



Government of **Western Australia**  
**Housing Authority**

# General Conditions of Contract

## Work Incorporating Property Demolition Or Property Removal

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# 1. DEFINITIONS & INTERPRETATION

## 1.1. Definitions

In this document:

**Assign** means sell, transfer, assign, novate, mortgage, charge, encumber or otherwise dispose of or deal with. If the Contractor is a corporation (other than a public company as defined in the *Corporations Act 2001* (Cth)) the Contractor is taken to have assigned the Contract if:

- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or
- (b) there is any change in control of the Contractor within the meaning of the *Corporations Act 2001* (Cth).

**Australian Standard** means a standard published by Standards Australia or a body accredited by its Standards Accreditation Board.

**Authority** means the body corporate constituted under section 6 of the *Housing Act 1980 (WA)* by the name 'Housing Authority'.

**Authority's Representative** means the person appointed as such by the Authority.

**Certificate of Practical Completion** means notice in writing from the Authority's Representative to the Contractor certifying the Date of Practical Completion.

**Code of Ethics** means the code set out in clause 7.3.1.

**Contract** means the agreement between the Authority and the Contractor for provision of the Works.

**Contract Documents** means:

- (a) the Letter of Award;
- (b) the Offer;
- (c) the Request (including the Statement of Requirements, General Specifications and any document annexed to the Request); and
- (d) these General Conditions

**Contract Sum** means the lump sum price specified in the Contract as varied in accordance with the Contract.

**Contractor** means the person whose Offer in response to a Request has been accepted by the Authority and includes the Contractor's Personnel.

**Contractor Personnel** means all officers, employees, agents and subcontractors of the Contractor, and all officers, employees or agents of subcontractors, engaged in relation to the supply of the Works.

**Contractor's Representative** means a person appointed as such by the Contractor.

**Date for Practical Completion** means the date for completion of the Works specified in the Request, but if any extension of time is granted, means the date resulting from the extension.

**Date of Practical Completion** means the date certified by the Authority's Representative as the date upon which Practical Completion was reached.

**Drawings** means the drawings referred to in the Contract and any modification of such drawings notified to the Contractor by the Authority's Representative and includes such other drawings as may from time to time be supplied to the Contractor by the Authority's Representative, or the use of which has been permitted by the Authority's Representative, for the purposes of the Contract.

**Event of Default** means a default in the performance of this Contract, including:

- (a) by failing to commence, carry out and complete the Works within the time specified and at a rate of progress satisfactory to the Authority's Representative;
- (b) by neglecting or omitting to carry out any instructions of the Authority's Representative in respect of the Works;
- (c) by expressing or demonstrating an unwillingness or inability to complete the Works;
- (d) by committing an act of bankruptcy or becoming insolvent;
- (e) by failing to carry out the Works to a satisfactory standard or neglecting to use the materials or methods specified;
- (f) by committing any substantial breach of the Code of Ethics;
- (g) by claiming for works not completed;
- (h) by over charging for works performed;
- (i) by carrying out works which have not been authorised by the Authority's Representative;
- (j) by sub-contracting any part of the work under the Contract without the prior written approval of the Authority;
- (k) by committing any major breach of any employment related Statutory Requirements, Awards, Registered Workplace Agreements or Industrial Agreements;
- (l) by failing to take out and maintain required insurances during the currency of the Contract; or
- (m) by breaching any other provision of the Contract and failing to make good that breach within seven (7) days of receipt of notice in writing to do so.

**Event of delay** means:

- (a) events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor, including but not limited to:
  - (i) industrial conditions; and
  - (ii) inclement weather;
- (b) any of the following events whether occurring before, on or after the Date for Practical Completion:
  - (i) delays caused by the Authority;
  - (ii) variations approved under clause 2.5;
  - (iii) delays by municipal, public or statutory authorities not caused by the Contractor; or
  - (iv) any breach of the Contract by the Authority.

**General Conditions** means these general conditions of contract.

**General Specification** means the part of the Request describing the general requirements of the Authority in respect of works involving the demolition of structures or property removal.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Latent Conditions** means physical conditions (other than climatic conditions or conditions arising from climatic conditions) including artificial obstructions which:

- (a) differ materially from those which would have been ascertainable by the Contractor under clause 4.1; and
- (b) could not reasonably have been anticipated at the date of the Offer by a Contractor experienced and competent in carrying out work in the nature of the Works.

**Letter of Award** means the letter signed by the Authority that:

- (a) accepts the Offer; and
- (b) may also specify, by the agreement of the Authority and Contractor:
  - (i) any amendments to these General Conditions or the Request or both; and
  - (ii) any other terms and conditions which are to form part of the Contract.

**Offer** means the offer submitted by the Contractor in response to the Request.

**Practical Completion** is the stage of execution of the Works where:

- (a) the Works are completed except for minor omissions and minor defects –



- (i) which the Authority's Representative determines the Contractor has reasonable grounds for not promptly rectifying; and
  - (ii) rectification of which will not affect the intended use of the site; and
- (b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (c) documents and other information required under the Contract which, in the opinion of the Authority's Representative are required in respect of the Works have been supplied.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with the performance of the Works, whether or not containing confidential information and however such records or information are held, stored or recorded.

**Request** means the request issued by the Authority for the supply of the Works.

**Site** means the premises on which the Works are to be carried out.

**Statement of Requirements** means the part of the Request describing the specific requirements of the Authority in respect of the Works to be carried out by the Contractor.

**Statutory Requirements** means the requirements of all Acts, regulations, by-laws, orders, proclamations or similar instruments of the Commonwealth and Western Australia.

**Work and Works** means the work or scope of works which the Contractor is or may be required to execute under the Contract, and includes variations and remedial work.

## 1.2. Interpretation

In this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to anything is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

- (f) if the Contractor consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Contractor under the Contract binds each person who comprises the Contractor jointly and severally;
  - (ii) each person who comprises the Contractor agrees to do all things necessary to enable the obligations imposed on the Contractor under the Contract to be undertaken; and
  - (iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor;
- (g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (h) a reference to the Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Authority or the Contractor;
- (i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Contract;
- (j) all the provisions in any schedule, attachment or appendix to the Contract are incorporated in, and form part of, the Contract and bind the Authority and the Contractor;
- (k) headings are included for convenience and do not affect the interpretation of the Contract;
- (l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (m) no rule of interpretation is to be applied to disadvantage the Authority or the Contractor on the basis that it was responsible for preparing the Contract;
- (n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a day is to a calendar day, a reference to a month is to a calendar month and a reference to a year is to a calendar year;

- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to a monetary amount means that amount in Australian currency; and
- (v) a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

## **2. Contract**

### **2.1. Performance and Payment**

The Contractor will execute and complete the Works in accordance with the Contract.

The Authority will pay the Contract Sum to the Contractor for completion of the Works in accordance with this Contract.

### **2.2. Formal instrument of agreement**

Unless and until a Formal Instrument of Agreement is executed by the parties, the Contract Documents shall evidence the Contract.

If the Request required a Formal Instrument of Agreement:

- (a) the Authority shall prepare in duplicate a Formal Instrument of Agreement and shall forward it together with the Letter of Award to the Contractor with a request that it be executed;
- (b) within 7 days after being requested in writing by the Authority, the Contractor must execute both copies of the Formal Instrument of Agreement in the manner directed by the Authority and return them to the Authority; and
- (c) within 7 days after receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor, the Authority will execute both copies and forward one to the Contractor.

The Authority's Representative may extend the time under this clause.

### **2.3. Discrepancies**

Discrepancies between the several documents forming the Contract shall be resolved by the Authority's Representative using the following order of precedence:

- (d) the Statement of Requirements will prevail over the General Specification and General Conditions;
- (e) figured dimensions will prevail over scaled dimensions;
- (f) larger scale drawings will prevail over smaller scale drawings; and

- (g) drawings showing details of particular parts of any work will prevail over those of more general purpose.

#### **2.4. No Rise and Fall**

No rise and fall clause exists within this Contract.

#### **2.5. Variations**

No variation to the Works will be made by the Contractor without the approval of the Authority's Representative. Any proposed variation must be priced before approval to commence is given.

The Authority's Representative may direct any variation to the Works that in the opinion of the Authority's Representative are necessary and the value of the variation(s) shall be taken into account when determining the final Contract Sum. The value of the variation(s) shall be the sum agreed by the parties or otherwise as reasonably determined by the Authority's Representative.

No variation shall invalidate the Contract.

#### **2.6. Confidential information and media**

The parties must keep confidential any documents or other information clearly identified as confidential.

The Contractor must not disclose any information concerning the Contract or the Works to any third party or the media without the Authority's prior written approval. The Contractor must refer to the Authority any enquiries from any media concerning the Contract or the Works.

### **3. Relationship of the parties**

The Contractor is an independent contractor, and nothing in the Contract may be construed to make the Contractor a partner, agent, employee or joint venturer of the Authority. The Contractor must not represent that the Contractor is the employee, agent, partner or joint venturer of the Authority.

### **4. Site**

#### **4.1. Site conditions**

The Contractor is deemed to have:

- (a) examined carefully and accepted actual knowledge of the contents of all information made available in writing by the Authority 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 Offer and obtainable by making reasonable enquiries; and
- (c) inspected and examined the Site and its surroundings; and

- (d) satisfied itself as to the correctness and sufficiency of the Offer for the Works and that the Contract Sum covers the cost of complying with all obligations under the Contract and all matters and things necessary for the due and proper performance and completion of the Contract.

Failure by the Contractor to do any of the things deemed to have been done under this clause will not relieve the Contractor of liability to perform and complete the Contract.

#### **4.2. Latent Conditions**

If during the execution of the Works, the Contractor encounters on the Site or its surroundings, any Latent Condition, the Contractor shall before the physical conditions are disturbed, give written notice to the Authority's Representative specifying:

- (a) the condition encountered;
- (b) any additional work and resources which the Contractor estimates to be necessary to deal with the conditions;
- (c) the time the Contractor anticipates will be required to deal with the conditions and the delay to Practical Completion;
- (d) an estimate of the cost of measures necessary to deal with the conditions; and
- (e) any other details reasonably required by the Contractor's Representative.

If a Latent Condition causes the Contractor to carry out additional work, or incur additional cost, which the Contractor could not reasonably have anticipated at the date of the Offer, the Authority's Representative shall grant an extension of time and cost in accordance with the provisions of this Contract.

In making a valuation under this clause, regard shall not be had to the value of the additional work carried out or extra cost incurred more than 28 days before the date the Contractor give written notice of the Latent Condition.

#### **4.3. Minerals, fossils and relics**

Valuable minerals, fossils, articles or objects of antiquity, anthropological or archaeological interest, found on the Site remain the property of the Authority. Immediately upon the discovery of these things the Contractor must take precautions to prevent their loss, removal or damage and must notify the Authority's Representative of the discovery.

If compliance with the obligations of this clause causes the Contractor to incur more or less cost than could have been reasonably anticipated at the time of tendering, the difference shall be valued in accordance with clause 4.2.

#### **4.4. Identity Survey**

Before commencing work on the Site the Contractor will employ a licensed surveyor to identify the Site, certify all boundaries and position necessary survey marker pegs, so that the set out of the Works is wholly within the titled boundary except for items for which approval has otherwise been given by proper authorities.

The Survey drawing will include locations to all services connection points including:

- (a) telecommunications;
- (b) sewer mains (inverts);
- (c) water;
- (d) power;
- (e) fire hydrant supply; and
- (f) general features.

The Contractor will immediately report any discrepancies between the certified survey and the Drawings to the Authority's Representative and must not proceed until further direction from the Authority's Representative.

On Practical Completion of the Works, the Contractor will submit to the Authority's Representative a certificate signed by a licensed surveyor certifying levels to the titled boundary.

#### **4.5. Possession and Access**

Subject to the Contractor's compliance with clause 10 (Insurances), the Authority shall give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence work on or before the time stated in the Contract.

Possession of the Site shall confer on the Contractor a right only to such use and control as is necessary to enable the Contractor to execute the Works.

The Authority and the Authority's Representative may have access to the Site at any time for any purpose.

#### **4.6. Existing Works or Services**

The Contractor will alter or reposition existing services as required by the Contract.

Any other existing works or services disturbed or damaged by the Contractor must be made good as directed by the Authority's Representative.

#### **4.7. Workers Amenities**

The Contractor will provide the amenities required by the relevant building industry awards and Statutory Requirements for workers engaged on the Site.

The Contractor will maintain the workers' amenities on the Site from the day the Works commence until Practical Completion.

#### **4.8. Electricity And Water**

The Contractor will provide any temporary supplies of electricity or water required for execution of the Works.

#### **4.9. Services Record**

Upon Practical Completion, the Contractor will prepare and submit to the Authority's Representative a drawing accurately showing the site and the location of services affected during the course of the Works.

#### **4.10. Site Control**

The Contractor will obtain written approval from the Authority's Representative for the formation of any temporary roads, the erection of temporary structures or any site clearing not specifically documented.

Flammable or explosive products will be stored in accordance with Statutory Requirements and the approval of the Authority's Representative.

#### **4.11. Noise Control**

The Authority's Representative may, at any time, direct the Contractor to take reasonable steps to control noise including (but not limited to):

- (a) the substitution of noisy equipment or processes with less noisy alternatives;
- (b) the modification of equipment (where this is practical and can be done safely and following consultation with the manufacturer);
- (c) situating noisy equipment away from noise sensitive areas;
- (d) undertaking noisy work in areas or at times specified by the Authority's Representative;
- (e) installing screens to limit the impact of noise on noise-sensitive areas; and
- (f) any other measure the Authority's Representative considers reasonable.

The Contractor must:

- (a) carry out the work in accordance with AS 2436-2010 Guide to Noise and Vibration Control on Construction, Demolition and Maintenance Sites;
- (b) ensure the equipment used is the quietest reasonably available; and
- (c) prepare and have approved by the CEO of the Environmental Protection Authority a noise management plan if required.

Where the Contractor has prepared a noise management plan, work must be carried out in accordance with that plan.

Where the construction work is carried out between 7 pm and 7 am, or on Sundays or Public Holidays, the Contractor must also:

- (a) Advise the occupants of all nearby properties of the work to be done at least 24 hours before it commences; and

- (b) Be able to establish that it was reasonably necessary for the work to be carried out at that time.

A local government may require the Contractor to submit a noise management plan and application fee. Where required, the Contractor must submit the noise management plan to the local government as well as any application fee due in relation to the noise management plan 7 calendar days prior to commencing the work. Where the Contractor has prepared a noise management plan, work must be carried out in accordance with that plan.

The Authority's Representative may direct the Contractor to provide to the Authority's Representative:

- (a) a written statement confirming it has complied with its requirements under this clause; and
- (b) a certificate of acoustic performance issued by a laboratory registered with the National Association of Testing Authorities Australia for any equipment before permitting its use, or continued use, on the Site.

For the purpose of this clause, 'equipment' has the same meaning as stated in section 3 of the *Environmental Protection Act 1986 (WA)*.

## **5. Planning and Methods**

### **5.1. Requirements**

The Contractor must plan and carry out the Works in accordance with AS 2601-2001 'The Demolition of Structures'.

### **5.2. Supervision**

The Contractor must adequately supervise the Works and ensure that the Works are completed in accordance with the Contract.

The Authority will undertake random audits to ensure that the Contractor has supervision in place and that the quality of work meets the standards specified in the Contract.

### **5.3. Program**

The Contractor will establish and maintain a system to schedule and plan the work including a construction program showing the times within which the various parts of the work are to be completed. This plan must include the personnel and equipment resources necessary to complete the Works and be regularly reviewed by the Contractor.

Where directed, the Contractor must provide the program to the Authority's Representative and must adhere to that program unless directed otherwise by the Authority's Representative.



## **6. Protection of Persons and Property**

### **6.1. Protection of Persons and Property**

The Contractor must:

- (a) Provide all things and take all measures necessary to protect people and property;
- (b) Avoid unnecessary interference with the passage of people or vehicles;
- (c) Prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If directed, the Contractor will furnish, for the approval of the Authority's Representative, details of the proposed protection arrangements.

