

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

QBuild, Department of Energy and Public Works

1. Definitions

1.1. The following definitions apply to the Contract:

“Building Certifier” means a Queensland Building and Construction Commission licensed Building Certifier.

“Business Days” has the meaning of **business day** as defined in Schedule 2 Dictionary of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

“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*.

“Contract Sum” means:

- a) where the Principal accepted a lump sum, the lump sum;
- b) where the Principal accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Schedule of Rates;
- c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs a) and b);

including provisional sums but excluding any additions or deductions which may be required to be made under the Contract.

“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, stated on the Offer form.

“Defects Liability Period” means the period of time stated in the Offer Form, which commences on the date that the Works reach Practical Completion.

“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.

“Government Department or Instrumentality” means

- a) any government department responsible for compliance with government policy, including but not limited to:
 - (i) the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Public Works;
 - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training;
 - (iii) Local Content with the Department of State Development, Infrastructure, Local Government and Planning;
- b) any government regulator, including but not limited to:
 - (i) the Queensland Building and Construction Commission;
 - (ii) the Office of Industrial Relations;
 - (iii) the Fair Work Commission;
 - (iv) the Australian Taxation Office;
 - (v) the Australian Building and Construction Commission; and
 - (vi) the Office of the Federal Safety Commissioner;

“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:

- a) in accordance with the Contract including but not limited to all plans and specifications for the Works and all statutory requirements applying to the work under the Contract;
- b) other than 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 Energy and Public Works.

“Queensland Procurement Policy” means the Queensland Government policy titled “Queensland Procurement Policy” or any policy which replaces that policy.

“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 pursuant to the Contract, which is to be handed over to the Principal in accordance with Contract.

1.2 In addition to these definitions, some terms, specific to a clause, are defined in that clause.

2. Execution of Works

- 2.1. The Contractor must 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.
- 2.2. The Contractor must 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

- 3.1. 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. 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. All requests for approval to subcontract or sub subcontract pursuant to this clause must be given by the Contractor to the Superintendent in the form attached to these Conditions.

4. Work health and safety

- 4.1. For the purposes of this clause:

‘Act’ means the *Work Health and Safety Act 2011* (Qld);

‘construction project’, ‘construction work’ and ‘principal contractor’ have the same meaning as defined in the Regulation;

‘inspector’, ‘notifiable incident’, ‘regulator’, ‘structure’ and ‘workplace’ have the same meaning as defined in the Act;

‘Regulation’ means the *Work Health and Safety Regulation 2011* (Qld);

‘WHS Laws’ means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

- 4.2. In relation to the work under the Contract, the Contractor will:

- a) comply with and discharge all obligations imposed on the Contractor under the WHS Laws;
- b) 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;

- c) discharge the duties of a person who conducts a business or undertaking under the WHS Laws; and
 - d) without limiting clause 4.2a, ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers and agents, discharge their respective duties under the WHS Laws in connection with the work under the Contract.
- 4.3. Unless otherwise advised in writing, where the work under the Contract comprises a construction project (i.e. a project that involves construction work of \$250,000 or more (inclusive of GST)), from the date of acceptance of offer:
- a) the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the construction project and authorises the Contractor to:
 - (i) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and
 - (ii) discharge the duties of a principal contractor under the Regulation;
 - b) the Contractor accepts the engagement as principal contractor and agrees to fulfil all requirements and give effect to that engagement prior to commencing any of the work under the Contract; and
 - c) the Contractor will comply with and discharge all obligations imposed on the Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the WHS Laws.
- 4.4. Without limiting any other obligations of the Contractor under the Contract, or the WHS Laws, in relation to the work under the Contract, the Contractor will:
- a) consult with the Principal and consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise the risks, so far as is reasonably practicable; and
 - b) take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out.
- 4.5. 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:
- a) any breach of this clause by the Contractor;
 - b) any breach by the Contractor of its obligations under WHS Laws; and
 - c) any enforcement of obligations imposed on the Contractor under the WHS Laws.
- 4.6. If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:
- a) immediately notify the regulator and the Superintendent of the notifiable incident; and provide copies of any communications, notices or reports provided to or received from the regulator or any Authority regarding the notifiable incident;
 - b) take all reasonably practicable steps to secure the site where the notifiable incident occurred until an inspector arrives at the site, or any earlier time that an inspector directs;
 - c) conduct a thorough investigation in relation to the root cause and contributing factors of the notifiable incident and provide a copy of the written investigation report within 10 Business Days of the Superintendent's request; and
 - d) if the Principal wishes to conduct its own investigation, provide the Principal with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.
- 4.7. Without limiting any other obligation of the Contractor under the Contract, or the WHS Laws, 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:
- a) immediately notify the Superintendent; and
 - b) in all circumstances, comply with all applicable obligations and restrictions imposed by the WHS Laws.

