# Conditions of Contract

|  |  |
| --- | --- |
| Project Name |  |
| Project Number |  |

# Contents

[Conditions of Contract 1](#_Toc167961595)

[Contents 2](#_Toc167961596)

[CONDITIONS OF CONTRACT 3](#_Toc167961597)

[1. DEFINITIONS AND INTERPRETATIONS 3](#_Toc167961598)

[2. NATURE OF CONTRACT 5](#_Toc167961599)

[3. SUPPLY OF THE BUILDING MATERIALS 5](#_Toc167961600)

[4. NON-CONFORMING BUILDING MATERIALS 6](#_Toc167961601)

[5. VARIATIONS 6](#_Toc167961602)

[6. OWNERSHIP, RISK AND TITLE 6](#_Toc167961603)

[7. SUPPLIER’S WARRANTIES 7](#_Toc167961604)

[8. DELAY 7](#_Toc167961605)

[9. WARRANTY PERIOD 8](#_Toc167961606)

[10. PAYMENT AND INVOICES 8](#_Toc167961607)

[11. DEFAULT OF THE SUPPLIER 9](#_Toc167961608)

[12. DISPUTES 10](#_Toc167961609)

[13. COMPLIANCE 10](#_Toc167961610)

[14. WORK HEALTH AND SAFETY 10](#_Toc167961611)

[15. PROTECTION OF PERSON AND PROPERTY 11](#_Toc167961612)

[16. INDEMNITY BY THE SUPPLIER 11](#_Toc167961613)

[17. PUBLIC AND PRODUCT LIABILITY INSURANCE 11](#_Toc167961614)

[18. GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG) 12](#_Toc167961615)

[19. INFORMATION PRIVACY 12](#_Toc167961616)

[20. ANTI-COMPETITIVE CONDUCT, CONFLICT OF INTEREST AND CRIMINAL ORGANISATION 13](#_Toc167961617)

[21. QUEENSLAND PROCUREMENT POLICY 13](#_Toc167961618)

[22. DUMPED GOODS 14](#_Toc167961619)

[23. MODERN SLAVERY 15](#_Toc167961620)

[24. GOVERNING LAW 15](#_Toc167961621)

[25. RECORDS AND ACCESS TO RECORDS 15](#_Toc167961622)

[ANNEXURE 18](#_Toc167961623)

## CONDITIONS OF CONTRACT

### DEFINITIONS AND INTERPRETATIONS

* + 1. The following definitions apply to the Contract:
			- 1. **business day** means a day that is not:

a Saturday or Sunday; or

a public holiday, special holiday or bank holiday in the place which any relevant act is to be or may be done; or

a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

* + - * 1. **Building Materials** means the building materials the subject of this Contract, described in the Order,
				2. **Contract** means the agreement in writing between the Purchaser and the Supplier for the supply of Building Materials in accordance including these Conditions of Contract, the Order and the Schedule of Prices;
				3. **Contract Price** means the sum ascertained by calculating the quantities in the Order with the corresponding rate in the Schedule of Prices, including any additions or deductions which may be required to be made under the Contract;
				4. **Warranty Period** means the period set out in the Annexure, commencing on the date of receipt of the Building Materials;
				5. **Delivery Date** means the date, or dates, on which the Building Materials are to be made available for collection or delivered as set out in the Annexure;
				6. **Delivery Location** means the location/s or address/es to which the Building Materials are to be delivered set out in the Annexure;
				7. **Environmental Laws** means:

any Laws relating to the environment or to environmental planning; and

any relevant approval, consent or licence (including any condition or requirement under any such approval, consent or licence) granted under any Laws relating to the environment or to environmental planning by any authority having any jurisdiction in connection with the Building Materials;

* + - * 1. **Ethical Supplier Mandate means** Queensland Government policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy;
				2. **Ethical Supplier Threshold** means the Ethical Supplier Threshold described in the Queensland Procurement Policy, or any policy that replaces that policy;
				3. **Government Department or Instrumentality** means:

any government department responsible for compliance with government policy, including without limitation:

the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Climate;

the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and

Local Content within the Department of State Development and Infrastructure; and

any government regulator, including without limitation:

the Queensland Building and Construction Commission;

the Office of Industrial Relations;

the Fair Work Commission;

the Australian Taxation Office; and

the Office of the Federal Safety Commissioner;

* + - * 1. **Heavy Vehicle National Laws** means the following legislation to the extent it applies in the jurisdiction in which the works under the Contract are being carried out:

Heavy Vehicle National Law Act 2012 (Qld);

Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); or

Heavy Vehicle National Law (Victoria) within the meaning of that term under the *Heavy Vehicle National Law Application Act 2013* (VIC),

* + - * 1. and related:

regulations;

codes of practice;

other compliance codes;

directions on safety or notices issued by any relevant Authority; and

standards,

* + - * 1. relevant and applicable to any part of the supply of Building Materials under the Contract;
				2. **Laws** includes:

Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Works are located;

certificates, licences, consents, permits, approvals, industry codes of practice, and requirements of organisations having jurisdiction applicable to the Works; and

fees and charges payable in connection with the above;

* + - * 1. **Order** means an order for the supply of Building Materials, to be made available for collection by or delivered to the Purchaser by the Supplier;
				2. **Purchaser** means the person identified as the Purchaser in the Annexure;
				3. **Purchaser’s Representative** means the person identified in the Annexure or such other person notified to the Supplier by the Purchaser;
				4. **QGP Compliance Branch** means the State of Queensland’s Queensland Government Procurement Compliance Branch within the Department of Energy and Climate and any successor administrative unit;
				5. **Queensland Procurement Policy** means the Queensland Government policy titled “Queensland Procurement Policy” or any policy which replaces that policy;
				6. **Schedule of Prices** means the Schedule of Prices submitted by the Supplier to the Purchaser, applicable to the supply of Building Materials under this Contract;
				7. **Supplier** means the person or company who accepted the Order and is responsible for the supply of the Building Materials under this contract, and its executors, administrators, successors or permitted assigns;
				8. **Supplier Code of Conduct** means the Queensland Government Code titled “Queensland Government Supplier Code of Conduct” or any code replacing that code;
				9. **WHS Laws** includes all relevant occupational or work health and safety Laws and the requirements contained in:

the relevant occupational or work health and safety Laws;

any part of any Code of Practice, Guideline, National Standard and Australian Standard which contain work health and safety requirements; and

these conditions which are in the nature of work health and safety requirements;

* + - * 1. **in writing** means any word, number or other communication including handwritten, typed out, printed, or electronically made resulting in a permanent record and includes electronically transmitted and stored information, excluding any oral communication;
		1. In addition to these definitions, some terms, specific to a clause, are defined in that clause.

### NATURE OF CONTRACT

* + 1. The Supplier must supply the Building Materials in accordance with this Contract and any other documents issued by the Purchaser. Unless otherwise provided, the Supplier is responsible for all things, including items not expressly mentioned in the Contract, necessary for satisfactory supply of the Building Materials. The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.
		2. The Supplier must comply with the requirements of all Laws and public or other authorities affecting the supply of Building Materials, and unless otherwise specified pay all fees, give all notices and obtain necessary consents.
		3. The Supplier must ensure the warranties are in the name of the Purchaser and must provide the warranties at the time of delivery of the Building Materials or collection of the Building Materials by the Purchaser.

### SUPPLY OF THE BUILDING MATERIALS

* + 1. The Supplier must make the Building Materials available for collection or deliver the Building Materials, by the Delivery Date.
		2. The Supplier must safely and securely pack and prepare the Building Materials and ensure that the Building Materials are adequately labelled for identification purposes, with such labels clearly displaying the:

the Order number;

the Delivery Location (if applicable); and

the Supplier’s details.

* + 1. Where the Building Materials include hazardous substances, the accompanying documentation must include all relevant material safety data sheets in accordance with the WHS Laws.
		2. When delivering the Building Materials, the Supplier must obtain acknowledgement of delivery from the Purchaser's Representative or nominated person or agent on a delivery docket which describes the Building Materials, the Delivery Date, and the Order number and must provide the Purchaser's Representative with a copy of that delivery docket. The Supplier must not leave the Building Materials unattended at the Delivery Location.
		3. Building Materials unaccompanied by appropriate delivery documentation may be rejected until the appropriate delivery documentation has been received.
		4. The Supplier must not deliver the Building Materials in instalments, unless approved by the Purchaser in writing.
		5. In delivering the Building Materials, the Supplier must use its best efforts not to interfere with any of the Purchaser's activities, or the activities of any other person at the Delivery Location. The Supplier must ensure that the Delivery Location is left secure, clean, orderly and fit for immediate use and must, if requested by the Purchaser, remove and safely dispose of all packaging after delivery at no additional cost to the Purchaser.

