**SPECIAL CONDITIONS OF CONTRACT**

**CONTENTS**

[1. General 1](#_Toc446575844)

[2. Schedule of rates 1](#_Toc446575845)

[3. Lump sum 2](#_Toc446575846)

[4. Media releases 2](#_Toc446575847)

[5. Provisional sums and provisional quantities 2](#_Toc446575848)

[6. Latent conditions 3](#_Toc446575849)

[7. Reliance upon documents 3](#_Toc446575850)

[8. Insurance 3](#_Toc446575851)

[9. Costs of testing 3](#_Toc446575852)

[10. Working hours 3](#_Toc446575853)

[11. Times for commencement and practical completion 4](#_Toc446575854)

[12. Rise and fall 4](#_Toc446575855)

[13. Goods and services tax 4](#_Toc446575856)

[14. Overheads and profit 4](#_Toc446575857)

[15. Building and construction industry security of payment act 4](#_Toc446575858)

[16. Certificates and payments 4](#_Toc446575859)

[17. Contractor’s conduct 4](#_Toc446575860)

[18. Disclosure of contract 5](#_Toc446575862)

[19. Builders licence 5](#_Toc446575863)

[20. Construction industry training fund 5](#_Toc446575864)

[21. Contractor’s safety and environmental obligations 5](#_Toc446575865)

[22. Respectful behaviour 5](#_Toc446575866)

[23. Workforce participation and skills development 5](#_Toc446575867)

# GENERAL

These Special Conditions of Contract delete, amend or add to the clauses in the General Conditions of Contract. In the event of an inconsistency, these Special Conditions of Contract shall take precedence over the General Conditions of Contract to the extent of that inconsistency.

# SCHEDULE OF RATES

This clause applies where all or part of the work under the Contract is to be paid for by the rates in a Schedule of Rates.

Where work is to be paid for by rates, the unit of measurement listed in the Schedule of Rates shall apply.

The following limits of accuracy shall apply to the rates:

1. where indicated in the Schedule of Rates as either a ± percentage of, or a ± number of, the quantity, that percentage or number shall apply;
2. where not indicated on the Schedule of Rates, the limit of accuracy shall be ± 10% of the quantity stated.

The rates and amounts in the Schedule of Rates are deemed to include the cost of:

1. all survey, inspection, measuring and testing necessary to comply with the Specification (unless specified otherwise); and
2. all works, services, fees, charges, minor items and incidentals associated with or necessary for the proper execution of the work under the Contract whether or not such items are specifically referred to in the Contract.

The last paragraph of Clause 3.3 “Adjustment for Actual Quantities – Schedule of Rates” of the General Conditions of Contract is deleted and replaced with the following:

The rates in the Schedule of Rates are deemed to be full and complete payment for all work necessary to fulfil the Contractor’s obligations in regard to that part of Works to which payment by rates applies, notwithstanding that the description of the rate may not fully describe all of the work. Where there is no rate associated with work that the Contractor must undertake to fulfil its obligations, the cost thereof shall be deemed to be included in the rates or prices generally. Where any rate in the Schedule of Rates is unpriced by the Contractor, all costs applicable to that rate shall be deemed to be included elsewhere in the Schedule of Rates and no additional payment will be made.

# LUMP SUM

This clause applies to that part of the work under the Contract (if any) which is to be paid for by lump sum.

Work under the Contract which is not included in a Schedule of Rates will be paid for by lump sum.

The lump sum is deemed to be full payment for all necessary work, services, fees, charges, incidentals, inspection and testing in respect of the work under the Contract to be paid for by lump sum, regardless of whether or not such work, services, fees, charges, incidentals, inspection and testing are specifically referred to in the Contract.

# MEDIA RELEASES

Notwithstanding Clause 8.7 “Media Releases of the General Conditions of Contract” the Contractor shall not issue any information, publication, document or article for publication concerning the project to the media.

# PROVISIONAL SUMS AND PROVISIONAL QUANTITIES

Clause 11 “Provisional Sums” of the General Conditions of Contract is deleted and replaced with the following:

 “**Provisional sum**” includes principal controlled allowances, prime cost items and contingency sums.

“**Provisional quantity**” includes provisional items.