5. Protection of persons and property

5.1. The Contractor must:

- a) 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;
- b) for the purposes of clause 5.1a, comply with all reasonable directions of the Superintendent.

5.2. If the Contractor damages any property, the Contractor must provide temporary protection for, and repair it at its cost.

6. Care of Works and reinstatement of damage

- 6.1. The Contractor will be responsible for the care of the whole of the work under the Contract.
- 6.2. If loss or damage occurs to the work under the Contract, the Contractor must 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

- 7.1. 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.
- 7.2. The Contractor indemnifies the Principal against any liability arising from an infringement of any intellectual property right contrary to a warranty provided under clause 23, if applicable.

8. Public liability insurance

- 8.1. Before commencing the work under the Contract, the Contractor must have public liability insurance for an amount not less than the amount stated in the Offer Form, covering the Contractor's liability to the Principal for loss of, or damage to, property and death or injury to any person.
- 8.2. The Contractor must maintain such insurance for the duration of the Contract and produce evidence of insurance, if requested.

9. Insurance of employees

- 9.1. Before commencing the work under the Contract, 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

- 10.1. For the purposes of this clause, 'Non-Conforming Building Product' has the same meaning as in section 74AB(2) of the *Queensland Building and Construction Commission Act 1991* (Qld).
- 10.2. All materials used in any work under the Contract and the standards of workmanship must be in conformity with the provisions of the Contract. In the absence of such provisions in the Contract, the materials or standard of workmanship as the case may be, must be of a kind suitable for its purpose and is 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, must be examined and/or tested.
- 10.3. The Contractor must:
- a) ensure that none of the materials, plant, machinery, equipment or products used in the Works are a Non-Conforming Building Product; and
 - b) promptly notify the Principal if it becomes aware, or reasonably suspects, that any materials, plant, machinery, equipment or products it has used for incorporation into the Works are a Non-Conforming Building Product for that particular use.
- 10.4. The Contractor must comply with any written direction by the Superintendent to remedy any work not in accordance with the Contract, including but not limited to, defective work, loss or damage to work under the Contract and cleaning of the Site, within the time stated in writing by the Superintendent. If the Contractor fails to comply with such a direction to carry out rectification work within the time stated, 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

- 11.1. The Contractor must commence work under the Contract within the time stated in the Offer Form and must, unless otherwise agreed, give at least two (2) Business Days' notice to the Superintendent prior to the commencement of Works.

12. Time for completion

- 12.1. The Contractor must execute the Works to Practical Completion by the Date for Practical Completion, or within any extended time agreed by the Superintendent.
- 12.2. 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.
- 12.3. The Superintendent may extend the Date for Practical Completion for any reason.

13. Liquidated damages

- 13.1. 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 is terminated, whichever is sooner.

14. Defects liability period

- 14.1. The Contractor must promptly rectify all defects and omissions notified to the Contractor during the Defects Liability Period. 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 or recovered by any other means.

15. Cleaning of Site

- 15.1. 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 must clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind.