### NON-CONFORMING BUILDING MATERIALS

* + 1. For the purposes of this clause:
			- 1. **Non-Conforming Building Materials** means Building Materials that:

do not comply with the relevant law or regulatory provisions;

are not in accordance with the description in the Order and requirements of this Contract;

do not perform, or are not capable of performing, for the use or to the standard that they are represented to perform;

* + 1. Without limiting any other obligations of the Contract, the Purchaser’s Representative may, at its absolute discretion and within a reasonable time, reject any Non-Conforming Building Materials by giving written notice to the Supplier.
		2. The Supplier must, at its own cost, and at the Purchaser’s Representative’s direction, promptly replace and/or repair the Non-Conforming Building Materials as soon as practicable.
		3. If the Supplier fails to repair and/or replace the Non-Conforming Building Materials within the time required, the Purchaser may perform or have the obligation performed on the Supplier's behalf and recover from the Supplier the costs and expenses incurred as a debt due and payable from the Supplier to the Purchaser.

### VARIATIONS

* + 1. The Purchaser's Representative may omit, reduce or vary the Building Materials before dispatch by the Supplier by issuing a notice in writing to the Supplier specifying the required changes to the Building Materials.
		2. On receipt of such written notice, the Supplier must:

comply with that notice; or

provide written notification to the Purchaser if it is unable to comply with the notice.

* + 1. The variation will be valued in accordance with the Schedule of Prices, and the Contract Price adjusted accordingly. No payment for additional Building Materials supplied will be made unless the additional Building Materials are authorised in writing by the Purchaser’s Representative.
		2. If the Purchaser omits or reduces the Building Materials under this Contract, it may engage another supplier to supply the omitted Building Materials.

### OWNERSHIP, RISK AND TITLE

* + 1. Ownership, risk and title in the Building Materials passes to the Purchaser when the Purchaser signs a docket acknowledging receipt of the Building Materials.
		2. Any rights that the Purchaser may have in connection with a breach of any warranty, or any other breach of the Contract, continue even if the Purchaser has:

taken delivery of the Building Materials;

signed a delivery docket in respect of the Building Materials;

paid for the Building Materials; or

received title and/or risk in the Building Materials.

* + 1. The Supplier must allow the Purchaser to inspect, test, and must carry out at its cost any test required by the Purchaser in respect of the Building Materials at the Delivery Location or any location where activities associated with the delivery of the Building Materials are taking place.
		2. If any Building Materials supplied to the Purchaser fail such inspection or tests, the Purchaser’s Representative will be entitled to reject some or all of the Building Materials and the Supplier will be liable to remove the rejected Building Materials at its own cost within 10 Business Days of notification of the rejection, failing which the Purchaser’s Representative will be entitled to return the rejected Building Materials at the Supplier’s expense.

### SUPPLIER’S WARRANTIES

* + 1. The Supplier warrants that:

it has the right to sell the Building Materials;

the Purchaser will have and enjoy quiet possession of the Building Materials;

the Building Materials are free of encumbrances, liens and reservations of title;

if the Building Materials are sold by description, they will correspond with the description;

if the Building Materials are sold by sample, they will correspond with the sample;

the Building Materials are fit for the purpose;

unless otherwise specified, the Building Materials are new and of merchantable quality;

the Building Materials are free from any defects in material and workmanship;

it must take all necessary action to obtain for the Purchaser the benefit of any manufacturer’s warranties applicable to the Building Materials; and

the Building Materials comply with all applicable Laws (including, without limitation, Laws applicable to the manufacture, sale, delivery, loading, unloading, labelling and quality of the Building Materials, and the conduct of the Supplier’s business).

### DELAY

* + 1. The Supplier must promptly notify the Purchaser, in writing, of anything that may delay delivery of the Building Materials and may request to the Purchaser’s Representative for an extension of time.
		2. A written notice of delay must set out:

the circumstances giving rise to the delay, including the cause of the delay;

the expected length of the delay; and

any other information the Purchaser’s Representative may reasonably request.

* + 1. In determining a reasonable extension of time for an event causing delay, the Purchaser’s Representative must take into consideration whether the Supplier has taken all reasonable steps to prevent the occurrence of the cause and minimise the consequences of the delay.
		2. The Purchaser’s Representative may extend the Delivery Date for any reason as agreed by the Purchaser but is not obliged to exercise this right for the benefit of the Supplier.
		3. Except where such a claim is expressly permitted in other provisions of the Contract, the Supplier will not be entitled to any additional payment because of the granting of an extension of time.
		4. If the Supplier has been delayed in completing delivery of the Building Materials by the Delivery Date by an act or omission, including breach of contract by the Purchaser, the Purchaser may extend the Delivery Date by a reasonable period.