If the Contractor or the employees or agents of the Contractor damage property, including, but not limited to public utilities and services and property on or adjacent to the Site, the Contractor must promptly make good the damage and pay any costs or expenses arising from the damage.

In the event of the Contractor's failure to comply with any obligation under this clause, the Authority may perform the obligation on the contractor's behalf and the cost incurred will be a debt due and payable from the Contractor to the Authority.

### **6.2. Adjoining Property Survey**

Before commencing any demolition, piling, excavations, underpinning, shoring or such like work under the Contract the Contractor will carry out a comprehensive survey of adjoining properties.

The survey will be carried out, where possible, in the presence of the owners or representatives of the owners of such adjoining properties. The Authority's Representative will attend the survey if requested.

The survey will be recorded by suitable means to accurately show the condition of the adjoining properties at the time immediately prior to the commencement of Work.

The Contractor must lodge with the Authority's Representative copies of the survey documents endorsed by the adjoining owners.

## **7. Work Standard**

### **7.1. Materials and Work Standards**

Any materials, not otherwise specified, will be new and where applicable, materials and standard of work will be in accordance with the relevant Australian Standards. The Authority's Representative may 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 will be at the Contractor's cost.

Where work is specified to be inspected by the Authority's Representative, the Contractor will notify the Authority's Representative when same is ready for inspection. Should the Authority's Representative not inspect the work within a reasonable time, the Contractor may proceed with the Works. If required to open up the work at a later date, the Contractor will be paid the cost of opening up and making good, unless the work does not comply with the Contract.

Where, in the opinion of the Authority's Representative, materials or work provided by the Contractor are not in accordance with the Contract, then the Contractor will at the Contractor's expense make good such works at the times and in the manner directed by the Authority's Representative.

If the Contractor fails to comply with a direction issued by the Authority's Representative pursuant to this clause, the Authority may have the work carried out by other persons and the cost incurred by the Authority in having the work so carried out shall be a debt due and payable from the Contractor to the Authority.

The Contractor will not purchase or use goods that are determined by the Commonwealth Minister for Customs to have been dumped.

## **7.2. Guarantee of Work Quality**

The Contractor warrants the work quality of workmanship and materials used in the work for a period of two years. If a defect becomes apparent during the period of warranty the Contractor will at the Contractor's cost rectify the defect within ten (10) days of notification without cost to the Authority.

## **7.3. Quality Service/Customer Service**

### **7.3.1. Code of Ethics**

The Contractor must adhere to the following:

- (i) carry out duties to a morally acceptable standard, displaying honesty and integrity when dealing with the Authority, the Authority's customers and the Contractor's own employees;
- (ii) respect and observe the rights of all tenants, their guests, and any other customers of the Authority. At all times be polite and courteous and avoid any possible confrontation;
- (iii) the Contractor will not enter the Site under the influence of drugs or alcohol or accept drugs or alcohol from the occupants or induce any occupants of the house to partake in any such activity. Smoking is strongly discouraged; and
- (iv) maintain a legally and morally acceptable code of behaviour in accordance with the provisions of all Statutory Requirements and uphold acceptable community standards of behaviour. The contractor will not engage by action or words in any behaviour which could be interpreted as intimidating or discriminatory, e.g. taunts, insulting language, aggressive behaviour, bodily gestures or pass sexual or racial comments or references. Dress standards are to be neat and must not offend community standards or common decency.

The Contractor will not divulge or discuss with any other person any private details concerning the occupants of the Site (if any). The contractor will not advise the occupants of any financial details concerning the contract or the cost of works carried out.

Any misconduct, obstruction, non access or property damage caused by the occupant of the Site (if any) should be reported immediately to the Authority's Representative.

The Contractor will take all necessary and reasonable precautions to prevent any damage or loss to the possessions, property or personal effects of any occupants of the Site. Any damage or loss should be reported to the Authority's Representative immediately. Any reimbursement by the Contractor to the tenant for any damage or loss caused will be by the mutual agreement between the two parties concerned.

#### **7.3.2. Standard Ethical Behaviour**

The Contractor must not offer any accommodation, travel, gift or other incentive to public sector employees.

#### **7.3.3. Transparency**

The Contractor must ensure that all dealings with the Authority would withstand public scrutiny on fairness and equity.

The Contractor must discuss with the Authority any aspect of the contracting process that poses an ethical concern.

By treating ethical behaviour as a routine element of open dialogue with public sector employees who buy and manage contracts, the potential for unethical behaviour will be significantly reduced.

#### **7.3.4. Conflict of Interest**

If a conflict of interest arises in respect of the Contractor, the Contractor must:

- (a) Promptly notify the Authority that the conflict has arisen and provide full details; and
- (b) Take reasonable steps in consultation with the Authority to remove the conflict.

## **8. Supply of Materials, Labour and Plant**

The Contractor will provide all materials, labour, plant, equipment, tools and everything else necessary for the Works in accordance with the terms of the Contract, including:

- (a) adequate personal protective clothing and equipment for employees where it is not practicable to avoid the presence of hazards; and
- (b) Residual Current Device (RCD) protection for all electrical tools used on Site during the execution of the Works.

The Contractor undertakes the whole risk of executing, completing and maintaining the Works and protecting and maintaining any part or parts of the buildings adjacent to or affected by the Works from taking possession of the Site until Practical Completion.

## **9. Indemnity**

The Contractor indemnifies the Authority, the State of Western Australia and all their respective officers, employees and agents against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim or demand or proceeding taken or made by any third party arising from or in connection with:

- (a) Any breach of contract by the Contractor;
- (b) Any wilful, tortuous or unlawful act or omission of the Contractor or any Contractor Personnel; or
- (c) Any breach of a Statutory Requirement relevant to the Contract or any Contractor Personnel.

The Contractor's liability under the indemnity in this clause will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Authority, the State of Western Australia or their respective officers, employees or agents.

## **10. Insurances**

### **10.1. Insurance requirements**

Without limiting the Contractors' obligations and responsibilities, unless specified otherwise in the Request, the Contractor will take out and maintain during the currency of the Contract, insurances in respect of the following risks:

- (a) a Public Liability Policy in respect of death or bodily injury to any person and damage to property for an amount not less than ten million dollars (\$10,000,000) in the joint names of the Contractor, sub-contractors and the Authority for their respective rights, interests and liabilities, and include a cross liability clause;
- (b) Where the works to be performed include the removal and or handling of Asbestos Containing Materials (ACM's) the contractor is to either;
  - (i) Effect and maintain during the period of the contract an Asbestos Liability insurance policy covering the legal liability of the Contractor, its employees and agents arising out of or in connection with any asbestos and abatement Works or Services as specified in the Contract (including stripping, encapsulation, removal, transport, sudden and accidental pollution and clean-up costs) for an amount not less than ten million dollars (\$10,000,000) any one occurrence. If the Asbestos Liability insurance policy is on a "claims made and notified" basis, the Contractor must continue to either maintain the insurance policy until at least 6 years after termination or expiration of the Contract or alternatively effect a run-off cover under the insurance policy for a period of at least 6 years for an

amount not less than ten million dollars (\$10,000,000) any one claim and \$40,000,000 for all claims in the aggregate during any one 12 month period of insurance; or

- (ii) Produce evidence that the contractor's Public Liability Insurance is endorsed to include liabilities arising out of the removal and or handling of Asbestos Containing Materials (ACM's)
- (c) an Employers' Indemnity Policy including a principal's indemnity clause to protect the Authority in respect of liability for payment of compensation or damages to any employee or sub-contractor of the Contractor both under statute and common law for an amount not less than fifty million dollars (\$50,000,000).

## **10.2. Reputable and Solvent Insurer**

Any policy of insurance taken out by the Contractor must be taken out with a reputable and solvent insurer acceptable to the Authority which carries on insurance business in Australia and is authorised in Australia to operate an insurance company.

## **10.3. Evidence of Insurance**

Prior to commencement of the Works, the Contractor must give to the Authority sufficient evidence of the insurances required under this Contract (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Authority.

Where an insurance policy has ceased to remain current, the Authority may suspend the Works and the Contract may be terminated.

## **10.4. Incidents and claims**

If the Authority or the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under the Contract, it must as soon as reasonably practicable notify the Authority and the Contractor (as applicable) in writing of that event of incident.

Failure to comply with this sub-clause will not invalidate or otherwise affect any indemnities, liabilities and releases of the Contract.

## **10.5. No Limitation of Other Liabilities**

Nothing in this clause 10 limits the Contractor's other liabilities under the Contract or restricts the Contractor from insuring for sums or risks greater than those required under the Contract.

# **11. Assignment and Sub-Contracting**

## **11.1. Assignment**

The Contractor will not, without the prior written approval of the Authority, Assign any of its rights or obligations under the Contract or any part thereof or any benefit or moneys or interest thereunder.

## **11.2. Sub-contracting**

The Contractor will not sub-contract any part of the Works unless prior application has been made in writing to the Authority giving full particulars of the part of the work to be sub-contracted and of the proposed Sub-Contractor.

## **11.3. Terms of Consent**

Any consent given by the Authority to subcontract is taken to be subject to the following terms and conditions unless otherwise stated in the consent:

- (a) The Contractor must include in any subcontract provisions consistent with this clause, as if references in those clauses to the Contractor referred instead to the subcontractor;
- (b) The Contractor must ensure that it is a term of any agreement to subcontract that remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- (c) The engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligations to perform the Contractor's obligations under this Contract; and
- (d) The Contractor must, if requested by the Authority, supply to the Authority a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with this clause.

# **12. Statutory Requirements**

## **12.1. Governing law**

This Contract is governed by the law of Western Australia.

## **12.2. Complying with Statutory Requirements**

The Contractor must comply with all Statutory Requirements in any way affecting or applicable to the Works or the execution of the Work under the Contract.

If a Statutory Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor must notify the Authority's Representative. If the Statutory Requirement necessitates a change to the Works or method of working specified in the Contract, the Authority's Representative shall direct a variation under clause 2.5 and the Contractor shall be entitled to an extension of time in accordance with clause 18.2.

Except to the extent that the Contract provides for reimbursement in respect of a Statutory Requirement, the Contractor shall bear the cost of complying with the requirement, whether or not the requirement existed at the time of the Offer.

Without limiting the generality of the Contractor's obligations under this clause, the Contractor must comply with all Statutory Requirements relating to:

- (a) Protection of the environment;
- (b) Storage of materials;
- (c) Interruption of existing services and facilities;
- (d) Noise control;
- (e) Occupational safety and health;
- (f) Asbestos;
- (g) Infections diseases (such as HIV and Hepatitis); and
- (h) Equal opportunity.

### **12.3. Documents evidencing Approvals of Authorities**

The Contractor must give the Principal copies of documents issued to the Contractor by municipal, public or other statutory authorities in respect of the Work, and in particular, any approvals required for the Work.

## **13. Safety**

In addition to compliance with all Statutory Requirements, the Contractor will comply with the requirements and procedures prescribed by Worksafe, Western Australia in respect of occupational safety and health.

The Contractor must supply all their workers and sub contractors with relevant safety data sheets.

The Contractor will comply with the Authority's safe working procedure for working on roofs.

## **14. Hepatitis B, HIV/Aids and Other Infections Diseases**

Employers have a primary responsibility to protect their employees from exposure to blood or body fluids in the workplace. This includes considering alternative systems of work to enable employees to avoid exposure to hazards. Where employers and employees agree that work practices cannot be developed to enable employees to avoid working with blood or blood and bodily fluids, then employers must provide adequate personal protective clothing and equipment. In addition, employees should be trained in how to use and care for this protective clothing and equipment.

People, who pose a risk of infection from Hepatitis, HIV/AIDS and other infectious diseases, as with any other accommodation, may occupy the Site or areas in proximity to the Site. Privacy requirements prevent the Authority from disclosing whether the occupant of any particular dwelling suffers from an infectious disease. The Contractor should take appropriate steps to avoid infection by treating each dwelling as potentially hazardous and ensuring observance with the Code of Practice referred to below.

Worksafe has established a Code of Practice that provides practical guidance and strategies to reduce exposure of people in the work place to Hepatitis B and HIV/AIDS related diseases. Due to the potential risk of exposure to blood or bodily fluids in the workplace, The Contractor must ensure that both it and its employees and sub-contractors are familiar with the Code of Practice and take all reasonable steps to apply its terms.

## **15. Tipping Fees**

Rubbish is not to be placed in household bins. The contractor is responsible for all charges incurred for tipping of rubbish.

## **16. Contract Administration**

### **16.1. General**

The Contractor will establish and maintain a system to ensure that all documentation and Records associated with the Contract are properly stored and managed. The system must take of changes to instructions and specifications to ensure that only current versions are used in the Work.

### **16.2. Authority's Representative**

Any person described in the Contract as the Authority's Representative may act as the representative of the Authority in relation to the Contract.

The Contractor agrees and acknowledges that the Authority's Representative may administer the Contract and any such administration by the Authority's Representative will be deemed to be administration by the Authority for the purposes of the Contract.

The Authority may by notice to the Contractor at any time:

- (a) vary or terminate the appointment of the Authority's Representative; and
- (b) appoint any other person to act as the Authority's Representative.

### **16.3. Contractor's Representative**

Execution of the Works will be supervised by the Contractor personally, or by an approved competent person employed by the Contractor whose name will be notified to the Authority's Representative in writing.

The Contractor or Contractor's authorised representative will be on the Site whenever necessary, as determined by the Authority's Representative, to provide adequate supervision of the execution of the Works.

Any order given by the Authority's Representative to the Contractor's authorised representative will be deemed to be an order given to the Contractor.



## **17. Contractor Personnel**

### **17.1. Contractor Personnel Generally**

The Contractor must ensure that all Contractor Personnel:

- (a) are properly qualified and suitable for the tasks that they are required to complete;
- (b) hold all necessary permits, licenses and authorities required by law; and
- (c) act in circumstances and at all times, in a fit and proper manner.

### **17.2. Specified Personnel**

Where Specified Personnel are specified as being responsible for the performance of key roles or tasks under the Contract, the Contractor will provide those individuals to fulfil those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of these key roles or tasks, the Contractor will promptly advise the Authority and propose a substitute. Any substitute Specified Personnel must be approved by the Authority. The Authority may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under the Contract.

### **17.3. Awards, Workplace Agreements**

The Contractor must ensure that the remuneration and terms of employment of all Contractor Personnel for the duration of the Contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

### **17.4. Police Clearance**

The Authority may request the Contractor, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any Contractor Personnel.

The Contractor must comply with that request within seven (7) Business Days of such request.

If any police clearance evidences that any Contractor Personnel has committed a criminal offence punishable by imprisonment or detention, then the Authority may, without prejudice to their other rights under the Contract, request the Contractor to promptly remove that Contractor Personnel from involvement in the Contract.

If the Contractor is requested to remove any Contractor Personnel under this clause, the Contractor must, at its own cost, promptly remove that Contractor Personnel from all involvement in the Contract as the case may be and arrange for a replacement of that Contractor Personnel.

## **18. Completion**

### **18.1. Time for Completion**

The Contractor must complete the works in accordance with

- (a) the Date for Practical Completion; and
- (b) any extension of time granted in accordance with clause 18.2.

### **18.2. Extension of time**

When it becomes evident to the Contractor that anything, including an act or omission of the Authority, may delay the Works under the Contract, the Contractor must promptly notify the Authority's Representative in writing with details of the possible delay and the cause.

When it becomes evident to the Authority's Representative that anything which the Authority is obliged to do or provide under the Contract may be delayed, the Authority's Representative shall notify the Contractor of the extent of the likely delay.

If the Contractor is or will be delayed in reaching Practical Completion by an Event of Delay and within 14 days after the delay occurs the Contractor gives the Authority's Representative a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based and the number of days claimed, the Contractor shall be entitled to an extension of time for Practical Completion.

If the Contractor is entitled to an extension of time, within 28 days of receipt of the notice of the number of days extension claimed, the Authority's Representative shall give notice in writing to the Contractor of the extension granted.

In determining a reasonable extension of time, the Authority's Representative shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of delay.

Notwithstanding that the Contractor is not entitled to or has not applied for an extension of time, the Authority's Representative may at any time and from time to time before the date one year after the original Date for Practical Completion, by notice in writing to the Contractor, extend the time for Practical Completion for any reason.