16. Variations

- 16.1. The Superintendent may direct, in writing, a variation to any work under the Contract and the Contractor must promptly comply with that direction. The Contractor must submit to the Superintendent a detailed price for the variation within 10 Business Days of the direction. The variation will be valued by agreement between the Contractor and the Superintendent or, failing agreement, by the Superintendent and the Contract Sum 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

- 17.1. Excluding weather 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, 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;
 - 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 must immediately notify the Superintendent in writing and may request that a variation be directed pursuant to clause 16. 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.

- 17.2. 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

- 18.1. At the times stated in the Offer Form, the Contractor will give the Superintendent a payment claim, accompanied by a supporting statement, in accordance with the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and supported by relevant job cards (where applicable), containing sufficient information to enable the Superintendent to assess the payment claim.

- 18.2. The supporting statement must, as a minimum, include:
 - a) A declaration stating that all subcontractors have been paid all amounts owed to them by the head contractor at the date of the payment claim or, if the amount hasn't been paid in full, stating the:
 - (i) subcontractor's name;
 - (ii) amount still to be paid;
 - (iii) details of unpaid payment claim;

- (iv) date the subcontractor carried out the construction work or supplied the related goods and services; and
- (v) reasons the amount was not paid in full.

- 18.3. The Superintendent will assess the payment claim to determine the amount to be paid.
- 18.4. 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.
- 18.5. The Principal will only be liable to pay:
- a) if the Superintendent has issued a payment schedule, 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 payment claim; 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.
- 18.6. 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 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.
- 18.7. Payment will be made by means of electronic transfer to the Contractor's nominated bank account.
- 18.8. Payment will not be 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.
- 18.9. The Superintendent may, in a later payment, correct an error in a previous payment.
- 18.10. 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.
- 18.11. 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

- 18A.1 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.
- 18A.2 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.
- 18A.3 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

- 19.1. Subject to clause 19.3, if the Contractor:
- a) fails to commence the work under the Contract within the time for commencement stated in the Offer Form, or
 - b) fails to proceed with the Works at a reasonable rate of progress, or
 - c) commits any substantial breach of the Contract, or
 - d) 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 stated in the notice, why the Principal should not exercise a right under clause 19.2 ("Show Cause Notice").
- 19.2. If the Contractor fails to show reasonable cause by the date stated by the Principal in the Show Cause Notice, then the Principal will have the power, upon notice in writing to the Contractor to:
- a) terminate the Contract; or

- b) 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.

19.3. If the Contractor:

- a) fails to hold or maintain a current licence required, to perform the work under the Contract; or
- b) 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
- c) 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
- d) has a liquidator, a receiver, or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets; or
- e) fails to maintain registration with QBuild as a QBuild registered Contractor;

the Principal may, without giving a Show Cause Notice, exercise a right under clause 19.2 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).

- 19.4. 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

- 20.1. Within 10 Business Days of a dispute arising, either party may refer it to the Superintendent. Within 20 Business 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 10 Business 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. Goods and Services Tax (GST) and Pay as You Go (PAYG)

21.1. GST Included in Price

Payments for any taxable supplies under the Contract include GST.

21.2. Tax Invoices

- a) The Contractor must issue to the Principal a tax invoice or adjustment note (as the case may require) within five (5) 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.
- b) The Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring.
- c) Each party acknowledges it was registered for GST when it entered into the Contract and agrees it will notify the other immediately it becomes aware of it ceasing to be registered for GST.

21.3. PAYG Withholding

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

- 22.1. For the purposes of 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.
- 22.2. 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.

22.3. 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.