Work identified as a provisional quantity or as a provisional sum in an applicable payment schedule shall only be carried out at the direction of the Superintendent. The valuation of any provisional work carried out shall be determined in accordance with Clause 40.5. Where the provisional work is carried out by a subcontractor and there is no applicable rate in the payment schedules, the Contractor shall be entitled to payment for profit and attendance calculated by reference to the percentage or methodology stated in the Annexure.

In the event of any provisional sum being greater or less than the amount directed by the Superintendent to be expended against the provisional sum, the amount unexpended or the amount of the difference shall be taken into account in determining the final amount payable under the Contract.

In the event of any provisional quantity being greater than or lesser than the provisional quantity actually carried out, the value of the difference between the provisional quantity and the actual quantity shall be taken into account in determining the final amount payable under the Contract.

The limit of accuracy for provisional quantities and provisional sums is ± 100% of the quantity or sum stated.

The Contractor is not entitled to overheads and profit related to provisional sums and provisional quantities that are not expended.

# LATENT CONDITIONS

For the purpose of determining whether physical conditions are a Latent Condition, the determination shall be made on the premise that the Contractor is competent, skilled and experienced in the work which is the subject of the Contract.

# RELIANCE UPON DOCUMENTS

Where a document (or part thereof) is designated as an “information document” or “for information only”, the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of such documents and the Contractor acknowledges that it has taken this into account.

# INSURANCE

**Insurance Provided by the Contractor**

Where the Contractor has the obligation to effect and maintain insurance, the Contractor shall produce such evidence to the Principal at the time of signing the Formal Instrument of Agreement.

**Principal Arranged Insurance**

Where the Principal has the obligation to effect and maintain insurance, the Contractor shall bear or pay any excess or deductible which is applicable to any claim made under any of the policies of insurance effected under Clauses 18 or 19 of the General Conditions of Contract, except where the claim is with respect to loss or damage which is the direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.3 of the General Conditions of Contract.

If the Contractor considers that any insurance provided by the Principal does not adequately cover the Contractor’s liabilities, it is the responsibility of the Contractor to take out and pay for any additional insurance that the Contractor considers necessary.

# COSTS OF TESTING

Clause 31.7 “Costs of Testing” of the General Conditions of Contract is deleted and replaced with the following:

If testing is carried out to fulfil a requirement of the Specification for the purpose of verifying conformance with the Contract, the costs of and incidental to that testing shall be borne by the Contractor.

If further testing is carried out as result of a direction by the Superintendent, costs of and incidental to testing shall be borne by the Principal or shall be valued under Clause 40.5 and paid by the Principal to the Contractor unless:

1. the test shows that the material or work is not in accordance with the Contract;
2. the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent’s prior approval where such was required; or
3. the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

# WORKING HOURS

The Superintendent’s approval of a change to the working hours or working days specified in the Contract may be conditional. These conditions may include precluding the execution of work requiring surveillance by the Superintendent or an obligation for the Contractor to meet the additional costs incurred by the Superintendent as a consequence of the changed working hours or working days. The Contractor acknowledges that other restrictions to the working hours or working days may apply (either under this Contract or by law) and the Contractor is deemed to have allowed for any such restrictions.

# TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

The Contractor is not be entitled to an extension of time for Practical Completion in respect of a delay referenced in Clause 35.5 “Extension of Time for Practical Completion” of the General Conditions of Contract, unless within 28 days after the time when a competent and experienced contractor should have reasonably become aware of the cause of the delay, the Contractor has notified the Superintendent of the possible delay or has given the Superintendent the written claim for an extension of time for Practical Completion.

The Superintendent may extend the time for Practical Completion for any reason without a claim for an extension of time from the Contractor.

The Contractor is not entitled to an extension of time for inclement weather where the delay is less than 4 hours.

# RISE AND FALL

This Contract is not subject to adjustment for rise and fall of costs.

# GOODS AND SERVICES TAX

Rates and/or prices included in payment schedules shall be exclusive of GST. Payment from the Principal to the Contractor will include the GST payable. The Contractor must raise Tax Invoices for payment in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

# OVERHEADS AND PROFIT

Rates and amounts in all schedules shall be deemed to allow for all overheads and profit.

# BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT

Pursuant to Clause 34 (1) (e) of the *Building and Construction Industry Security of Payment Act 2009* (SA),the Contractor agrees and acknowledges that:

1. the Principal has nominated the Superintendent to receive payment claims and issue payment schedules under the Act; and
2. the Contractor’s payment claims made pursuant to Section 13 “Payment claims” of the Act must be served on the Superintendent.

# CERTIFICATES AND PAYMENTS

The first paragraph of Clause 42.7 “Final Payment Claim” of the General Conditions of Contract is deleted and replaced with:

The Contractor shall rectify all known defects and omissions within 28 days of the Date of Practical Completion. Within 56 days of the Date of Practical Completion the Contractor shall lodge with the Superintendent a final payment claim and endorse it ‘Final Payment Claim’.

Clause 42.8 “Final Certificate” is deleted from the General Conditions of Contract.

# CONTRACTOR’S CONDUCT

The Contractor must conduct itself in a manner that does not invite, directly or indirectly, the Principal’s officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the Principal’s interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

# DISCLOSURE OF CONTRACT

If applicable, the Contractor agrees to disclosure of this Contract in accordance with Department of Premier and Cabinet Circular 27 (PCO27)."Disclosure of Government Contracts", available from:

http://www.premcab.sa.gov.au/dpc/publications\_circulars.html. The Contractor’s attention is drawn to the *Freedom of Information Act 1991*. No exemption from the provisions of this Act applies to this Contract.

# BUILDERS LICENCE

Where required by the *Building Work Contractors Act 1995*, the Contractor shall hold an appropriate Builders Licence. Evidence of compliance with this Clause shall be submitted to the Superintendent on request.

# CONSTRUCTION INDUSTRY TRAINING FUND

Attention is drawn to the *Construction Industry Training Fund Act 1993* which imposes a levy of 0.25% of the value of building and construction works in South Australia. The Contractor shall pay the levy, calculated on the basis of the Contract sum less any Provisional Sums, Provisional Quantities and Principal controlled amounts. The Principal will not make separate payment to the Contractor for the levy, the cost of which is deemed to be included in the Contract Sum. Proof of payment of the levy may be required prior to the first or any progress payment being made under this Contract.

# CONTRACTOR’S SAFETY AND ENVIRONMENTAL OBLIGATIONS

The Contractor acknowledges the importance that the Principal places on care of the environment and the provision of a safe workplace. The Contractor must comply with all requirements of the Contract, applicable Australian Standards and all relevant law relating to protection of the environment and occupational, health, safety and welfare.

The Contractor must ensure, in connection with the execution of the work under the Contract, the health and safety of all persons including without limitation, members of the public, the Superintendent, the Principal’s employees, consultants and agents and the Contractor’s employees, subcontractors and agents.

The Contractor must perform its obligations under this Contract in an environmentally responsible manner so as to protect and preserve the environment (including from harm or damage arising from or in connection with the carrying out of the work under the Contract except to the extent such harm or damage was a direct and unavoidable result of carrying out and completing the work under the Contract in accordance with the Contract).

The Contractor, except to the extent prohibited by law, must indemnify and keep indemnified the Principal against any loss that the Principal suffers or incurs arising out of or in any way in connection with a failure by the Contractor to comply with any of its environmental or safety obligations.

# 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.

# WORKFORCE PARTICIPATION AND SKILLS DEVELOPMENT

This clause applies if the Contract Sum is greater than $150,000 (including GST)

1. An objective of this Contract is to increase the employment and training of Apprentices and Trainees, displaced automotive employees, Aboriginal people and Local People with Barriers to Employment (the “Target Group”) and to Upskill people engaged directly in connection with the performance of the Contract.
2. 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.
3. 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.

\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEXURE TO THE GENERAL CONDITIONS OF CONTRACT**

Where a clause in the General Conditions of Contract refers to Annexure Part A for particular information, for the purposes of that clause, that information shall be determined from the following table:

| **Clause Referenced** |  |
| --- | --- |
| 1 | The laws of South Australia shall apply to this Contract.Payment under the Contract will be made at Adelaide, South Australia |
| 2 | The Minister for Transport and Infrastructureof 136 North Terrace, Adelaide, South Australia, 5000,is the Principal.ABN: 92 366 288 135The Commissioner of Highwaysof 136 North Terrace, Adelaide, South Australia, 5000,is the Principal.ABN: 92 366 288 135The person occupying the position of Director Construction Contracting, DPTI of 77 Grenfell Street, ADELAIDE SA 5000, is the Superintendent. |
| 3.3(b) | Refer to Clause 5.2 "Schedule of Rates" of the Special Conditions of Contract for the limit of accuracy applying to rates in the Schedule of Rates. |
| 4.1 and 4.2 | A Bill of Quantities will not apply to this Contract. |
| 5.2 | The amount of security provided by the Contractor shall be $........................ and the Principal is not required to provide security. |
| 5.5 | If the Principal intends to have recourse to retention moneys and/or to convert security, it will give the Contractor 5 days prior notice.  |
| 5.7 | Any security and retention will be released when the Contractor has rectified all known defects and omissions after the issue of the Certificate of Practical Completion |
| 5.9 | Interests on Security and retention moneys shall be owned in accordance with Alternative 2. |
| 8.3 | The Principal will supply 1 copy of the documents. |
| 8.4 | The Contractor shall supply 1 copy of the documents.The Superintendent will notify the Contractor whether the documents are suitable or not within 14 days. |
| 9.2 | The Superintendent’s approval of subcontractors shall be sought in accordance with Clause 11 of the Special Conditions of Contract. |
| 11 | 12% will be paid on work carried by a subcontractor where there is no applicable rate for the provisional work. |
| 18 | Insurance of the Works shall be provided by the Contractor in accordance with Alternative 1 of Clause 18 of the General Conditions of ContractInsurance of the Works will be provided by the Principal in accordance with Alternative 2 of Clause 18 of the General Conditions of Contract. Refer also to: <http://www.dpti.sa.gov.au/standards/contractsandtenders/principal_arranged_insurance2> |
| 18(ii), 18(iii), 18(iv), 18(v) | Not Applicable. |
| 19 | Public Liability Insurance shall be provided by the Contractor in accordance with Alternative 1 of Clause 19 of the General Conditions of ContractThe amount of Public Liability Insurance shall not be less than $20 million.Public Liability Insurance will be provided by the Principal in accordance with Alternative 2 of Clause 19 of the General Conditions of Contract. Refer also to: <http://www.dpti.sa.gov.au/standards/contractsandtenders/principal_arranged_insurance2> |
| 27.1 | Possession of Site is given at the Date of Acceptance of Tender.  |
| 35.2 | The Date for Practical Completion is ......... calendar weeks after the Date of Acceptance of Tender |
| 35.6 | The rate for the application of Liquidated Damages is $......... per working day. |
| 35.7 | Liquidated Damages are unlimited. |
| 35.8 | A bonus per day for early Practical Completion does not apply. |
| 36 | Except as provided elsewhere in the Contract, extra costs for delay and disruption will not be paid to the Contractor |
| 37 | The Defects Liability Period is 12 months. |
| 41(f) | The charge for overheads, profit, etc is deemed to be included in the rates in the Schedule of Rates for Daywork |
| 42.1 | Times for Payment Claims shall be as agreed between the parties after acceptance of tender |
| 42.1(ii) | Nil. |
| 42.3 | Retention moneys are not required. |
| 42.4 | Payment for unfixed plant and materials shall be made in accordance with Alternative 2 of Clause 42.4 of the General Conditions of Contract. |
| 42.9 | The interest rate applicable to any overdue payments is the rate prescribed under the [*Supreme Court Act 1935*](http://www.legislation.sa.gov.au/index.aspx?action=legref&type=act&legtitle=Supreme%20Court%20Act%201935) *(SA)*  in respect of judgment debts of the Supreme Court. |
| 44.7 | Delay by the Principal in excess of 3 months in giving possession of Site shall be a substantial breach of contract. |
| 47.2 | Dispute resolution shall proceed in accordance with Alternative 2 of Clause 47.2 of the General Conditions of Contract. |
| 47.3 | An arbitrator shall be nominated by The Chairperson for the time being of the Institute of Arbitrators and Mediators Australia, South Australian Chapter, and arbitration shall be held in South Australia. |

\_\_\_\_\_\_\_\_\_\_\_\_