



KINGSTON DISTRICT COUNCIL

TERMS AND CONDITIONS OF CONTRACT

To be read in conjunction with an official Purchase Order issued by Council

1 DEFINITIONS: In these terms and conditions:

“Contract” means:

- (a) if the attached Works Order issues under a Local Government Works Contract (**“Head Contract”**), the provisions and any Specifications of the Head Contract together with the Works Order;
- (b) otherwise, these terms and conditions together with any Specifications and the attached Works Order, as constituting the contract documents and the entire terms of the agreement.

“Specifications” mean any specifications the Principal issued for the Contract.

“Works” means all work specified in the attached Works Order, and any additional work necessary to perform the Contract, including any variations agreed between the parties.

1 STATUS OF CONTRACTOR:

The Contract does not constitute the Contractor as the partner, joint venturer, agent or employee of the Principal for any purpose.

2 OBLIGATIONS OF THE CONTRACTOR:

The Contractor shall:

- 2.1 Perform and complete the Works and, subject to other provisions in the Contract, provide all supervision, labour, materials, plant, transport and temporary works necessary.
- 2.2 Not vary the Works from the description in the Works Order or the Specifications without the prior written consent of the Principal.
- 2.3 Be responsible for the care of the Works from commencement until completion, including the care, storage and protection of unfixed items and items provided by the Principal.
- 2.4 Provide, erect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the Works, other property and for the safety and convenience of the public.
- 2.5 Complete the Works diligently and to the satisfaction of the Principal and within the time specified in the Works Order or as agreed in writing by the Principal.
- 2.6 Not vary the price of the Works from the price agreed, or undertake work which will incur additional costs without the prior written consent of the Principal

3 QUALITY:

- 3.1 The Contractor shall exercise reasonable skill, care and diligence in performing the Works and comply with all applicable standards, codes of practice and any specific requirements resulting from the Contractor's occupation or expert knowledge.
- 3.2 The Contractor at its cost shall correct any defects in the Works within 14 days of notice in writing by the Principal requesting correction. Failing such correction, the Principal may have such defects corrected at the reasonable cost of the Contractor.

4 WARRANTY:

The Contractor warrants that all materials provided to the Principal as part of the Works will:

- 4.1 conform with the description in the contract documents;
- 4.2 be of good merchantable quality, suitable for the purpose for which provided;
- 4.3 be new, unless otherwise agreed in writing by the Principal;
- 4.4 on installation in the Works, be free of any security interest of a third party.

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5 STATUTORY REQUIREMENTS:

The Contractor shall:

- 5.1 comply with all legislation and other laws relating to the Contract or the performance of the Works, including give any notices as may be required;
- 5.2 comply with any obligations of the Contractor as may arise under the Ombudsman Act 1972 and/or the Independent Commissioner Against Corruption Act 2012 in relation to the Contract.

6 PAYMENT:

- 6.1 Unless otherwise specified in the payment terms, the Council shall pay, by cheque or electronic funds transfer, the price to the Supplier by the last business day of the calendar month following the month in which the invoice is dated provided that the goods are supplied, and the services are provided in the manner setout in the contract documents.
- 6.2 The Supplier must provide an invoice (preferably in PDF electronic file) to the email address accounts@kingstondc.sa.gov.au to the Council on the completion of supply of the goods or services specifying the relevant purchase order number.

7 INDEMNITY:

The Contractor agrees to indemnify and keep indemnified the Principal, its employees and agents and each of them from and against all actions, costs, claims, damages or charges and expenses whatsoever which may be made or brought or claimed against them arising out of or in relation to the performance of the Works.

8 PUBLIC LIABILITY INSURANCE:

The Contractor shall take out and keep current during the period of this Contract a public risk insurance policy in the name of the Contractor for a minimum sum of \$20,000,000.00 in relation to the Contract. The Contractor shall not commence the Works until evidence of such insurance is given to the Principal.

9 SUB-CONTRACTING:

The Contractor shall not sub-contract any of the Works.

10 WORKPLACE SAFETY:

- 10.1 The Contractor shall comply with the Work Health and Safety Act 2012 and its regulations and ensure that its employees comply with the same and any notices and codes of practice issued thereunder and having application to this Contract.
- 10.2 The Principal has non-delegable duties under the Work Health and Safety Act 2012, and so right to ensure the Contractor complies with the Act.
- 10.3 The Contractor shall comply with all reasonable directions and procedures relating to security and workplace safety as required by the Principal when the Works are to be undertaken at premises or facilities of the Principal.
- 10.4 The Contractor shall immediately notify the Principal of any incident or accident arising from the undertaking of the Contract including those involving the public.

11 WORKCOVER:

Where applicable:

- 11.1 The Contractor must be registered as an employer under the Return to Work Act 2014 and that it pays all levies due thereunder in respect of its employees engaged in or about the Works.
- 11.2 The Contractor agrees to indemnify the Principal in respect of any action, claim, demand, suit or proceedings made by an employee of the Contractor brought in connection with the Return to Work Act 2014.
- 11.3 The Contractor (if an individual) shall have or take out and keep current a personal accident and sickness insurance policy for a period from the commencement of the Works extending until the completion date of this Contract.

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- 12 **DISPUTES:**
All disputes or differences between the Principal and the Contractor shall be referred to an arbitrator who shall be mutually agreed upon by the parties.
- 13 **SPECIAL CONDITIONS:**
Any special conditions that Council shall incorporate on the purchase order shall be incorporated into these standard terms and conditions and in the event of any inconsistency with the terms of the contract the special conditions prevail.
- 14 **OMBUDSMAN:**
The supplier acknowledges that the Ombudsman Act 1972 (SA) empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under the Act and all other applicable laws.
- 15 **ICAC:**
The Supplier acknowledges and agrees that by entering into this contract with the Council the Supplier will be considered to be a public officer, for the purposes of the Independent Commissioner Against Corruption Act, 2012 (SA) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.
- 16 **TERMINATION:**
The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:
- Ceases to carry on business or becomes otherwise unable to perform its obligations under this contract.
 - Breaches a provision of this contract and fails to remedy the breach within a specified reasonable time, defined by Council after receiving notice requiring it to do so;
 - Becomes an externally administered body corporate under administration or becomes insolvent (each within the meaning of the Corporations Act 2001).
- Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.
- 17 **TIME OF THE ESSENCE:**
Time shall be of the essence as regard to any date or period under this contact.

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