22.4. The Contractor must immediately notify the Principal on becoming aware of any breach of clause 19.

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

23. Design responsibility

23.1. If stated in the Offer Form, this clause is included in the Contract.

23.2. Design

- a) The Contractor will prepare and be responsible for the design of the Works.
- b) The Contractor will:
 - (i) complete the design and documentation of the Works, including drawings and trade specifications, in accordance with the Contract and all relevant legislative requirements; and
 - (ii) ensure that materials and standards of workmanship prescribed in drawings, trade specifications and other documents are fit for the purpose specified in the tender documents and are consistent with the nature and character of the Works and in accordance with the Contract.
- c) The Contractor warrants to the Principal that:
 - (i) the Contractor will exercise the degree of skill, care and diligence expected of a competent design professional in carrying out the design and documentation of the Works; and
 - (ii) the design of the Works will comply with the Contract and will in all respects be fit for the purpose specified in the tender documents.
- d) The Contractor will remain responsible for the design of the Works notwithstanding any approval or confirmation given under the *Building Act 1975* (Qld) or any review or approval of the design undertaken by or on behalf of the Principal.
- e) The Contractor acknowledges that the Principal is relying on the Contractor's skill and expertise in undertaking the design and construction of the Works.

23.3. Building Certifier

- a) A Building Certifier is required to be engaged by the party stated in the Offer Form to provide advice on compliance of the Works with the provisions of the *Building Act 1975* (Qld) and, in the performance of the Building Certifier's duties, must be required to act as an independent party and not as an agent of the Principal.
- b) The Contractor will be responsible for obtaining confirmation of compliance with the *Building Act 1975* (Qld), or if required, Building Act approval under the *Building Act 1975* (Qld), in respect of the design of the Works. For this purpose, the Contractor must pay all fees and submit to the Building Certifier all material necessary for obtaining such confirmation or approval. The Contractor must allow a minimum of 20 Business Days for confirmation or approvals under the *Building Act 1975* (Qld).
- c) The Contractor will be responsible for providing the plumbing and drainage plans to the relevant authority for review of compliance with the *Plumbing and Drainage Act 2018* (Qld) and ensure the plans are stamped and approved in accordance with the requirements of that legislation at the Contractor's own cost. During construction of the Works, the Contractor must arrange for the plumbing and drainage installations to be inspected by all relevant authorities and all associated fees must be paid by the Contractor.
- d) Approvals and certificates issued by the Building Certifier and relevant authorities must be provided to the Principal for Practical Completion.

23.4. Professional Indemnity Insurance

- a) Before commencing the work under the Contract, the Contractor must have professional indemnity insurance for not less than the amount stated in the Offer Form
- b) Professional indemnity insurance must be maintained for 6 years after the completion of the Contract.
- c) Before the Contractor commences work and whenever requested in writing by the Principal, the Contractor must provide to the Principal a certificate of currency in respect of each insurance policy required under this clause showing:
 - (i) the insurance policy numbers;
 - (ii) the expiry date of each policy; and
 - (iii) the amount of insurance cover required to be held under the Contract.
- d) Failure by the Contractor to provide evidence of insurance will constitute a substantial breach of the Contract by the Contractor.

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

24.1. For the purpose of 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.

- 24.2. 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.
- 24.3. 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 the 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.
- 24.4. 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).
- 24.5. 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.
- 24.6. 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.

25. Queensland Procurement Policy

25.1. 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;
- b) the Ethical Supplier Threshold; and
- c) the Ethical Supplier Mandate.

25.2. 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 the Contract.

25.3. The Contractor authorises the Principal and parties nominated by the Principal or the Superintendent (which may include the Principal's staff or external contractors) to obtain information about the Contractor relevant to assessing the Contractor's compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold, and the Ethical Supplier Mandate, that may be held by any Government Department or Instrumentality.

25.4. The Contractor acknowledges and agrees that the Principal may refer matters of non-compliance with the Ethical Supplier Mandate to the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works, who may publish information about sanctions imposed on the Contractor under the Ethical Supplier Mandate.

25.5. Upon request by the Principal or a party nominated by the Principal or the Superintendent (which may include the Principal's staff or external contractors), the Contractor must provide all necessary information, including information of any of its subcontractors, for the purposes of investigation or an audit to assess the Contractor's or its subcontractors' compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate. This information may be shared with relevant Government Departments or Instrumentalities and when necessary the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works and the Tripartite Procurement Advisory Panel for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate.