A delay or failure by the Authority's Representative to grant a reasonable extension of time shall not cause the Date for Practical Completion to be set at large.

## **19. Cleaning Up**

The Contractor shall keep the Works clean and tidy during the Contract.

Prior to the issue of Certificate of Practical Completion of the Works the Contractor shall clear away and remove from the site all plant, surplus material, rubbish and temporary works of every kind and fill in and consolidate and level off all excavations (other than those forming part of the Works) made by the Contractor on site and leave the whole of the site and Works clean and tidy and free of rubbish and surplus material to the satisfaction of the Authority's Representative.

## **20. Certificates and Payments**

### **20.1. Certificate of Practical Completion**

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Authority's Representative to issue a Certificate of Practical Completion.

Within 14 days of receipt of the request, the Authority's Representative shall give to the Contractor a Certificate of Practical Completion certifying the Date of Practical Completion, or give the Contractor reasons for not issuing the Certificate.

The Authority's Representative may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

### **20.2. Invoices**

Upon Practical Completion of the Works, the Contractor must issue to the Authority an invoice which is set out in a manner that clearly identifies the Works the invoice covers and the amount payable for those Works.

### **20.3. Payment of Invoice**

The Authority will pay to the Contractor the Contract Sum within 30 days of the later to occur of Practical Completion or receipt of an invoice issued in accordance with clause 20.1, if the amount claimed in the invoice is:

- (a) properly payable; and
- (b) correctly calculated in accordance with the Contract.

### **20.4. Method of payment**

The Authority may pay the amount specified in an invoice by cash, cheque, electronic funds transfer to an account with a financial institution nominated by the Contractor or by credit card.

The Contractor must not impose a surcharge on the Authority for payment by credit card.

### **20.5. Right to request further details**

If the Authority request, the Authority must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Contract.

### **20.6. No obligation to pay**

The Authority has no obligation to make any payment to the Contractor unless and until:

- (a) Practical Completion; and
- (b) Receipt of an invoice in accordance with clause 20.2; and
- (c) the Authority is satisfied that no Event of Default has occurred and continues unremedied.

## **20.7. Effect of Certificate and payments**

The issue of a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Authority.

Payment of monies shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

## **20.8. Failure of Contractor to Pay**

Save as this clause otherwise provides, before paying any monies to the Contractor under the Contract the Authority may require the Contractor to provide a Statutory Declaration that all workmen who at any time have been engaged on Work under the Contract have been paid in full all amounts which have become payable to them by virtue of their employment on the work under the Contract.

If the monies referred to in this clause remain unpaid, the Authority may, upon production of satisfactory evidence or a judgement or court order, pay the amount of the judgement or order including any costs awarded thereby to the workman concerned and any amount so paid shall be a debt due from the Contractor to the Principal which may be deducted by the Authority pursuant to clause 26.7.

## **21. Settlement of Disputes**

All disputes or differences between the Authority and the Contractor arising out of the Contract will be first negotiated between the parties.

If a matter is not resolved by negotiation between the parties within twenty eight (28) days of the matter being raised as an issue of dispute or difference, it may be referred by either party to an arbitrator who will hear the dispute and make a determination.

The disputes or differences being referred to an arbitrator for a determination must be issues within the Contract and include those concerning the performance or non-performance by either party of their respective obligations under the Contract.

The selection of the Arbitrator will be made according to the following:

- (i) mutually agreed upon by the parties in writing; or
- (ii) if the parties cannot agree, by an arbitrator appointed by the Institute of Arbitrators & Mediators, Australia (by the President of the WA Chapter) to deal with the dispute in accordance with the provisions of the *Commercial Arbitration Act (1985)* (WA).

For the avoidance of doubt, this clause shall be an 'arbitration agreement' as that term is defined in the *Commercial Arbitration Act (1985)* (WA).

## **22. Default**

### **22.1. Termination or Suspension**

Upon the occurrence of an Event of Default the Authority may, in its absolute discretion by giving notice in writing, suspend or terminate the Contract.

All moneys held by the Authority may be utilised by the Authority for the purpose of making good any defects and completing the Works.

The Authority may end a suspension at any time by notice to the Contractor. At the end of the suspension, the rights and obligations of the Authority and the Contractor under the Contract recommence.

## **22.2. Consequences of Termination**

The termination of the Contract does not affect any rights, liabilities or obligations of the Authority or the Contractor as a result of anything occurring before the termination.

On termination of the Contract, the Contractor must:

- (a) deliver to the Authority all Records required by the Authority as soon as practicable after the date of termination;
- (b) vacate the site as soon as practicable;
- (c) allow the Authority to use at the Authority's sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Site if required in connection with the Contract, but the Authority must pay the Contractor for any materials or consumables used by the Authority as a result of using that property; and
- (d) in every other respect, cooperate with the Authority as reasonably required by the Authority in order to minimise any loss, damage or inconvenience to the Authority resulting from the termination of the Contract.

## **23. GST and other Taxes**

Terms used in this clause have the same meaning as defined in the GST Act.

All sums payable, or consideration to be provided under this Contract are expressed to be inclusive of GST.

If GST is imposed on any supply made under the Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

The amount referred to as GST must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under the Contract.

If a GST-inclusive price is charged or varied under the Contract, the supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment or variation.

If the amount of GST paid or payable by the supplier on any supply made under the Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Works are payable by the Contractor.

## **24. Service of Notices**

Each notice or other communication given under the Contract:

- (a) Must be in writing;
- (b) May be given by that party, the party's nominated representative (Authority's Representative or Contractor's Representative), an authorised officer or solicitor of the party;
- (c) Must be:
  - (i) Hand delivered or sent by prepaid post to the address of the recipient specified in the Contract for the service of notices; or
  - (ii) Sent by facsimile to the facsimile number of the recipient specified in the Contract for the service of notices,
- (d) Is taken to be received:
  - (i) In the case of hand delivery, on the date of delivery;
  - (ii) In the case of post, on the third Business Day after posting; and
  - (iii) In the case of a facsimile, on the day on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (e) If received after 5 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **25. General Warranties**

### **25.1. Contractor's General Warranties**

Except where the Contractor has otherwise disclosed in writing to the Authority, and the Authority has given its prior written consent to the matter disclosed, the Contractor warrants in favour of the Authority that:

- (a) The Contractor has no conflict of interest arising out of the Contract;
- (b) The Contractor is properly authorised and has the power to enter into the Contract and to perform the Contractor's obligations under the Contract;
- (c) The Contractor's obligations under the Contract are valid and binding and are enforceable against the Contractor;
- (d) All information provided by the Contractor in connection with the Contract is true and correct;
- (e) There is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Contractor which could have a

materially adverse effect on the Contractor's ability to perform the Works in accordance with the Contract;

- (f) Neither the Contractor nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention; and
- (g) Except where lawfully excused under the Contract, there is nothing that prevents the Contractor from complying with any obligation under the Contract.

## **25.2. General Warranties made continuously**

The warranties made by the contractor under this clause are taken to be made continuously throughout the term of the Contract.

## **25.3. Contractor's Undertakings**

The Contractor must:

- (a) Properly provide for the care, safety, security and protection of:
  - (i) all Records (whether created by the Authority, the Contractor or any other person) that are in the custody or control of the Contractor; and
  - (ii) all property supplied by the Authority to the Contractor in connection with the contract;
- (b) Promptly notify the Authority if any warranty under this clause is breached or becomes untrue;
- (c) Always act ethically in connection with the Contract and in accordance with good corporate governance practices;
- (d) Comply with all Statutory Requirements relevant to the Contract;
- (e) If the Contractor has custody or control of State records, comply with the Authority's record keeping plan to the extent necessary under the *State Records Act 2000*; and
- (f) Use its best endeavours to ensure that no Contract Personnel cause the Contractor to breach the Contract.

## **25.4. Contractor's Expenses and Equipment**

Unless the Authority agrees otherwise in writing, the Contractor must:

- (a) Pay all costs and expenses incurred by the Contractor in connection with the Contract, including travel expenses, accommodation and subsistence expenses; and
- (b) Provide everything necessary to enable it to fully comply with all of its obligations under the Contract, subject to the Authority doing everything that it is required under the Contract to do to enable the Contractor to so comply.

### **25.5. Cooperation with other service providers**

The Contractor must cooperate with any third party service provider appointed by the Authority where this is necessary to ensure the integrated and efficient conduct of the Authority's operations. Without limitation, the Contractor must provide such reasonable assistance to other service providers as the Authority may request from time to time, provided that the Contractor will be entitled by prior agreement with the Authority (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.

Nothing in this clause will require the Contractor to disclose its confidential information to a third party service provider.

## **26. Miscellaneous Provisions**

### **26.1. Waiver**

Any waiver by the Authority or the Contractor must be in writing and signed by the party waiving the right.

Any waiver by the Authority or the Contractor does not affect its rights in respect of any other breach of the Contract by any other party.

Subject to express waiver, any failure by the Authority or the Contractor to enforce any right under the Contract as the case may be will not be construed as a waiver of their respective rights under the Contract.

### **26.2. Entire Agreement**

The Contract supersedes all prior negotiations, understandings and agreements between the Authority and the Contractor relating to the matters covered by the Contract and constitutes the full and complete agreement between the Authority and the Contractor relating to the matters covered by the Contract.

### **26.3. Rights are Cumulative**

Unless otherwise stated, the rights, powers and remedies in the Contract are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

### **26.4. Auditor General**

The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Contract. The Contractor must allow the Auditor General or an authorised representative of the Auditor General, to have access to and examine the Contractor's Records concerning the Contract.

### **26.5. Consent**

Whenever the consent of the Authority is required under the Contract:

- (a) that consent may be given or withheld by the Authority in the Authority's absolute discretion and may be given subject to such conditions as the Authority may determine; and



(b) the Authority is not required to provide a reason or reasons for giving or refusing its consent.

**26.6. Further assurance**

The Authority and the Contractor must do everything reasonably necessary, including signing further documents, to give full effect to the Contract.

**26.7. Right of set off**

The Authority may set off or deduct any amount claimed by the Authority from any amount owing by the Authority to the Contractor on any account under the Contract or any other contract between the Contractor and the Authority.

**26.8. Trusts**

If the Contractor has entered into the Contract in the capacity of trustee whether or not the Authority has any notice of the Trust, the Contractor:

- (a) Is taken to enter into the Contract both as trustee and in the Contractor's personal capacity and acknowledges that the Contractor is personally liable for the performance of the Contractor's obligations under the Contract; and
- (b) Will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Authority for any default by the Contractor;
- (c) Will assign to the Authority any right of indemnity the Contractor has against the assets of the trust to the extent of the liability of the Contractor under the Contract; and
- (d) Warrants that the Contractor has the power and authority under the terms of the trust to enter into the Contract.

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