

**REDLAND SHIRE COUNCIL
PURCHASE ORDER TERMS & CONDITIONS**

**FOR THE SUPPLY OF
GOODS AND SERVICES**

Terms and Conditions

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Terms and Conditions

1. GOVERNING LAW

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

2. CONSTRUCTION OF CONTRACT

The Contract shall be governed by the laws of the State of Queensland and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

3. DEFINITIONS

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

'Clause' means a clause of these Purchase Order 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 the monetary consideration stated in the Contract for the sale of the Goods or Services to the Principal whether expressed as a lump sum, schedule of rates or price per unit or by weight or volume or otherwise.

- 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 the 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 party named in the Contract as the seller of the Goods and/or Services.

'Date for Delivery' means :

- a) where the Contract or Order specifies a date for delivery, that date; or
- b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

'Goods' means the goods, the subject of the Contract or such of them as shall be described in the Order.

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

'Local Government' means any local government established under the Local Government Act 1993 including the Principal.

'Council' means the Redland Shire Council.

'Officer' means any officer or person authorised by the Principal to act on its behalf for the purpose of the Contract.

'Order' means a purchase order from the Principal to the Contractor requiring the supply of specific Goods and/or Services.

'Principal' means the Redland Shire Council.

'Specification' means any functional, performance, technical and/or exemplar specification, drawing and schedule forming part of the Contract.

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

4. EVIDENCE OF CONTRACT

4.1 The Contract shall be evidenced by the Special Conditions of Contract, General Conditions of Contract, Specifications, Tender, Letter of Acceptance and all things referred to therein.

The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.

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4.2 Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

5. NOTICES

5.1 Any notice or other communication under the Contract shall be in writing and signed and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
- (b) facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.

4.2 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

6. CONTRACTOR TO HAVE INFORMED ITSELF

6.1 The Contractor shall be deemed to have:

- (a) examined carefully and to have acquired actual knowledge of the contents of all documents and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its tender and which was obtainable by the making of reasonable enquiries; and
- (c) satisfied itself as to the correctness and sufficiency of its tender and that the Contract Price covers the cost of complying with all its obligations under the Contract.

6.2 Failure by the Contractor to have done all or any of the forgoing shall not relieve the Contractor of its obligation to perform the Contract in accordance with the terms of the Contract.

6.3 Where a current, duly executed and authorized contract or procurement arrangement with the Redland Shire Council exists and predates the receipt of an official Redland Shire Council Purchase Order the terms and conditions of that contract or procurement arrangement shall take precedence over the terms and conditions of the Purchase Order. Should any further conflict be found then the precedence of the documents shall be in accordance with **clause 4.1** above.

7. COMPLYING WITH STATUTORY REQUIREMENTS

The Contractor shall comply with the requirements of all applicable Acts, statutes and laws and all ordinances, rules, regulations, by-laws, local laws, orders and proclamations, throughout the performance of the Contract. If a requirement is at variance with a term of the Contract the Contractor shall notify the Principal in writing. If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

8. ASSIGNMENT AND SUBCONTRACTING

8.1 The Contractor shall not without the prior written approval of the Principal:

- (a) assign the Contract, or any part thereof or any payment hereunder. Approval to assign shall be on terms and conditions determined by the Principal.
- (b) subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

9. INDEMNITY

9.1 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 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 sale or delivery of the Goods or Services by the Contractor or its employees, agents or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.

9.2 Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for 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 nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

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10. **PATENT RIGHTS/COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

The Contractor warrants that neither the Goods nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right and shall indemnify the Principal against any action, suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

11. **SPECIFIED BRANDS**

Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

12. **QUALITY OF GOODS AND SERVICES**

12.1 All Goods delivered shall conform to the Specification and to samples provided (if any) specified in the Contract.

12.2 Where no standards are specified in the Contract the Goods shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation.

12.3 If no samples or standards are specified, Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use.

12.4 All Services rendered shall conform to the Specification and the standards specified in the Contract.

12.5 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.

12.6 If no standards are applicable, the Services shall be of the highest standard and carried out promptly with all due skill care and diligence.

12.7 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.