25.6. 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.

26. Payment of Workers and Subcontractors

26.1. At the request of the Contractor and out of moneys payable to the Contractor the Principal may on behalf of the Contractor make payment directly to a worker or subcontractor.

26.2. If a worker or subcontractor obtains a court order in respect of moneys unpaid and produces the court order to the Principal the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

26.3. After the making of a sequestration order or a winding up order in respect of the Contractor, the Principal shall not make any payment to a worker or subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

27. Machinery of Government

27.1. The Principal may assign, novate or otherwise deal with its interests under the Contract to another Queensland Government department, agency or body at any time.

Request to subcontract

Pursuant to clause 3.1 of the Conditions of Contract, I request approval to enter into a subcontract for the following:

| | | | |
|--|--------------------------|-------------------------------|--------------------------|
| To (QBuild) | | Region | |
| From (Contractor) | | ABN | |
| Contract Title | | Contract Number | |
| Contract Location | | | |
| Details of proposed subcontractor or sub subcontractor (complete another form for more than one) | | | |
| Name | | | |
| ACN (if a company) | | ABN | |
| Address | | | |
| Relevant Licence No. | | | |
| Particulars of the work/s to be subcontracted | | | |
| Reason for the work being subcontracted | | | |
| Total value of proposed subcontract (if applicable) | | | |
| Contractor's certification | | | |
| I confirm that the proposed subcontractor: | | | |
| 1. <input type="checkbox"/> is a local supplier as described by the Queensland Procurement Policy; or <input type="checkbox"/> is not a local supplier as described by the Queensland Procurement Policy and evidence is attached demonstrating the Contractor's efforts to source a local supplier; and | | | |
| 2. is compliant with the Ethical Supplier Threshold; | | | |
| 3. is not subject to a current sanction under the Ethical Supplier Mandate; and | | | |
| 4. has been informed of the existence of the <i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i> ; and | | | |
| 5. either: | | | |
| (a) has a personal services business determination in effect from the Australian Taxation Office under the <i>Income Tax Assessment Act 1997 (Cth)</i> ; or | | | |
| (b) has been informed of the existence of the <i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i> ; | | | |
| (c) in relation to the work to be performed under the subcontract: | | | |
| (i) will be paid to achieve a specified result or outcome; | | | |
| (ii) is required to supply the plant and equipment or tools of trade needed to perform the work; and | | | |
| (iii) will be liable for the cost of rectifying any defect in the work performed. | | | |
| I warrant that if approval is granted, the subcontract will be entered into in accordance with the above and will ensure the subcontractor (any sub subcontractors): | | | |
| <ul style="list-style-type: none"> understands, acknowledges, and complies with any obligations and responsibilities in accordance with the Contract conditions, legislative requirements, and <i>Conditions of Working with QBuild – Contractors</i> holds the necessary qualifications, insurance, and licences to carry out the works and ensure all workers completes the QBuild Work Health and Safety online induction training before attending Site; and understands, acknowledges, and complies with the principles of the Queensland Procurement Policy and any requirements under Contract in this regard. | | | |
| I understand this does not in any way operate as an authority to transfer any of my responsibility to the subcontractor and in no way relieves me of my obligations and liabilities under the Contract or under Legislation. | | | |
| Name and Title | | | |
| Signature | | Date | |
| Subcontractor / Sub subcontractor declaration | | | |
| I have reviewed the information available on the Australian Tax Office website " Difference between employees and contractors " and, after applying this information to my relationship with the Contractor, I confirm I am a genuine subcontractor. | | | |
| Name and Title | | | |
| Signature | | Date | |
| <i>QBuild use only (If approved - a copy must be returned to the Contractor and retained on Site and be produced, if requested, by a QBuild representative)</i> | | | |
| Subcontractor Rejected | <input type="checkbox"/> | Subcontractor Approved | <input type="checkbox"/> |
| Name: | | Signature: | |