### WARRANTY PERIOD

* + 1. If during the Warranty Period, the Purchaser considers that the Building Materials are defective, including where the Building Materials do not comply with this Contract, the Purchaser must notify the Supplier by written notice and the Supplier must rectify, which may include replacement and reinstallation, the defective Building Materials at its own cost within 10 Business Days of notice or such other period advised by the Purchaser in writing.
		2. Upon rectification or replacement of the defective Building Materials, a further period equal to the original Warranty Period shall apply to the rectified Building Materials.
		3. If the Supplier does not rectify the defective Building Materials within the time required, the Purchaser may, in its discretion:

have the Building Materials rectified by others and the reasonable costs incurred by the Purchaser in doing so will be a debt due and payable from the Supplier to the Purchaser; or

reduce the Contract Price by the value of the defective Building Materials, as determined by the Purchaser.

* + 1. Without limiting clause 9.3, the Supplier is not entitled to any payment in respect of that part of the Building Materials which are defective until the defective part is rectified by the Supplier.

### PAYMENT AND INVOICES

* + 1. At the times or by the stages stated in the Annexure and upon completion of the Order, the Supplier may claim payment of the Contract Price in accordance with clause 10.2.
		2. Payment claims must be submitted to the Purchaser's Representative in the form of a tax invoice that contains the following information:

the Order number;

the Supplier’s Australian Business Number and the Supplier’s legal entity name and/or business name;

the description of Building Materials, including the volume, unit prices and details of all approved variations that makeup the invoiced amount and any other information reasonably required by the Purchaser;

the supply cost; and

the amount of GST (if applicable).

* + 1. Within 10 Business Days after receipt of a payment claim, the Purchaser’s Representative will assess the payment claim and, if the Purchaser’s Representative determines the amount to be paid is other than the claimed amount, will issue a payment statement stating the amount of the payment to be made by the Purchaser or the Supplier and the reasons for the difference from the claimed amount.
		2. Subject to clause 10.4, payment will be made within 15 Business Days after receipt of a valid payment claim.
		3. Payments of moneys to the Supplier will not be evidence of Building Materials supplied conforming to the Contract or an admission of liability but will be a payment on account only. The Purchaser’s Representative may by a later payment statement correct an error in a previous payment statement. Nothing in the Contract will oblige the Purchaser to pay for Building Materials not supplied, or for Building Materials supplied not conforming to the Contract.
		4. Payment will take into account interim payments for variations (if any) and any other amount which the Purchaser may be entitled to deduct or which is due and payable by the Supplier to the Purchaser whether under the Contract, any other contract or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Supplier, any deficiency remaining will be a debt due and payable from the Supplier to the Purchaser.

### DEFAULT OF THE SUPPLIER

* + 1. If the Supplier:

fails to supply the Building Materials in accordance with the requirements of this Contract;

commits any breach of the Contract and the Supplier does not remedy the breach (to the Purchaser's satisfaction) within 7 Business Days of the Supplier receiving the Purchaser's notice requiring the Supplier to remedy the breach; or

indicates that it is unable or unwilling to complete the supply of Building Materials;

* + - * 1. the Purchaser may, by written notice, require the Supplier to show cause by the date stated in the notice, why the Purchaser should not exercise a right under clause 11.2 (“Show Cause Notice”).
		1. If the Supplier fails to show reasonable cause by the date stated by the Purchaser in the Show Cause Notice, then the Purchaser will have the power upon notice in writing to the Supplier to:

terminate the Contract; or

suspend payment and take the supply of Building Materials remaining to be completed wholly or partly out of the hands of the Supplier,

* + - * 1. without prejudice to any rights of the Purchaser under the Contract or at common law.
		1. If the Supplier:

fails to hold and maintain a current statutory licence, if required, to supply the Building Materials in accordance with the Contract;

becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation;

enters into a debt agreement, a deed of assignment a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or

in any way the Supplier indicates that they are or will become unable to pay their debts as and when they become due or payable including if they suspend payment of their debts or as an individual, they commit an act of bankruptcy;

