter in connection with the work under the Contract;

(b) complies with any other reasonable instructions or restrictions imposed by the person in charge of the relevant area; and

(c) does not enter any area that it does not have authority to enter.

The Contractor must and must ensure that each Worker submits to such police checks and such other enquiries as may be notified to the Contractor by the Superintendent or the person in charge of the relevant area. The Contractor consents to and must procure the consent of any Worker to the conduct of any such enquiry and upon request, the Contractor shall supply details of any Worker, including the name (including former names), address, and date of birth and any other information that may be required to conduct the enquiry.

The Contractor must, on an ongoing basis:

(i) monitor all Workers to ensure that they do not present a potential security risk;

(ii) immediately inform the Superintendent upon becoming aware of any such risk:

(iii) take all immediate and ongoing steps necessary to protect any person from harm; and

(iv) take the steps reasonably required by the Superintendent to avoid or minimise that risk (which may include a direction to procure the immediate removal and ongoing exclusion of the person from the Site and from any involvement in the work under the Contract).

This Clause 62 is not intended to limit the Principal’s rights or the Contractor’s obligations as set out in the Contract.

For the purpose of this Clause 62 “Workers” means:

- the Contractor, its directors, officers, employees, agents, volunteers and invitees; and

- all subcontractors, their directors, officers, employees, agents, volunteers and invitees,

who attend on the Site.

# RESPECTFUL BEHAVIOUR

The Contractor acknowledges the Principal’s zero tolerance towards men’s violence against women in the workplace and the broader community.

The Contractor agrees that, in undertaking the work, its personnel will at all times:

1. act in a manner that is non-threatening, courteous, and respectful; and
2. comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.

If the Principal believes that Personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:

1. prohibit access by the relevant personnel to the Site;  and
2. direct the Contractor to withdraw  the relevant personnel from undertaking the work under the Contract.

ANNEXURE

This annexure takes the place of Part A of the Annexure to the General Conditions of Contract (AS2124-1992).

|  |  |
| --- | --- |
| 1. The law applicable is that of the State or Territory of:   (Clause 1) | South Australia |
| 1. Payments under the Contract shall be made at:   (Clause 1) | Adelaide, South Australia |
| 1. The Principal:   (Clause 2) | Minister for Transport and Infrastructure |
| 1. The address of the Principal:   (Clause 2) | Level 12, Roma Mitchell House 136 North Terrace ADELAIDE SA 5000 |
| 1. The Superintendent:   (Clause 2) | Director Procurement and Contracting  People and Business Division  Department of Planning, Transport and Infrastructure |
| 1. The address of the Superintendent:   (Clause 2) | Level 13, 77 Grenfell Street  ADELAIDE SA 5000 |
| 1. Limits of accuracy applying to quantities for which the Principal accepted a rate or rates:   (Clause 3.3(b)) | Not Applicable |
| 1. Bill of Quantities - the alternative applying:   (Clause 4.1) | Alternative 2 |
| 1. The time for lodgement of the priced copy of the Bill of Quantities:   (Clause 4.2) | Not Applicable |
| 1. Contractor shall provide security in the amount of:   (Clause 5.2) | 3% of the Contract Sum (GST excluded) to be held until the issue of the Final Certificate |
| 1. Principal shall provide security in the amount of:   (Clause 5.2) | Nil |
| 1. The period of notice required of a party’s intention to have recourse to retention moneys and/or to convert security;   (Clause 5.5) | Refer to the amended Clause 5.5 in the Special Conditions of Contract |
| 1. The percentage to which the entitlement to security and retention moneys is reduced:   (Clause 5.7) | Refer to the amended Clause 5.7 in the Special Conditions of Contract |
| 1. Interest on security and retention moneys – the alternative applying:   (Clause 5.9) | Alternative 2 |
| 1. The number of copies to be supplied by the Principal   (Clause 8.3) | 5 copies |
| 1. The number of copies to be supplied by the Contractor   (Clause 8.4) | 3 copies |
| 1. The time within which the Superintendent must give a direction as to the suitability and return the Contractor’s copies   (Clause 8.4) | 14 days |
| 1. Work which cannot be subcontracted without approval:   (Clause 9.2) | Refer to the amended Clause 9.2 in the Special Conditions of Contract |
| 1. The percentage for profit and attendance:   (Clause 11(b)) | 5% |
| 1. The amount or percentage for profit and attendance:   (Clause 11(c)) | 5% |
| 1. Insurance of the Works - the alternative applying:   (Clause 18) | Alternative 2 |
| 1. The assessment for insurance purposes of the costs of demolition and removal of debris:   (Clause 18(ii)) | Not applicable |
| 1. The assessment for insurance purposes of consultant’s fees:   (Clause 18 (iii)) | Not applicable |
| 1. The value of materials to be supplied by the Principal:   (Clause 18(iv)) | Not applicable |
| 1. The additional amount or percentage:   (Clause 18(v)) | Not applicable |
| 1. Public Liability Insurance - the alternative applying:   (Clause 19) | Alternative 2 |
| 1. The amount of Public Liability Insurance shall be not less than:   (Clause 19) | Not applicable |
| 1. The time for giving possession of the Site:   (Clause 27.1) | Single stage contract  Date of Acceptance of Tender Or for multi-stage contract Stage 1 – Date of Acceptance of Tender  Stage 2 – Within 1 Calendar Week following Practical Completion of Stage 1  Stage 3 – Within 1 Calendar Week following Practical Completion of Stage 2  Or for construction managed trade contract  As per the master construction program |
| 1. Requirements for Quality Assurance   (Clause 30.2) | Required |
| 1. The Date for Practical Completion:   (Clause 35.2)  Or for construction managed trade contract  30a. The Date for Practical Completion of the Works:  (Clause 35.2)  30b. The Date for Practical Completion of the Project Works:  (Clause 35.2) | Within No Working Weeks from the Date of Acceptance of Tender  Or for construction managed trade contract  As per the master construction program  Within 14 Working Weeks from the Date of Acceptance of Tender |
| 1. Liquidated Damages per day:   (Clause 35.6) | Not Applicable |
| 1. Limit of Liquidated Damages:   (Clause 35.7) | Not Applicable |
| 1. Bonus per day for early Practical Completion:   (Clause 35.8) | Not Applicable |
| 1. Limit of bonus:   (Clause 35.8) | Not Applicable |
| 1. Extra costs for Delay or Disruption:   (Clause 36) | Rate is $00,000 (inclusive of GST) per each day of Extension of Time for Practical Completion Event Events under clause 35.5(b)(i), 35.5(b)(iv), 35.5(b)(v), 35.5(b)(vi), 35.5(b)(x). |
| 1. The Defects Liability Period:   (Clause 37) | 12 months  Or for construction managed trade contract  Refer to the amended Clause 37 in the Special Conditions of Contract |
| 1. The Charge for overheads, profit, etc. for Daywork:   (Clause 41(f)) | 5% |
| 1. Times for Payment Claims:   (Clause 42.1) | Monthly |
| 1. Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works:   (Clause 42.1(ii)) | Refer to the amended Clause 42.1 in the Special Conditions of Contract |
| 1. Retention Moneys:   (Clause 42.3) | Nil |
| 1. Unfixed Plant or Materials - the alternative applying:   (Clause 42.4) | Refer to the amended Clause 42.4 in the Special Conditions of Contract |
| 1. The rate of interest on overdue payments:   (Clause 42.9) | 10% per annum |
| 1. The delay in giving possession of the Site which shall be a substantial breach:   (Clause 44.7) | 3 months |
| 1. The Principal’s Dispute Representative:   (Clause 47) | Chief Corporate Officer  People and Business Division  Department of Planning, Transport and Infrastructure |
| 1. The Contractor’s Dispute Representative:   (Clause 47) | TBA |

|  |  |
| --- | --- |
| Separable Portion | |
| 1. Separable Portion: | Describe Separable Portion  (Refer Clause 3.1 Specification Preliminaries) |
| 1. Contractor shall provide security in the amount of:   (Clause 5.2) | Security is on Total Contract Sum  Refer Annexure Item 10 |
| 1. Principal shall provide security in the amount of:   (Clause 5.2) | Not applicable |
| 1. The period of notice required of a party’s intention to have recourse to retention moneys and/or to convert security   (Clause 5.5) | Refer to the amended Clause 5.5 in the Special Conditions of Contract |
| 1. The Date for Practical Completion:   (Clause 35.2) | Within 12 Working Weeks from the Date of Acceptance of Tender  or for construction managed trade contract  As per the master construction program |
| 1. Liquidated Damages per day:   (Clause 35.6) | Nil |
| 1. Limit of Liquidated Damages:   (Clause 35.7) | Not Applicable |
| 1. Bonus per day for early Practical Completion:   (Clause 35.8) | Not Applicable |
| 1. Limit of bonus:   (Clause 35.8) | Not Applicable |
| 1. Extra costs for Delay or Disruption:   (Clause 36) | Rate is $00,000 (inclusive of GST) per each day of Extension of Time for Practical Completion Event Events under clause 35.5(b)(i), 35.5(b)(iv), 35.5(b)(v), 35.5(b)(vi), 35.5(b)(x). |
| 1. Defects Liability Period | 12 months |

**ATTACHMENT 1 – INSURANCE DETAILS**

| **Item** | | **Policy particulars** | | | |
| --- | --- | --- | --- | --- | --- |
| **Insured**:  all for their respective rights, interests and liabilities | | Minister for Transport and Infrastructure as Principal | | | |
| Project representatives of the Department of Planning, Transport and Infrastructure, other government agencies and client groups | | | |
| Contractor or Construction Manager | | | |
| Sub-contractor(s) or Trade Contractor(s). | | | |
| Professional Service Contractor(s). | | | |
|  | | | | | |
| **Insurer**(**s**): | | Contract Works Material Damage - Vero Insurance Limited | | | |
|  | | General Liability (Public (Third Party) Liability) - Liberty International Underwriters. | | | |
|  | | | | | |
| **Limit of Liability**:  Material damage to the Works (Contract Works): | |  | | | |
|  | **Limit of Liability for any one Event at any one Worksite** | Contract Works | | $125,000,000 (other than wet civil works - $5,000,000) | |
| Existing Structures | | $1,000,000 | |
| Constructional Plant and Equipment (limit any one item) | | Not insured | |
| Acquired Constructional Plant and Equipment (limit any one item and in the aggregate and one occurrence) | | $250,000 | |
|  | **Sub-limits of Liability: These sub-limits will apply in addition to the above Limits of Liability** | Removal of debris | | $12,500,000 | |
| Temporary protection shoring, propping and other costs | | $3,750,000 | |
| Expediting expenses | | 20% of loss up to maximum $7,500,000 | |
| Search and locate costs | | Not covered | |
| Professionals’ fees | | $10,000,000 | |
| Mitigation expenses | | $5,000,000 | |
| Plant hire charges | | Not covered | |
| Claim preparation costs | | $500,000 | |
| Government and other fees | | $2,500,000 | |
| Inflation protection | | $1,000,000 | |
|  | **Sub-limits of Liability: The following sub-limits are included within the Limits of Liability** | Off-site storage | | $5,000,000 | |
| Insured Property whilst in transit | | $2,000,000 | |
| Aggregate Limit of Liability per Event for all Damage in respect of Named Cyclone | | $125,000,000 | |
|  | | | | | |
| **Public (Third Party) Liability**: | | $50,000,000 for any one occurrence | | | |
|  | | | | | |
| **Excess**(**es**) **Material Damage**: | |  | | | |
| **Excess Category** | | **Initial Estimated Project Value** | | | |
|  | | **$0 to <$10 million** | **$10 to $50 million** | | **>$50 million** |
| Each loss except as below | | $5,000 | $10,000 | | $25,000 |
| Testing and Commissioning | | $5,000 | $25,000 | | $50,000 |
| Earthquake, subsidence, collapse, Storm, tempest, Flood, Named Cyclone | | $5,000 | $10,000 | | $50,000 |
| Civil Contracts | | $5,000 | $50,000 | | $100,000 |
|  | | | | | |
| **Excess(es) Public (Third Party)**: | |  | | | |
|  | Worker to Worker Liability | $100,000 | | | |
|  | All other claims | $25,000 (costs inclusive) | | | |
|  | | | | | |
| **Insuring**: | |  | | | |
| (a) | Material Damage to the Works includes all contracts declared to the Insurer(s) including the whole of the Contract Works, temporary works, removal of debris and/or expediting expenses and all as defined in the Insurance Policy, but excluding: | loss of use, consequential loss, penalties for non-completion or delay; | | | |
| wear and tear; | | | |
| defective materials, workmanship, design, plan or specification; | | | |
| aircraft or waterborne craft or plant and equipment permanently mounted thereon; | | | |
| inventory disappearance or shortage; | | | |
| money; | | | |
| transits outside Australia; | | | |
| electronic data exclusion; | | | |
| breakdown of constructional plant and equipment | | | |
| unsealed roads; | | | |
| nuclear risks; | | | |
| war and terrorism | | | |
| dewatering | | | |
| overtopping of coffer dams | | | |
| haul roads and borrow pits | | | |
| pipelines | | | |
| directional drilling or other trenchless pipe installation | | | |
| piling and retaining wall works in respect of:   * rectifying or replacing piles or retaining wall elements which have become misplaced or jammed or are lost or abandoned or damaged during driving or extraction or have become obstructed by jammed or damaged piling equipment or casings; * rectifying or disconnecting declutched sheet piles; * rectifying any leakage or infiltration of material of any kind; * filling voids or replacing lost bentonite; * pile or foundation elements having failed to pass a load bearing test or otherwise not having achieved the design load bearing capacity or that cannot be driven to the required depth; * reinstating profiles or dimensions. | | | |
| (b) | Public (Third Party) Liability is legal liability of the contracting parties against the costs of liability to third parties arising from the Contract, but excluding: | insurance of workers compensation | | | |
| industrial awards | | | |
| aircraft and watercraft | | | |
| registered vehicles | | | |
| loss of used contract works | | | |
| damage to products and work performed | | | |
| professional liability | | | |
| pollution and contamination | | | |
| fines and penalties | | | |
| advertising injury | | | |
| property owned and damage to the works | | | |
| products liability | | | |
| nuclear risk | | | |
| war and terrorism | | | |
| mould | | | |
| asbestos liability | | | |
| ‘Asbestos’ means;   * that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysolite, Crocidolite and Tremolite; * that group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres; and * includes Asbestos products and products containing Asbestos. | | | |

**ATTACHMENT 2 – APPROVED FORM OF UNCONDITIONAL UNDERTAKING**

(Clause 5.3)

**TO**: **MINISTER FOR TRANSPORT AND INFRASTRUCTURE**

("the Principal")

Attention: Chief Corporate Officer

Department of Planning, Transport and Infrastructure

GPO Box 1533

ADELAIDE SA 5001

**UNCONDITIONAL UNDERTAKING**

At the request of

...................................................................................................................................... (Name of Contractor)

(‘the Contractor’) and in consideration of the Principal accepting this undertaking in respect of the contract for: ………..................................................................................................................................................

...................................................................................................... Contract No:….....................................

.................................................................................................................... (Name of Insurance Company)

(‘the Insurance Company’) undertakes unconditionally to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of:.....................................................................………………………….....($...............................................)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal on until this undertaking is returned to the Insurance Company or until payment to the Principal by the Insurance Company of the whole of the sum or such part as the Principal may require.

Should the Insurance Company be notified in writing, purporting to be signed by the Chief Corporate Officer, Department of Planning, Transport and Infrastructure for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Insurance Company will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Insurance Company may at any time without being required so to do pay to the Principal the sum of:

.....................................................................………………………..…….... ($.......................................……..)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Insurance Company hereunder shall immediately cease.

Dated at:…………………………………………………………….

this………………………day of………………………………2014

**TO**: **MINISTER FOR TRANSPORT AND INFRASTRUCTURE**

("the Principal")

Attention: Chief Corporate Officer

Department of Planning, Transport and Infrastructure

GPO Box 1533

ADELAIDE SA 5001

**UNCONDITIONAL UNDERTAKING**

At the request of

.......................................................................................................................................... (Name of Contractor)

(‘the Contractor’) and in consideration of the Principal accepting this undertaking in respect of the contract for: ……………….................................................................................................................................................

.................................................................................................. Contract No:…........................................

..................................................................................................................... (Name of Financial Institution)

(‘the Financial Institution’) undertakes unconditionally to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of:.....................................................................………………..……...... ($..................................................)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal on until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by the Chief Corporate Officer, Department of Planning, Transport and Infrastructure for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of:

.....................................................................……………....($........................................……..)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Dated at:…………………………………………………………….

this………………………day of………………………………2014

**ATTACHMENT 3 – FORMAL INSTRUMENT OF AGREEMENT**

Included in Contract

**ATTACHMENT 4 – INDUSTRY PARTICIPATION POLICY PLAN NOT USED**

If the SAIPP requirements are not applicable to this contract use NOT USED. **Do not delete** the Attachment.

**ATTACHMENT 5 – INDUSTRY PARTICIPATION POLICY REPORT TEMPLATE NOT USED**

If the SAIPP requirements are not applicable to this contract use NOT USED. **Do not delete** the Attachment.

**ATTACHMENT 6 – DEED OF NOVATION**

(AS 2124⎯1992 Clause 10.1(c) and 10.3)

**THIS DEED** is made on the ……………….…………...…….day of …………….….…………………... ………….

Between **Minister for Transport and Infrastructure** ("the Principal") of Level 12 Roma Mitchell House, 136 North Terrace, ADELAIDE SA 5000

and …………………………………………………………..……………………….("the Nominated Subcontractor")

of ………………………………………………….……………………………...….……… ACN ………………………

and ……………………………………………….…………..………………….........………………("the Contractor") of …………………………………………………………………….….……..…......…….. ACN ………………......….

**WHEREAS**

1. The Principal has called tenders for the construction of ………………………….……………………………………………………………………………………………at ………………………………………………………………..…………………………..……. (“the Project”);
2. The Principal and the Nominated Subcontractor have entered into a contract (“Nominated Subcontract”) whereby the Nominated Subcontractor will execute and complete certain work more particularly described in the Nominated Subcontract (which work is herein called the Nominated Subcontract Work) and which will form part of the Project;
3. The Nominated Subcontract has been entered into between the Principal and the Nominated Subcontractor prior to the execution of a contract between the Principal and the successful tenderer for the construction of the Project;
4. The Nominated Subcontract provides that the Nominated Subcontractor will enter into this Deed of Novation with the successful tenderer for the Project;
5. The Contractor is the successful tenderer on the Project and has executed a contract for the construction for the Project with the Principal; and
6. The Contractor has been directed by the Superintendent named in the said contract for the construction of the Project between the Principal and the Contractor to enter into this Deed on Novation with the Nominated Subcontractor.

**THIS DEED WITNESSES** that in consideration of the mutual promises contained in this Deed, the parties agree:

1. The Contractor shall punctually perform, execute and carry out all of the obligations of the Principal under the Nominated Subcontract so far as they are not performed. The Contractor acknowledges itself to be bound by the terms and conditions of the Nominated Subcontract in all respects and in every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.
2. The Nominated Subcontractor hereby releases and forever discharges the Principal from the further performance of the Nominated Subcontract and from all claims and demands whatsoever in respect of the Nominated Subcontract and accepts the liability of the Contractor upon the Nominated Subcontract in place of the liability of the Principal.
3. The Subcontractor shall punctually perform, execute and carry out all of its obligations under the Nominated Subcontract and be bound by the terms of the Nominated Subcontract in each and every way as if the Contractor had originally been named in the Nominated Subcontract as a party to the Nominated Subcontract in place of the Principal.
4. This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor.

THE COMMON SEAL of the MINISTER FOR )

TRANSPORT AND INFRASTRUCTURE was )

affixed hereto by authority of the Minister )

in the presence of: )

……………………………………………………………….

Witness

……………………………………………………………….

Name of Witness

THE COMMON SEAL of NOMINATED SUBCONTRACTOR )

NAME (ACN XXX XXX XXX) was affixed hereto in the )

presence of: )

………………………………………………………………

Secretary/Director

………………………………………………………………

Name of Secretary/Director

………………………………………………………………

Director

…………………………………………………………….

Name of Director

THE COMMON SEAL of CONTRACTOR NAME )

(ACN XXX XXX XXX) was affixed hereto in the )

presence of: )

………………………………………………………….

Secretary/Director

………………………………………………………….

Name of Secretary/Director

………………………………………………………….

Director

………………………………………………………….

Name of Director