



GENERAL CONDITIONS OF CONTRACT

**FOR THE PROVISION OF
MINOR WORKS AND SERVICES**

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1 INTERPRETATION

1.1 For the purpose of this contract:

- (a) "**Contract**" means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.
- (b) "**Contractor**" means the person or persons, corporation or corporations, who contract to supply the Works the subject of the Contract.
- (c) "**Contract Sum**" means:
 - (i) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the provision of the Works and the performance of the obligations of the Contractor under the Contract;
 - (ii) where payment is to be made on a Bill of Quantities or Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Bill of Quantities or Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Bill of Quantities or Schedule of Rates;
 - (iii) where payment is to be made on a Lump Sum and a Bill of Quantities or Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (i) and (ii),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.
- (d) "**Principal**" means the Shire of Denmark.
- (e) "**Superintendent**" means the person appointed by the Principal to be the Superintendent and shall include any person notified to the Contractor as the representative of the Superintendent for the purposes of the Contract.
- (f) "**Works**" means the whole of the work to be carried out and completed in accordance with the Contract, including variations provided for by the Contract.

2 RISE AND FALL ADJUSTMENT

The Contract shall not be subject to rise and fall adjustment in costs.

3 SERVICE OF DOCUMENTS

3.1 Any notice to be given to the Contractor under the terms of the Contract, shall be served by:

- (a) sending by post, or
- (b) leaving the notice at the address given in the tender.

3.2 When posted in a prepaid letter, shall be deemed to have been duly received at the time at which the notice would have reached that address in the ordinary course of post.

4 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

4.1 The Contractor shall provide all materials, labour, plant, equipment, tools and everything else necessary for the Works.

- 4.2 The Contractor shall take upon itself the whole risk of executing, completing and maintaining the Works in accordance with these Conditions, the drawings and specification (if any) and such orders as the Superintendent may issue.
- 4.3 The Contractor shall be solely liable for loss or damage to the Works from any cause whatsoever (except loss or damage caused by any negligent act or omission of the Principal, the Superintendent or the employees, professional consultants or agents of the Principal) until the Superintendent has certified that the whole of the Works have been satisfactorily completed by the Contractor.

5 ASSIGNMENT AND SUBCONTRACTING

- 5.1 The Contractor shall not, without the prior written approval of the Principal assign, mortgage, charge or encumber the Contractor or any part thereof or any benefit or moneys or interest thereunder.
- 5.2 The Contractor shall not sub-contract any part of the work under the Contract unless it has made prior application in writing to the Principal giving full particulars of the part of the work under the Contract it wishes to sub-contract and of the proposed sub-contractor and it has obtained the written approval of the Principal.

6 STATUTE REQUIREMENTS

- 6.1 The Contractor shall comply with the provisions of all relevant Acts, regulations, by-laws, orders and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Works or the execution of the work under the Contract.
- 6.2 The Contractor shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith.
- 6.3 Where information is disclosed to third party providers to act on behalf of the Shire to provide services for the Shire, the Shire of Denmark requires the provider to:
- Manage data and personal information in accordance with the Australian Privacy Principles; and
 - Notify the Shire of Denmark should a privacy breach or suspected privacy breach occur, or should the entity fail to manage data and personal information at any time in accordance with the Australian Privacy Principles.

Should third-party providers act in contravention of the Australian Privacy Principles, the Shire of Denmark reserves the right to take action as required, including reporting breaches or suspected breaches to the Office of the Australian Information Commissioner.

7 INSURANCE

- 7.1 Without limiting its obligations and responsibilities, the Contractor shall take out Insurance for the entire Contract period under the following headings;

(a) **Public Liability:**

A Public Liability policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Public Liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of Death, Property Damage and Bodily Injury.

(b) **Workers Compensation or Personal Accident Insurance Cover:**

The Contractor shall effect and keep in effect during the currency of the Contract such Insurance as may be necessary to adequately protect the Contractor and the Principal in

respect of liability for payment of compensation to any Employee of the Contractor or of a Subcontractor of the Contractor under the *Workers' Compensation and Injury Act 1981* or at Common Law.

(c) **Professional Indemnity:**

Where the Contract involves the provision of professional services and/or advice, the Contractor is to take out a Professional Indemnity Insurance policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Professional Indemnity Insurance taken out by the Contractor will have a limit of Liability based upon a figure agreed by the Principal and Contractor as per the attached Schedule however; the limit of Liability will not be less than \$5 million (AUD\$5,000,000).

(d) Product Liability:

Product liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of any one occurrence and for an unlimited number of claims.

- 7.2 The Contractor is to provide the Principal with Certificates of Currency and/or a copy of the Policy wording confirming as laid down within the tender document (if not mentioned, within seven (7) days) that the above Insurance policies are in place for the entire Contract period.
- 7.3 The Contractor at the discretion of the Principal may be required to provide the Principal with a Risk Management Plan relating to the Contract in accordance with AS/NZS ISO 31000:2009 Risk Management.
- 7.4 The Contractor at the discretion of the Principal may be required to detail the Principal as a Joint Named Insured under some or all of the Insurances detailed under Clause 7.1 and/or detail the Principals Interest by way of notation on Certificates of Currency.

8 TIME FOR COMMENCEMENT AND COMPLETION

- 8.1 The Contractor shall commence work on the site within fourteen days after the Principal has given to the Contractor possession of sufficient of the site for the commencement of such work by it, or within such further time as may be approved by the Superintendent.
- 8.2 Before commencing work the Contractor shall give the Superintendent three days clear notice in writing. Thereafter the Contractor shall execute the work under the Contract in accordance with the Contract and any directions of the Superintendent and at a rate of progress satisfactory to the Superintendent. The Contractor shall complete the Works within the time specified or within any extended time allowed by the Superintendent.

9 MATERIALS

Materials used in the work under the Contract and standards of workmanship shall be in conformity with the provisions of the Contract. Any materials not otherwise specified shall be new and where applicable, materials and workmanship shall be in accordance with the relevant standard of the Standards Association of Australia. The Superintendent may, at any time before the issue of the Final Certificate reject any material or work which is not in accordance with the Contract and may direct its replacement, correction or removal. All such replacements, corrections and removals shall be at the Contractors cost.

10 CONTRACTOR'S REPRESENTATIVE

Execution of the Works shall be supervised by the Contractor personally, or by an approved competent person employed by the Contractor whose name shall be notified to the Superintendent in writing. The Contractor or its authorised representative shall be on the site whenever necessary, as determined by the Superintendent, to provide adequate supervision of the execution of the Works. Any order given by the Superintendent to the Contractor's authorised representative shall be deemed to be an order given to the Contractor.

11 CLEANING UP

On the completion of the Works the Contractor shall clear away and remove from the site of the Works all constructional plant, surplus material, rubbish and temporary works of every kind and where necessary shall fill and compact and level off all excavations (other than those forming

part of the Works) made by the Contractor on the site and leave the whole of the site and Works in a clean and tidy condition to the approval of the Superintendent.

12 DEFECTS LIABILITY

- 12.1 As soon as, in the opinion of the Superintendent, the Works shall have been substantially completed in accordance with the Contract and on receiving a written undertaking by the Contractor to finish any outstanding work during the Defects Liability period, the Superintendent shall issue a Certificate of Practical Completion and the Defects Liability period of the time specified shall be calculated from the date so certified.
- 12.2 The Works shall, at or as soon as practicable after the expiration of the Defects Liability period, be delivered up to Principal fully completed in accordance with the Contract and in good condition (fair wear and tear excepted) to the approval of the Superintendent.
- 12.3 The Contractor shall, at its own expense, execute all work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be required by the Superintendent during the Defects Liability period or within fourteen days after its expiration if required as a result of an inspection made prior to its expiration.

13 VARIATIONS

- 13.1 If, at any time during the progress of the work under the Contract, the Superintendent determines that the form, quality or quantity of the work under the Contract should be varied the Superintendent may order the Contractor to increase, decrease or omit any part of the Work under the Contract or change the character or quality of any material or work.
- 13.2 The rate or price payable for the variation shall be determined by agreement between the Contractor and the Superintendent, and shall be taken into account in determining the final contract sum.

14 PROGRESS PAYMENTS

Unless otherwise provided and subject to these Conditions, the Contractor shall be entitled at intervals of not less than one month, to receive ninety-five (95) per centum of the value of the work done as determined by the Superintendent and the Principal shall retain five (5) per centum. During the Defects Liability period the moneys retained by the Principal shall be reduced to two and one half (2.5) per centum of the final Contract Sum*. Interest shall not be payable on retained moneys. The moneys retained shall be held until the Superintendent shall have certified that the Works have been fully completed and the Contract obligations as to the Defects Liability period have been fulfilled. No certificate of the Superintendent shall be deemed to signify approval or acceptance of any completed work.

*Note: works valued under \$100,000 do not need to comply with the condition above. No retention amount is necessary for works under \$100,000.

15 LIQUIDATED DAMAGES

Where an amount for Liquidated Damages is specified and if the Contractor shall fail to complete the Works within the time specified or such extended time as shall be allowed by the Superintendent, then the Contractor shall pay the Principal the sum specified as Liquidated Damages, for such default, and not as or in the nature of a penalty, for every week or part of a week by which completion of the Works is delayed.

16 CONDITIONS OF EMPLOYMENT

16.1 Any person who for the purpose of his, her or its trade or business employs a worker or employee upon or in connection with any part of the Works, shall be required to observe all the conditions of the relevant award applicable to that trade or business or of a registered workplace agreement. For the purpose of this clause:

- (a) “**Award**” means an award or industrial agreement as so defined under the Industrial Arbitration Act 1912 and amendments, or the Conciliation and Arbitration Act 1904 and amendments;
- (b) “**Employee**” has the meaning ascribed to it in the Conciliation and Arbitration Act 1904 and amendments;
- (c) “**Worker**” has the meaning ascribed to it in the Industrial Arbitration Act 1912 and amendments; and
- (d) “**Workplace Agreement**” means an agreement registered under section 31 of the Workplace Agreements Act 1993.

17 PAYMENT OF WORKERS WAGES AND ALLOWANCES

The Principal may require the Contractor to make and deliver to the Principal a statutory declaration that all workers who are or at any time have been engaged on the work under the Contract have been paid in full all amounts which have become payable to them under any statute, ordinance of subordinate legislation, or by any relevant, determination, judgment or order of any competent court, board commission or other industrial tribunal.

18 DEFAULT OR BANKRUPTCY OF CONTRACTOR

If the Superintendent shall certify to the Principal that the Contractor has failed to commence the Works within the period specified or has failed to carry out the Works at a rate of progress satisfactory to the Superintendent or has neglected or omitted to carry out any instructions of the Superintendent in respect of the Works or has failed to complete the whole of the Works within the time specified for completion or such extended time as the Superintendent may approve or has intimated that it is unwilling or unable to complete the Works or has committed an act of bankruptcy the Principal may, by giving seven days’ notice in writing, cancel the Contract and all moneys held by the Principal may be utilised by the Principal for the purpose of completing the Works.

19 SETTLEMENTS OF DISPUTES

All disputes or differences between the Principal or the Superintendent on behalf of the Principal and the Contractor arising out of the Contract of concerning the performance or non- performance by either party of its obligations under the Contract whether raised during the execution of the Work under the Contract or after the completion of the Works shall be referred to an arbitrator who shall be either -

- (a) Mutually agreed upon by the parties in writing; **or**
- (b) In the absence of that agreement one of at least three persons none of whom shall be an employee of the Principal or the Contractor or have had any association with the work under the Contract whose names are submitted in writing by the Principal for selection by the Contractor, **or**
- (c) In the absence of that selection; by an arbitrator appointed in accordance with the provision of the laws of Western Australia.