* + - * 1. the Purchaser may, without giving a Show Cause Notice, exercise a right under clause 11.2, but only when and to the extent that there is no restriction on enforcing that right under Part 5.1, Part 5.2, or Division 17 of Part 5.3A of the *Corporations Act 2001* (Cth).
		1. In the event that the Purchaser takes the supply of the Building Material under the Contract out of the hands of the Supplier, the Purchaser may itself, or by means of other persons, complete the whole or part of the supply of the Building Material. If the cost incurred by the Purchaser in supplying the Building Material is greater than the amount which would have been paid to the Supplier if the Supplier had supplied the Building Material; the difference will be a debt due and payable from the Supplier to the Purchaser.
		2. Upon a termination of the Contract, the Purchaser may recover from the Supplier any loss or damage suffered by the Purchaser as a result of the termination.
		3. Termination of this Contract does not affect the accrued rights and remedies of the parties. This clause 11 does not affect the parties' rights at law, in equity or under statute.
		4. The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under this Contract.

### DISPUTES

* + 1. If a dispute arises under or in connection with the Contract, either party may serve a notice of the dispute on the other party.
		2. Within 20 business days of receiving a notice of the dispute, the parties shall confer at least once to attempt to resolve the dispute.

### COMPLIANCE

* + 1. Without limiting the Contract, the Supplier must comply with all applicable Laws, the WHS Laws, the Heavy Vehicle National Laws (if applicable) and the Environmental Laws in respect of the Building Materials.
		2. In delivering the Building Materials, the Supplier must comply with all applicable Laws; safety, health and environment guidelines, rules and procedures applicable to the Delivery Location; and all directions and orders given by the Purchaser's Representative.
		3. If the Supplier fails to perform an obligation under this clause 13, the Purchaser may perform or have the obligation performed on the Supplier's behalf and recover from the Supplier the costs and expenses incurred as a debt due and payable from the Supplier to the Purchaser.

### WORK HEALTH AND SAFETY

* + 1. For the purposes of this clause:
			- 1. **Act** means the *Work Health and Safety Act 2011* (Qld);
				2. **inspector**, **notifiable incident**, **regulator**, **structure** and **workplace** have the same meanings as in the Act;
				3. **Regulation** means the *Work Health and Safety Regulation 2011* (Qld);
		2. In relation to the supply of Building Materials in accordance with the Contract, the Supplier will:

comply with and discharge all obligations imposed on the Supplier under the WHS Laws;

discharge the duties of a person who conducts a business or undertaking under the WHS Laws; and

without limiting clause 14.2(a), the Supplier will ensure its officers, workers, and agents discharge their respective duties under the WHS Laws in connection with the Contract.

* + 1. The Supplier will indemnify the Purchaser against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Purchaser as a result of or in connection with:

any breach of this clause by the Supplier;

any breach by the Supplier of its obligations under the WHS Laws; and

any enforcement of obligations imposed on the Supplier under the WHS Laws.

* + 1. If a notifiable incident occurs at the workplace in connection with the supply or delivery of Building Materials, the Supplier must:

immediately notify the regulator and the Purchaser’s Representative of the notifiable incident and provide copies of any communications, notices or reports provided to or received from the regulator or any authority regarding the notifiable incident to the Purchaser’s Representative;

take all reasonably practicable steps to secure the Delivery Location where the notifiable incident occurred until an inspector arrives at the Delivery Location or any earlier time that an inspector directs;

conduct a thorough investigation in relation to the root cause and contributing factors of the notifiable incident and provide a copy of the written investigation report within 10 Business Days of the Purchaser’s Representative's request; and

if the Purchaser wishes to conduct its own investigation, provide the Purchaser with reasonable assistance (including access to relevant documents and the Supplier's personnel) in investigating any such notifiable incident.

### PROTECTION OF PERSON AND PROPERTY

* + 1. The Supplier must:

take all measures necessary to protect people and property, including the supply of Building Materials, avoid unnecessary interference with passage of people and vehicles, prevent nuisance, unreasonable noise, and disturbance; and

for the purposes of clause 15.1(a), comply with all reasonable directions of the Purchaser’s Representative.

* + 1. If the Supplier damages any property, the Supplier must provide temporary protection for, and repair it at its cost.

### INDEMNITY BY THE SUPPLIER

* + 1. The Supplier indemnifies the Purchaser against:

any loss of or damage to the Purchaser’s property; and

claims by any person in respect of injury, death or loss of or damage to any property,

* + - * 1. resulting from or in any way connected with, the Supplier supplying the Building Materials under the Contract and the use of the Building Materials for their intended purpose. The Supplier’s liability to indemnify the Purchaser will be reduced proportionally to the extent that an act or omission of the Purchaser, or its employees or agents, contributed to the loss, damage, death or injury.