13. **SUPPLY OF GOODS AND SERVICES BY ORDER**

13.1 The Contractor shall fulfill all Orders for Goods and/or Services placed by the Principal during the term or currency of the Contract.

13.2 Where the Contract is for the supply of Goods by reference to:

(a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed **EXCEPT** such of the Goods as may be ordered by the Principal.

(b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.

(c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.

13.3 The Principal may order requirements of any one type or item of the Goods either in one single lot or installments or in such quantities as may be required.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

14. **PACKAGING**

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The Contractor shall ensure that all Goods are properly, safely and securely packaged and labelled for identification and safety.

15. DELIVERY OF GOODS

15.1 The Contractor shall deliver the Goods in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.

15.2 Upon it becoming evident to the Contractor that delivery of the Goods is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

15.3 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.

16. EXPENSES OF DELIVERY

Unless otherwise provided in the Contract, the Contractor shall pay all packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of Goods and the return of Goods wrongly supplied and all packaging.

17. RECEIPT AND ACCEPTANCE OF GOODS

17.1 Delivery and receipt of Goods, shall not of itself constitute acceptance of the Goods by the Principal, with acceptance being subject to the approval of the Officer.

17.2 The Principal shall be deemed to have accepted the Goods when the Officer notifies the Contractor that the Goods have been accepted or when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.

17.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.

17.4 Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

18. REJECTION AND REMOVAL OF GOODS

18.1 The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.

18.2 Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to :

- (a) exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
- (b) sell the rejected Goods; or
- (c) have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.

18.3 The Principal shall not be responsible for the care or custody of any rejected Goods.

18.4 Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;

- (a) shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
- (b) where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.

In both cases any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

19. PROPERTY IN THE GOODS

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Upon payment for the Goods property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.

20. DEFICIENT GOODS

20.1 Where after acceptance, the Goods are subsequently found not to be in accordance with the Contract or of an inferior quality, or differing from those ordered (whether by sample or quality), ("the deficient Goods"), the Principal may notify the Contractor of the deficiency, and require the Contractor to forthwith:

- (a) remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
- (b) refund the price paid and thereupon to remove the deficient Goods from the Principal's premises;

20.2 Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.

20.3 Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.

20.5 Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Sub-Clauses 18.2, 18.4 and 34.2 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Sub-Clauses 18.2, 18.3, 18.4 and 34.2 were set out herein.

21. WARRANTIES

The Contractor shall obtain all warranties specified in the Contract including any warranties that are obtained by any subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

22. 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.

23. VARIATION TO CONTRACT TERMS

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

24. PRICE BASIS

Unless otherwise stated in the Contract, the Contract Price shall be firm and not subject to rise and fall.

25. PRICE VARIATIONS

25.1 Contract prices shall be firm unless otherwise stated in the Contract.

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.

25.3 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.

25.4 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.

25.5 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.

25.6 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.

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25.7 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.

25.8 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.

26. SPECIAL PRICING AND OFFERS

Any special price, licence fee, rate or charge in relation to the Goods or goods of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract shall be made available to the Principal and all purchasers.

The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

27. PAYMENT

27.1 Unless otherwise provided in the Contract all payments shall be computed from the date of the receipt of the invoice and Council shall make payment 30 days after the month end of the invoice date and upon receipt of a valid; correctly submitted invoice, provided that the Goods have been accepted by a Council Officer

27.2 All invoices submitted for payment shall be fully tax compliant and quote an official Redland Shire Council order number. Failure to quote an official Redland Shire Council order number shall prevent payment being made until such time as an official Redland Shire Council order number is provided. Council shall make every effort to notify suppliers and request the provision of an order number where invoices are submitted and fail to conform with the above requirement.

27.3 Failure by the Principal to pay the amount payable at the due time, will not be grounds to invalidate or avoid the Contract.

27.4 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

27.5 All invoices for payment shall be delivered to the attention of "Supply Accounts Payable" - Redland Shire Council, PO Box 21, CLEVELAND, QLD 4163

28. 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.

29. DEDUCTIONS OF CHARGES OR DEBTS

The Principal may deduct from monies due to the Contractor under the Contract or on any other account, any monies due from the Contractor to the Principal, under the Contract or on any other account, and if those monies are insufficient, the Principal may have recourse to any security under the Contract.

30. TIME

30.1 Goods and/or 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.

30.2 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.

31. GOODS AND SERVICES TAX

31.1 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 Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made there under and any other written law dealing with GST applying for the first time being in the State of Queensland.

(c) "Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act.

31.2 Where the supply of Goods or any part thereof is a taxable supply under the GST Act:

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the Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

32. STAMP DUTY

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

33. CUSTOMS AND EXCISE DUTIES

33.1 The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of tenders.

33.2 The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

33.3 The Contractor shall:

- (a) if the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the Australian Customs Tariff (Anti Dumping) Act 1975, in respect of the Goods supplied under the Contract direct to the Principal or to the Australian Customs Service as the case may be.
- (b) indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

34. SETTLEMENT OF DISPUTES

34.1 The parties agree to use their best endeavours to use mediation and negotiation to resolve any dispute or unresolved claim arising out of or relating to this Contract or any Order (including any breach or termination of this Contract or any such Order) ("the Dispute").

34.2 If a party believes there is a Dispute, it may give written notice to the other party detailing the nature of the Dispute. If the Dispute is not resolved to the satisfaction of the parties within ten (10) Business Days of receipt of such notice, either party may request that the Dispute 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 Queensland Chapter Chairman of the Institute of Arbitrators and Mediators Australia.

In such a case, the Dispute shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitration for the time being of the Institute of Arbitrators and Mediators Australia.

34.3 The referral of the Dispute to arbitration (or any other form of dispute resolution), shall not prevent either party commencing court proceedings relating to the Dispute where the party seeks urgent interlocutory relief.

34.4 Notwithstanding the existence of a Dispute, each party shall continue to perform its obligations under this Contract and the Order in dispute.

34.5 The parties acknowledge and agree that nothing in this clause shall be construed as:

- a) compelling the parties to refer any Dispute to arbitration, mediation or any other form of dispute resolution; or
- b) requiring the Council to seek to negotiate all disputes or unresolved claimed in relation to any breach by the Contractor of its obligations under this Contract or any Order prior to or in order to any exercise of its rights under clause 14 or any other provision of this Contract or the Order in question.

35. TERMINATION OF CONTRACT

35.1 Subject to Clause 34, if the Contractor fails to duly and punctually observe perform and comply with any term condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term condition or stipulation or otherwise to remedy the breach; or

- (a) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
- (b) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
- (c) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
- (d) If the Contractor includes in its Tender any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

THEN and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

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35.2 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the abovementioned matters and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

36. WAIVER

No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

37. SECURITY DEPOSIT

37.1 Within the time limited in the Special Conditions of Contract the Contractor shall deposit with the Principal the Security in the amount and in the form (if any) set out in the Special Conditions of Contract. The Principal shall hold such Security as security for the due and proper performance and completion of the Contract, or until the Contract has been terminated in which event the Security shall become forfeited to the Principal.

37.2 If the Contract has not been terminated and Orders are not completed in accordance with the terms of the Contract, then the amount of loss and damage (if any) to the Principal caused thereby may be deducted from the Security and appropriated by the Principal.

37.3 Where the Contractor fails to deposit the Security within the said period the Principal may give to the Contractor notice in writing terminating the Contract and the Contract shall thereupon be deemed to be discharged.

38. POWER TO ACT FOR THE PRINCIPAL

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

39. ACCIDENT OR INJURY TO EMPLOYEES

41.1 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.

40. INSURANCE

42.1 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 9, 39 and 40.

42.2 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.

42.3 The Contractor shall lodge certificates of proof the required insurance policies with the Principal before the delivery/commencement of the Goods/Services provision and at such other times as the Principal may require.

41. INDUSTRIAL AWARDS

43.1 With respect to all work done in Queensland 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.

43.2 Failure by the Contractor to comply with sub clause 43.1 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.

42. ENTIRE AGREEMENT

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods and/or Services.

43. RIGHTS AND REMEDIES

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at law or under the Contract.