

SHIRE OF NARROGIN

GENERAL CONDITIONS FOR THE PROVISION OF SERVICES

ATTACHMENT 2

GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS OF CONTRACT

1. GOVERNING LAW

The contract shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of the State.

2. DEFINITIONS

2.1 In the Contract, except where the context otherwise requires:

'**Clause**' means a clause of these General Conditions.

'**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.

'**Contract Price**' means

- (a) 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 supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (b) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the 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 Schedule of Rates;
- (c) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a) and (b);

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

'**Contractor**' means the person or persons, corporation or corporations, who contract to supply the Services the subject of the Contract.

'**Officer**' means any officer or person authorised by the Principal and notified to the Contractor as an authorised officer for the purpose of this Contract.

'**Principal**' means the Shire of Narrogin.

'**Services**' means the whole of the services, tasks, work and requisites to be supplied rendered provided or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

'**Specification**' means any Special Conditions, Technical Specification and Schedules forming part of the Contract; and such Specification shall be read with these General Conditions as an integral part of the Contract, but in the event of any inconsistency between the Specification and these General Conditions the former shall (unless the Contract otherwise provides) prevail.

2.2 Unless the context otherwise requires, the singular in all cases includes the plural and vice versa. The clause headings of the General Conditions of Contract shall not in any way affect their interpretation. Any one gender includes all genders.

GENERAL CONDITIONS OF CONTRACT

3. QUALITY OF SERVICES

- 3.1 All Services rendered shall conform to the Specification and the standards specified in the Contract.
- 3.2 Where no standards are specified in the Contract, the Services shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then the appropriate and current standard of the British Standards Institution or such other standard as the Principal shall consider appropriate.
- 3.3 If no standards are applicable, the Services shall be of the highest standard and carried out promptly with all due skill care and diligence.
- 3.4 The Contractor shall employ only such persons as are careful skilled and experienced in their respective professions trades and callings who hold all necessary licences permits and authorities required by law and whose standards of workmanship are entirely suitable for the performance of the Services and the requirements of the Contract.

4. PATENT RIGHTS

- 4.1 The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.
- 4.2 All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.
- 4.3 In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise therefrom and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

5. SETTLEMENT OF DISPUTES

- 5.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 5.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.
- 5.3 Subject to the provisions of clause 5.2, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).
- 5.4 If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected:
 - (a) by an arbitrator mutually agreed upon between the parties; or
 - (b) in default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,in accordance with the provisions of the Commercial Arbitration Act 1985.

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6. TIME

- 6.1 Services under the contract shall be supplied punctually at or within the time stated in the Order and in this respect time shall be of the essence of the Contract.
- 6.2 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

7. SUPPLY OF SERVICES BY ORDER

- 7.1 The Contractor shall fulfil all orders for Services placed by the Principal during the term or currency of the Contract.
- 7.2 Where the Contract is for the supply of Services by reference to a list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed EXCEPT such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- 7.3 Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.
- 7.4 The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.
- 7.5 Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

8. STAMP DUTY

The Contractor shall pay all stamp duties in connection with the Contract.

9. GOODS AND SERVICES TAX

- 9.1 For the purposes of this clause:
- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
 - (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
 - (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.
- 9.2 Where the supply of the Services or any part thereof is a taxable supply under the GST Act:
- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force at the time being.
 - (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.
 - (c) This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.

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- 9.3 The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under the Contract.

10. PRICE VARIATIONS

- 10.1 Contract prices shall be firm unless otherwise stated in the Contract.
- 10.2 Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.
- 10.3 Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.
- 10.4 Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.
- 10.5 Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.
- 10.6 Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.
- (a) All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.
- (b) The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.
- 10.7 In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, facts and figures shall entitle the Principal to refuse the variation.
- 10.8 Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission, such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

11. SECURITY RETENTION

- 11.1 The Client will pay 90% of the tendered price on completion of the required works and a formal handover and training has been completed. A retention of 10% of the Tendered Price will be retained for a period of 2 months for any defects or faults that may appear and require repair.
- 11.2 The Client reserves the right to apply penalties for failure to complete the required works within the specified time frame, unless agreed extensions have been signed by both parties. Penalties will be applied at the rate of \$500 + GST per week and will be removed from the 90% payment upon completion of works (not the retention payment).

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12. ASSIGNING OR SUBLETTING

- 12.1 The Contractor shall not without the previous consent of the Principal in writing, assign transfer mortgage charge encumber sublet or sub contract the Contract, or any part thereof. The Contractor shall not assign transfer mortgage, charge, or encumber, all or any of the moneys payable or to become payable or any other interest or benefit under the Contract without the consent in writing of the Principal being first obtained.
- 12.2 Any consent shall not discharge the Contractor from any liability in respect of the Contract, and shall extend only to the assignment or other transaction actually consented to and shall not be deemed a consent to any other assignment of transaction nor to prevent any proceedings for any subsequent breach of this condition any may be granted or withheld or made subject to conditions in the absolute discretion of the Principal.

13. TERMINATION OF CONTRACT

- 13.1 Where the Contractor
- (a) fails to supply and provide the Services on the due date or dates or at the location or locations specified in the Contract or in any order or to duly and punctually observe and perform all or any of the terms or conditions set out in the Contract; or
 - (b) assigns subcontracts or sublets the Contract, or any part thereof, or assigns, mortgages, charges, or encumbers, or attempts to assign, mortgage, charge, or encumber, all or any of the moneys payable or to become payable under the Contract, or any other interest or benefit whatsoever arising, or which may arise, under the Contract without the consent in writing of the Principal being first obtained; or
 - (c) (if an individual) becomes bankrupt; or
 - (d) (if a corporation) goes into voluntary or compulsory liquidation or goes into receivership or enters into voluntary administration; or
 - (e) makes an assignment of its estate for the benefit of its creditors, or makes an arrangement or composition with its creditors; or
 - (f) includes any statement fact information representation or material in its Tender which is false untrue or incorrect; or
 - (g) fails in any manner to perform the Contract to the complete satisfaction of the Principal; then, and in every such case, the Principal may give notice in writing to the Contractor terminating the Contract, whether there are any orders remaining to be filled or not and engage or contract with any person or corporation other than the Contractor to perform and complete the same.
- 13.2 All damages and expenses incurred by the Principal under or by virtue of the provisions of sub-clause 13.1 shall be ascertained and certified to by the Officer, and shall be deducted from any money that may be then due, or may thereafter become due to the Contractor, or that may have been deposited by itself as security in respect of the Contract. If the money then due, or thereafter becoming due to the Contractor, or deposited by itself as aforesaid, shall be not sufficient for that purpose, the balance remaining unpaid shall be a debt due by the Contractor to the Principal, and may be recovered from the Contractor in any Court of competent jurisdiction.
- 13.3 If the Contract is terminated the moneys which have been previously paid to the Contractor on account of the orders filled shall be taken by the Contractor as full payment and satisfaction for all orders executed under the Contract. All sums of money that may be due to the Contractor and unpaid, and all sums of money (if any) held as security, shall be forfeited and may be retained by the Principal.
- 13.4 Upon termination of the Contract all moneys previously paid to the Contractor shall be deemed to be in full satisfaction of all claims of the Contractor of any kind or description whatsoever under or in respect of the Contract.

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14. FAILURE TO SUPPLY

Where a state of emergency exists or where the Contractor is unable or fails (for whatever reason) to supply and provide the Services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Services as it requires during the state of emergency or at that time or in that place (as the case may be) from any other source supplier or provider thereof. The existence of a state of emergency shall be determined by the Principal in its sole discretion.

15. POWER TO ACT FOR THE PRINCIPAL

Anything to be done or performed by the Principal may be done and performed by any person duly authorised by the Principal.

16. VARIATION OF CONTRACT TERMS

None of the terms of the Contract shall be varied, waived, discharged or released either at law or in equity, unless by the express agreement of the Principal in writing.

17. SUSPENSION OF PAYMENTS

Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

18. DEDUCTION OF CHARGES OR DEBTS

- 18.1 Without limiting the Principal's rights under the any of the foregoing clauses hereof any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, and if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- 18.2 The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

19. PAYMENT

- 19.1 The Principal shall pay or cause to pay to the Contractor, upon the certificate of the Officer, all sums of money due or to become due to the Contractor under the Contract, in the amounts and at the times set forth in the Contract, and shall pay or hand over the Security (if any) deposited to the Contractor within fourteen days after the Officer has certified that the Contract has been satisfactorily completed. Failure by the Principal to pay the amount payable at the due time will not be grounds to vitiate or avoid the Contract.
- 19.2 Where the Contract is a schedule of prices Contract to be executed at the rates or prices given in the Contract, then the Services shall be paid for at their schedule rates and not at the total amount of the Contractor's tender.
- 19.3 The Contractor shall not be entitled to any interest, credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Services unless expressly provided for in the Contract.
- 19.4 The Principal shall not be obliged to pay accounts of the Contractor unless received by the paying officer nominated on the Order.
- 19.5 All periods for payment of invoices shall be calculated from the date of preparation of the invoice.

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20. SERVICE OF NOTICES

20.1 Any notice, order, instruction or communication required to be, or that may be served on or given to the Contractor by the Principal or the Officer shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is handed to the Contractor or is sent by prepaid cost to or is left at the address of the Contractor stated in its Tender or at such other address as is notified in writing by the Contractor to the Principal.

21. CONTRACTOR TO INFORM ITSELF

21.1 The Contractor shall be deemed to have:

- (a) examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) examined the site and its surroundings; and
- (c) satisfied itself as to the correctness and sufficiency of its tender and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract.

Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof.

22. COMPLYING WITH STATUTORY REQUIREMENTS

22.1 The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws, orders, codes of practice 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 Services or the performance of the Contract.

22.2 Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the Occupational Health, Safety and Welfare Act 1984 and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

22.3 If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Principal specifying the departure from such provisions which he considers necessary to comply with such requirements.

23. PROPERTY DAMAGE AND PUBLIC RISK

23.1 Subject to the next succeeding paragraph of this clause, the Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, or the employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the supply or provision of the Services by the Contractor or its employees, agents or sub-contractors and also from any costs and expense that may be incurred in connection with any such claim, demand, action, suit or proceeding.

23.2 The Contractor shall not, under the last preceding paragraph of this clause, be rendered liable for or in respect of personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal or for or in respect of any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

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24. ACCIDENT OR INJURY TO EMPLOYEES

The Contractor shall indemnify and keep indemnified the Principal against liability for all loss or damage resulting from personal injury to or the death of (other than such injury or death resulting from any breach by the Principal of any of the provisions of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal), the Contractor or of any sub-contractor occurring during the currency of the Contract and arising out of or in connection with the supply or provision of the Services under the Contract or the performance of the Contract and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto, whether at Common Law or under any statute.

25. INSURANCE

- 25.1 Without limiting its obligations and responsibilities the Contractor, in the joint names of itself and the Principal for their respective rights interests and liabilities, shall effect and keep in effect during the currency of the Contract insurance policies covering all matters referred to in clauses 22 and 23.
- 25.2 The insurance policies shall contain a cross-liability clause and otherwise be in terms, and effected with an insurance company, approved by the Principal which approval shall not be unreasonably withheld.
- 25.3 The Contractor shall lodge certificates of proof the required insurance policies with the Principal before the commencement of the Services provision and at such other times as the Principal may require.

26. WARRANTIES

The Contractor shall obtain warranties as specified in the Contract and shall ensure that the Principal will have the benefit of the warranties. The Contractor shall ensure that the Principal will have the benefit of any warranties specified in the Contract that are obtained by the sub-contractors of the Contractor.

27. INDUSTRIAL AWARDS

- 27.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.
- 27.2 Failure by the Contractor to comply with sub clause 27.1 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.

28. OCCUPATIONAL HEALTH AND SAFETY

- 28.1 It is the responsibility of the Contractor to inform themselves of the all Occupational Health And Safety requirements as per the Australian Standards and the Shire of Narrogin organisational requirements and shall comply with requirements. The Shire of Narrogin will take no responsibility for the Contractor or any subcontractor that fails to perform full duty of care in these requirements.