### PUBLIC AND PRODUCT LIABILITY INSURANCE

* + 1. Prior to supplying Building Materials, the Supplier must effect and maintain until the end of the Warranty Period the following policies of insurance:

public liability insurance policy and product liability insurance in the amounts stated in the Annexure; and

Workers Compensation insurance, as required by Law.

* + 1. If requested by the Purchaser, the Supplier must provide a certificate of currency or any such other evidence of compliance with its insurance obligations.
		2. The Supplier:

warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds, in accordance with this clause 17, will not impact on the Supplier’s ability to meet any claim or otherwise prejudice the Purchaser’s rights under the Contract; and

must immediately advise the Purchaser if any insurance policy required by the Contract is cancelled or materially modified.

* + 1. If the Supplier fails to comply with clause 17.1, the Purchaser may effect and maintain the necessary insurance policy and/or pay the premium in respect of the policy and the cost of doing so is a debt due and payable by the Supplier to the Purchaser.

### GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG)

###### Definitions

* + - * 1. For the purposes of this clause:
				2. **ABN**, **adjustment event**, **adjustment note**, **amount**, **Australian resident**, **consideration**, **GST**, **GST Law**, **input tax credit**, **recipient created tax invoice**, **registered**, **tax invoice**, **taxable supply** have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

###### GST Included in Price

* + - * 1. Payments for any taxable supplies under the Contract include GST.

###### Tax invoices

* + - * 1. The Supplier must issue to the Purchaser a tax invoice or adjustment note (as the case may require) within 5 Business Days after each of the following occurring in relation to that taxable supply:

the Supplier submitting a claim for payment that is not in the form of a valid tax invoice;

the Purchaser stating an amount for payment different to the amount claimed;

the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) stated.

###### PAYG Withholding

* + - * 1. Whenever the Purchaser reasonably considers itself bound by law to do so, the Purchaser will be entitled to withhold from any payment otherwise due to the Supplier, amounts calculated and to be withheld in accordance with the law.

### INFORMATION PRIVACY

* + 1. For the purposes of this clause:
			- 1. **Personal Information** means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.
		2. If the Supplier collects or has access to Personal Information in order to carry out the supply of Building Materials under the Contract, the Supplier must:

if the Purchaser is an ‘agency’ within the meaning of the *Information Privacy Act 2009* (Qld) (“IPA”), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Supplier was the Purchaser;

not use Personal Information other than in connection with discharging its obligations under the Contract, unless required or authorised by law;

not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Purchaser, unless required or authorised by law;

ensure that its officers, employees and agents do not access, use, or disclose Personal Information other than in connection with discharging its obligations under the Contract;

fully co-operate with the Purchaser to enable the Purchaser to respond to applications for access to, or amendment of a document containing an individual’s Personal Information and to privacy complaints; and

comply with such other privacy and security measures as the Purchaser may reasonably require from time to time.

* + 1. On request by the Purchaser, the Supplier must obtain from its employees, officers, or agents supplying any Building Materials under Contract, an executed deed of privacy in a form acceptable to the Purchaser.
		2. The Supplier must immediately notify the Purchaser on becoming aware of any breach of this clause.
		3. The Supplier acknowledges that, in accordance with the Contract, the Purchaser and the QGP Compliance Branch:

will collect information for the purposes of administering the Contract that may contain Personal Information which will be used in accordance with the Contract and may be disclosed to the Purchaser, the QGP Compliance Branch and agents, consultants, or other Suppliers engaged by the Purchaser, but will not be disclosed to any other third party without the Supplier’s consent unless authorised or required by law or the Contract; and

may collect information containing Personal Information for the purposes of determining the Supplier’s compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the Supplier’s consent unless authorised or required by law or the Contract.

* + 1. Personal Information will be handled in accordance with the IPA.
		2. This clause will survive the termination or expiry of the Contract.

### ANTI-COMPETITIVE CONDUCT, CONFLICT OF INTEREST AND CRIMINAL ORGANISATION

* + 1. For the purposes of this clause:
			- 1. **Conflict of Interest** includes any actual, reasonably anticipated, or perceived conflict of interest, whether personal, financial, professional, or otherwise;
				2. **Personnel** means directors, officers and employees.
		2. The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated offers or tenders or any actual or potential contracts with any entity for goods similar to the Building Materials.
		3. In addition to any other remedies available to it under law or contract, the Purchaser may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in collusive or anti-competitive conduct.
		4. The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under the Contract, except as disclosed. If the Purchaser requests, the Supplier must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Purchaser.
		5. If a Conflict of Interest or risk of it arises, the Supplier must notify the Purchaser immediately. Upon receipt of such notice, or upon the Purchaser otherwise identifying a Conflict of Interest or risk to it, the Purchaser may, without limiting its rights under the Contract, direct the Supplier as to how to resolve the Conflict of Interest, and the Supplier must comply with any reasonable direction given.
		6. The Supplier warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 161P of the *Penalties and Sentences Act 1992* (Qld).

### QUEENSLAND PROCUREMENT POLICY

* + 1. The Supplier must:

in delivering the Building Materials, comply with the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard; and

for the term of the Contract, comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.

* + 1. The Supplier acknowledges that a failure to comply with government policies and legislation that apply to the Building Materials or the Supplier’s obligations under the Contract can result in the imposition of a penalty under the Ethical Supplier Mandate, in addition to any other remedies available to the Purchaser under the Contract.
		2. The Supplier:

consents to a relevant Government Department or Instrumentality providing information to the Purchaser and the QGP Compliance Branch; and

authorises the Purchaser and the QGP Compliance Branch to obtain information,

* + - * 1. about the Supplier’s compliance with government policy and legislation, including without limitation the Queensland Procurement Policy, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2022* (Qld).
		1. The Supplier acknowledges and agrees that the Purchaser may refer matters of non-compliance with the Ethical Supplier Mandate to the QGP Compliance Branch, which may publish information about sanctions imposed on the Supplier under the Ethical Supplier Mandate.
		2. Upon request by the Purchase or a party nominated by the Purchaser (which may include the Purchaser’s Personnel or third parties), the Supplier must provide all necessary information, for the purposes of investigation or an audit to assess the Supplier’s compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate. This information may be shared with relevant Government Departments or Instrumentalities and when necessary the QGP Compliance Branch and the Tripartite Procurement Advisory Panel for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate.
		3. Failure to comply in any respect with the requirements of this clause 21 will be considered a substantial breach of the Contract.

### DUMPED GOODS

* + 1. For the purposes of this clause:
			- 1. **dumped goods** means goods resulting from a practice where a supplier exports goods to another country at a price below the price charged in the country of manufacture or below the cost of manufacturing the goods.
		2. The Supplier warrants that:

it will not supply dumped goods or goods suspected of being dumped for the term of the Contract;

it will do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard;

it has put into place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and

should the Supplier become aware of any risk of breaching this warranty, it shall immediately notify the Principal of such risk and the remediation action it proposes to take.

* + 1. Notwithstanding clause 22.2 above:

the Supplier shall be responsible for payment of duties (if any) under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and any security under the *Customs Act 1901* (Cth) in respect of any duty that might become payable under the *Custom Tariff (Anti-Dumping) Act 1975* (Cth); and

the Supplier shall indemnify the Principal in respect of any payments that are payable or that may become payable under the *Customs Tariff (Anti-Dumping) Act* *1975* (Cth) or in respect of any security that is payable or may become payable under the *Customs Act 1901* (Cth) for duty that might become payable under the Customs Tariff (Anti-Dumping) legislation.

* + 1. Failure to comply in any respect with the requirements of this clause 22 will be considered a substantial breach of the Contract.

### MODERN SLAVERY

* + 1. For the purposes of this clause:
			- 1. **Modern Slavery** has the meaning given to it in the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;
				2. **Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.
		2. The Contractor warrants that:

it complies with and will continue to comply with all applicable Modern Slavery Laws;

it has thoroughly investigated its labour practices, and those of its subcontractors in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its subcontractors (to the extent reasonably possible);

it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and

it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

* + 1. Should the Contractor become aware of any:

Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or

Modern Slavery practices being carried out within its operations or supply chain, it must:

in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and

at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

* + 1. If the Contractor is a ‘reporting entity’ for the purposes of any state or federal Modern Slavery Laws, including the *Modern Slavery Act 2018* (Cth), it must provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal’s request.

### GOVERNING LAW

* + 1. The Contract is to be construed in accordance with the laws in force in the State of Queensland.
		2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract.

### RECORDS AND ACCESS TO RECORDS

* + 1. The Supplier must make and keep accurate and complete records of:

the Supplier’s tender, including without limitation the preparation and submission of that tender;

tenders received by it, whether accepted or not;

the execution and discharging of its obligations under the Contract; and

compliance with commitments made in the Supplier’s tender relating to or required by government policies including but not limited to the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate and the Supplier Code of Conduct.

* + 1. The records referred to in clause 24.1 must include records that are required to be created or provided, or that are otherwise referred to, under the Contract, as well as other records including but not limited to those that:

relate to the Supplier’s tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;

relate to design, including design calculations, option studies, opinions, reviews, and reports;

relate to the execution and completion of the supply under the Contract, including without limitation labour, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;

are required to demonstrate compliance with the matters referred to in clause 24.1 including without limitation payroll records, management records and time recordings; and

are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media.

* + 1. The records referred to in clause 24.1 must not be destroyed without the prior written approval of the Purchaser.
		2. Without limiting any other rights or obligations under this clause 24, the Purchaser and the QGP Compliance Branch may, at any time after giving written notice to the Supplier that an audit will be undertaken pursuant to this clause 24.4, undertake an audit in respect of the Supplier’s compliance with clause 24.
		3. In undertaking the audit, the Purchaser and the QGP Compliance Branch will have the right to inspect and copy any record referred to in clause 24.1. Upon receipt of written notice of the audit pursuant to this clause 24.4, the Supplier must promptly and at its own cost provide the Purchaser and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:

providing to the Purchaser and the QGP Compliance Branch any record requested for inspection or copying pursuant to clause 24.5;

making staff available to the Purchaser and the QGP Compliance Branch to access or explain systems, processes or any record referred to in clause 24.1; and

arranging and providing access to the Supplier’s workplaces, sites, premises, or facilities.

* + 1. Subject to the Supplier’s right to claim legal professional privilege in respect of any record, which is hereby maintained, the Purchaser and the QGP Compliance Branch will have the right to inspect and to copy at any time any record referred to in clause 24.1. In the case of any records referred to in clause 24.1 stored on a medium other than in writing, the Supplier must make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the Purchaser and the QGP Compliance Branch.
		2. Where a record referred to in clause 24.1 is created, maintained or stored by the Supplier in an electronic format, it must be provided to the Purchaser in its native, operable form or such other format as may be reasonably required by or acceptable to the Purchaser.
		3. Where a record referred to in clause 24.1 is stored on a medium licensed from a third party, where the Purchaser is a party to the communication, the Supplier must provide the Purchaser with a copy of such records in an external electronic storage device, readable on the Purchaser’s information technology system, or such other format as may be reasonably required by the Purchaser, each month until the expiration of the Warranty Period.
		4. The Supplier must comply in all respects with any request made pursuant to clause 24.5 to inspect or copy records referred to in clause 24.1, or any audit undertaken pursuant to clause 24.4, and will not be entitled to refuse audit, inspection or copying of any record referred to in clause 24.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
		5. Records accessed under clauses 24.4 or 24.5 may be used to assess the Supplier’s compliance with the Contract, the Queensland Procurement Policy, Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct and may be shared with relevant Government Departments or Instrumentalities for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.
		6. The Purchaser and the QGP Compliance Branch may in their absolute discretion, publish information about the Supplier’s compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Purchaser nor give rise to any other right or remedy of the Supplier at law or in equity against the Purchaser or the QGP Compliance Branch.

## ANNEXURE

|  |  |  |
| --- | --- | --- |
| Item |  |  |
|  | Name of Purchaser (clause 1): | The State of Queensland through \* / As per Order\*(\*Delete one) |
|  | Address of the Purchaser: |  \* / As per Order\*(\*Delete one) |
|  | Purchaser’s Representative (clause 1): |  \* / As per Order\*(\*Delete one) |
|  | Address of the Purchaser’s Representative: |  \* / As per Order\*(\*Delete one) |
|  | Address of the Delivery Location (clause 1): |  \* / As per Order\*(\*Delete one) |
|  | Delivery Date (clause 12): |  \* / As per Order\*(\*Delete one) |
|  | Warranty Period (from date of Acceptance of Building Materials) (clause 14): | If applicable **[Insert]**\* / In accordance with product warranty\*(\*Delete one) |
|  | Times for payment claims (clause10.1): |  \* /

|  |
| --- |
| \*Milestones**^** [Insert as applicable] |
| [Delivery of Building Materials where there are multiple delivery dates – monthly payment claims] |
| [Delivery of Building Materials where there is a single delivery date – upon completion of Order] |
| [Where Building Materials are Collected – upon completion of Order] |

[^Guide Note: Amend to suit at time of tendering](\*Delete one)(If nothing stated – Monthly) |
|  | