

General Terms and Conditions – Conditions of Contract (Works/Services)

QBuild, Department of Housing and Public Works

1. Definitions

“Business Days” In clause 21, has the meaning as defined in GST Legislation; in all other clauses, means a day that is not:

- a) a Saturday or a Sunday; or
- b) a public holiday, special holiday or bank holiday in the place where the Works are performed.

“Contract” means the agreement in writing between the Principal and the Contractor for the execution of the Work under the Contract, including the Offer documents and the Conditions of Working with QBuild – Contractors.

“Contractor” means the person or company whose Offer for the Work under the Contract has been accepted and its executors, administrators, successors or permitted assigns.

“Date for Practical Completion” means the date, or last day of the period of time, specified on the Offer form.

“Ethical Supplier Mandate” means the Queensland Government policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy.

“Ethical Supplier Threshold” means the Ethical Supplier Threshold described in the Queensland Procurement Policy.

“GST” means a goods and services tax imposed by or through the GST legislation.

“GST Legislation” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition legislation (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any such legislation.

“Practical Completion” means the Work under the Contract is completed in accordance with the Contract except for minor omissions and defects which will not (and the rectification of which will not) prevent or impair the normal use and occupation of the Works.

“Principal” means the party so defined on the Offer Form, or in absence of any definition on the Offer Form, The State of Queensland through QBuild, a business unit of the Department of Housing and Public Works.

“Site” means the land and/or other places to be made available and any other lands and/or places made available to the Contractor by the Principal for the purpose of the Contract.

“Superintendent” means the person nominated by the Principal to exercise the functions of the Superintendent under the Contract who, at all times, must exercise its functions acting honestly and fairly; act within certain times prescribed under the Contract or, where no times are specified, within a reasonable time; and arrives at a reasonable measure of value of work, quantities or time. The Superintendent may appoint a representative to exercise any of its powers, duties, discretions and authorities.

“Work under the Contract” means the work and/or services which the Contractor is or may be required to execute under the Contract including any variations.

“Works” means the whole of the work and/or services to be executed and completed in accordance with the Contract, including all variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

2. Execution of Works

The Contractor will undertake the Work under the Contract in accordance with the Contract and any other documents issued by the Principal. Unless otherwise provided, the Contractor is responsible for all things, including items not expressly mentioned in the Contract necessary for satisfactory completion of the Works. The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.

The Contractor will comply with the requirements of legislation and public or other authorities affecting the Works and, unless otherwise specified, pay all fees, give all notices and obtain all necessary consents.

3. Assignment and subcontracting

The Contractor must not assign or subcontract the Work under the Contract, or any part thereof, or any payment without the prior written approval of the Superintendent. If requested, the Contractor must notify the Superintendent in writing of the name and details of any subcontractor and the value of the subcontract. The Contractor must not, without the prior written approval of the Superintendent, allow a subcontractor to subcontract Work under the Contract. The Superintendent may, in its entire discretion, and without giving reasons, reject any request for approval by the Contractor.

4. Workplace health and safety

a) For the purposes of this clause:

'Act' means the *Work Health and Safety Act 2011 (Qld)*, as amended from time to time;

'Regulation' means the *Work Health and Safety Regulation 2011 (Qld)*, as amended from time to time;

'workplace', 'inspector', 'notifiable incident', 'principal contractor' and 'regulator' have the same meaning as in the Act.

b) In relation to the Work under the Contract, the Contractor will:

(i) comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking;

(ii) unless otherwise advised in writing, accept that it is the person having management or control of the workplace at which the Work under the Contract is being undertaken; and

(iii) discharge the duties of a person who conducts a business or undertaking under the Regulation.

c) The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:

(i) any breach of this clause by the Contractor;

(ii) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;

(iii) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulations.

d) If a notifiable incident occurs at the workplace at which the Work under the Contract is being undertaken, the Contractor must:

(i) immediately notify the Regulator and the Superintendent of the notifiable incident; and

(ii) take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area, or any earlier time that an inspector directs.

e) Without limiting any other obligation of the Contractor under this Contract, the Act, the Regulation or any other regulation, if material which might contain asbestos or asbestos containing material ("ACM") or other hazardous substance is discovered, and the ACM or other hazardous substance has not been identified in the Contract documents as containing asbestos or assumed asbestos or other hazardous substance, the Contractor must:

(i) immediately notify the Superintendent; and

(ii) in all circumstances, comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant regulation.

f) Where the value of the Contract is greater than \$250,000, the Principal engages the Contractor to be the Principal Contractor under the Regulation in relation to the Work under the Contract.

5. Protection of persons and property

The Contractor will take all measures necessary to protect people and property including the Works; avoid unnecessary interference with passage of people and vehicles and prevent nuisance, unreasonable noise and disturbance. If the Contractor damages any property, the Contractor must provide or arrange temporary protection for the damage and repair it at its cost.

6. Care of Works and reinstatement of damage

The Contractor will be responsible for the care of the whole of the Work under the Contract. If loss or damage occurs to the Work under the Contract, the Contractor will, at the Contractor's cost, rectify such loss or damage, except loss or damage caused by the negligent act or omission by the Principal, or employees or agents of the Principal, or caused by defects in the design of the Work under the Contract.

7. Indemnity by the contractor

The Contractor indemnifies the Principal against:

- a) loss of or damage to the Principal's property; and
- b) claims by any person in respect of injury, death or loss of or damage to any property,

resulting from, or in any way connected with, the Contractor carrying out the Work under the Contract. The Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, or its employees or agents, contributed to the loss, damage, death or injury.

8. Public liability insurance

Before commencing Works, the Contractor will have public liability insurance for an amount not less than twenty million dollars (\$20,000,000) or such other amount required by the Principal. The insurance policy must cover the Contractor's liability to the Principal for loss of, or damage to, property and death or injury to any person. The Contractor must maintain such insurance for the duration of the Contract and produce evidence of insurance if requested.

9. Insurance of employees

Before commencing Works, the Contractor must insure against liability for death of or injury to persons employed by the Contractor. Where the Contractor is a self-employed person, the Contractor must maintain an equivalent insurance policy for itself. The Contractor must maintain such insurance for the duration of the Contract and produce evidence of insurance if requested. The Contractor must ensure that every subcontractor is similarly insured.

10. Materials and workmanship

All materials and the standards of workmanship must conform to the Contract. In the absence of any specification in the Contract, the materials or standard of workmanship, must be of a kind suitable for purpose and consistent with the nature and character of the Works. Unless otherwise specified, all materials must be new and workmanship must be in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standard where applicable. Apart from any tests specified, the Superintendent may at any time direct that any materials, or work, shall be examined and/or tested.

The Contractor will comply with any direction by the Superintendent to rectify any Works in accordance with the Contract within the time stipulated in writing by the Superintendent. If the Contractor fails to comply with such a direction to carry out rectification work within the time stipulated, the Principal may have the rectification work, the subject of the direction, carried out by others at the Contractor's expense, or may accept the rectification work at a reduced value. The Principal may deduct the cost of rectification work, or reduced value, from payments or recover the cost, or reduced value, as a debt due from the Contractor. The Principal may deduct the estimated cost of rectification work from payments until such time as the Principal has incurred the cost of rectification.

11. Time for commencement

The Contractor will commence Work under the Contract within the time stated in the Offer and will, unless otherwise agreed, give at least two (2) days' notice to the Superintendent prior to the commencement of Works.

12. Time for completion

The Contractor will execute the Works to Practical Completion by the Date for Practical Completion, or within any extended time agreed by the Superintendent. The Contractor is not entitled to an extension of time for delays caused by it, whether occurring before or after the Date for Practical Completion, nor for delays due to inclement weather or industrial conditions occurring after the Date for Practical Completion. The Superintendent may extend the Date for Practical Completion for any reason.

13. Liquidated damages

If the Contractor fails to complete the Works by the Date for Practical Completion, together with any extensions of time granted by the Superintendent, the Contractor will be liable to the Principal for liquidated damages, in the amount stated in the Offer, for every day after that date until Practical Completion has been achieved or the Contract terminated, whichever is sooner.

14. Defects liability period

The Contractor will promptly rectify all defects and omissions notified to the Contractor during the defects liability period stated in the Offer. If the Contractor fails to do so, the Principal may have the omission or defect remedied by other persons and the cost so incurred will be a debt due to the Principal which may be deducted from payments.

15. Cleaning of site

The Contractor must keep the Site and the Works clean and tidy and regularly remove from the Site rubbish and surplus material arising from the execution of the Works. On completion of the Works, the Contractor shall clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind.

16. Variations

The Superintendent may direct, in writing, a variation to any Work under the Contract and the Contractor shall promptly comply with that direction. The Contractor must submit to the Superintendent a detailed price for the variation within 14 days of the direction. The variation must be valued by agreement between the Contractor and the Superintendent or, failing agreement, by the Superintendent and the Contract price adjusted accordingly. The Superintendent may make interim payments for variations until the respective variations have been finally valued. The margin for profit and attendance will be 12.5%. No payment for additional work will be made unless the additional work is authorised in writing by the Superintendent.

17. Latent conditions

If the Contractor discovers physical conditions, including suspected ACM that has not been identified in the Contract documents as ACM, or assumed asbestos or other hazardous substance on the Site or its surroundings, excluding weather conditions, which differ materially from those which should reasonably have been anticipated at the time of Offer if it had:

- a) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Works and obtainable by the making of reasonable enquiries; and
- c) inspected the Site and its surroundings;

the Contractor will immediately notify the Superintendent in writing and, in the case of suspected ACM or other hazardous substance, do all things necessary to protect person and property and to minimise the potential hazard including minimising disturbance of the discovered ACM or other hazardous substance.

The Superintendent may issue a direction in respect of the latent conditions and the Contractor will be entitled to claim an extension of time for delays and may be entitled to reimbursement of costs incurred as a consequence of the latent conditions and directions issued in respect thereof.

18. Payment

At the times stated in the Offer, the Contractor will give the Superintendent a payment claim, supported by relevant job cards (where applicable) and containing sufficient information to enable the Superintendent to assess the payment claim.

The Superintendent will assess the payment claim to determine the amount to be paid.

When the Superintendent determines that the amount to be paid is other than the claimed amount, the Superintendent must issue a payment schedule within 15 Business Days of receipt of the payment claim. The payment schedule must state the amount to be paid and the reasons for the difference from the claimed amount.

The Principal will only be liable to pay:

- a) if the Superintendent has issued a payment schedule with the amount identified to be paid in the payment schedule; or
- b) otherwise, the claimed amount;

Subject to clause 19, payment will be made:

- a) within 15 Business Days of receipt of a tax invoice; or
- b) where the Contractor is a small business in accordance with the **Conditions of Working with QBuild - Contractors**, within 20 days of invoice date.

Payment may take into account interim payments for variations (if any), the deduction of retention moneys (if any) and any other amount which the Principal may be entitled to deduct, or which is due and payable by the Contractor to the Principal whether under the Contract, any other contract or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Contractor, the Principal may have recourse to retention moneys or unconditional undertakings provided in lieu of retention.

Payment will be made by means of electronic transfer to the Contractor's nominated bank account. Payment is not evidence of the value of work done or that it has been done satisfactorily or an admission of liability but is payment on account only. The Superintendent may, in a later payment, correct an error in a previous payment. Nothing in this Contract will oblige the Principal to pay for Works not performed, Works not in accordance with the Contract, or plant or materials not incorporated into the Works on site.

For the purposes of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), the Superintendent is authorised to receive payment claims and to issue payment schedules on behalf of the Principal.

18A Retention

Retention moneys (if any) are for the purpose of ensuring the due and proper performance of the Contract and the Contractor may, at any time, provide in lieu of retention moneys, security in the form provided for in the Contract, or such other form as approved by the Principal. If the Contractor has provided security in lieu of retention moneys, the Principal may, at any time, convert into money security that does not consist of money, whether or not the Principal is then entitled to exercise a right under the Contract in respect of the security. The Principal will not be liable in any way for any loss occasioned by the exercise of rights under this clause.

The Principal's entitlement to retention moneys (if any) will be reduced to the percentage provided for in the Offer form or, if no percentage is stated, to 50% thereof, when the Contractor has achieved Practical Completion as certified by the Superintendent.

19. Default of the Contractor

- a) Subject to clause 19(c), if the Contractor fails to commence the Work under the Contract within the time for commencement stated in the Offer, or fails to proceed with the Works at a reasonable rate of progress, or commits any substantial breach of the Contract, or indicates that it is unable or unwilling to complete the Works; the Principal may, by written notice, require the Contractor to show cause by the date specified in the notice, which will be not less than five (5) days, why the Principal should not exercise a right under clause 19(b).
- b) If the Contractor fails to show reasonable cause by the date specified by the Principal, then the Principal will have the power, upon notice in writing to the Contractor, to terminate the Contract or suspend payment and take the Works remaining to be completed, wholly or partly, out of the hands of the Contractor, without prejudice to any rights of the Principal under the Contract or at common law.
- c) If the Contractor:
 - (i) fails to hold a current licence required to perform the Work under the Contract; or
 - (ii) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (iii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iv) has a liquidator or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets; or
 - (v) fails to maintain registration with QBuild as a QBuild registered Contractor; the Principal may, without giving a notice to show cause, exercise a right under clause 19(b) but only when, and to the extent that, there is no restriction on enforcing that right under Part 5.1, Part 5.2, or Division 17 of Part 5.3A of the *Corporations Act 2001* (Cth).
- d) In the event that the Principal takes the Work under the Contract out of the hands of the Contractor, the Principal may itself, or by means of other persons, complete the whole or any part of that work and may, without payment of compensation, take possession of the constructional plant and other things, on or in the vicinity of the Site, as are owned by the Contractor. If the cost incurred by the Principal in completing the Works is greater than the amount which would have been paid to the Contractor if the Contractor had completed the Works, the difference will be a debt due from the Contractor to the Principal, otherwise any difference will be a debt due from the Principal to the Contractor.

20. Disputes

Within 14 days of a dispute arising, either party may refer it to the Superintendent. Within 28 days of receiving notice of a dispute, the Superintendent must give its written decision to each party. If the Superintendent fails to give the decision, or if either party is dissatisfied with it, the parties must, within 14 days of receipt of the decision, or the date upon which it should have been given, confer at least once to attempt to resolve the dispute.

21. GST and PAYG

- a) Payments for any taxable supplies under the Contract include GST.
- b) The Contractor must issue to the Principal a tax invoice or adjustment note (as the case may require) within twenty-eight (28) Business Days after each of the following occurring in relation to that taxable supply:
 - (i) the Contractor submitting a claim for payment that is not in the form of a valid tax invoice;
 - (ii) the Superintendent certifying an amount for payment different to the amount claimed; or
 - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- c) Whenever the Principal reasonably considers itself bound by law to do so, the Principal will be entitled to withhold from any payment, otherwise due to the Contractor, amounts calculated and to be withheld in accordance with the law.

22. Information Privacy Act

If the Contractor collects or has access to Personal Information in order to carry out Work under the Contract, the Contractor must:

- a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009* (Qld) ("IPA"), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
- b) not use Personal Information other than in connection with carrying out Work under the Contract, unless required or authorised by law;
- c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
- d) ensure that its officers, employees, agents and subcontractors do not access, use or disclose Personal Information other than in connection with carrying out Work under the Contract;
- e) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;
- f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.

On request of the Principal, the Contractor must obtain from its employees, officers, agents or subcontractors carrying out Work under the Contract, an executed Deed of Privacy in a form acceptable to the Principal.

The Contractor must immediately notify the Principal on becoming aware of any breach of clause 22.

This clause will survive the termination or expiry of the Contract.

In this clause, 'Personal Information' is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

23. Anti-Competitive Conduct, Conflict of Interest and Criminal Organisations

The Contractor warrants that neither it, nor its Personnel* have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Works. In addition to any other remedies available to it under Law or Contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has engaged in collusive or anti-competitive conduct. The Contractor warrants that neither it nor its Personnel hold any office or possess any property or are engaged in any business or activity or have any obligations whereby a Conflict of Interest** is created, or might appear to be created, in conflict with its obligations under this Contract; except as disclosed. If the Principal requests, the Contractor must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Principal.

The Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 161P of the *Penalties and Sentences Act 1992* (Qld).

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Contractor warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

In addition to any other remedies available to it under Law or Contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this clause.

**Personnel means officers, directors, employees, agents and subcontractors;*

***Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.*

24. Queensland Procurement Policy

The Contractor must, and must ensure its subcontractors in carrying out the work under the Contract, comply with:

- a) the principles of the Queensland Procurement Policy ("Policy") and any requirements under the Contract in this regard; and
- b) the Ethical Supplier Threshold.

The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the Work under the Contract or the Contractor's obligations under the Contract, can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate in addition to any other remedies available to the Principal under this Contract.

Failure to comply in any respect with the requirements of the Policy will be considered a substantial breach of Contract and entitle cancellation of the Contract in accordance with clause 19.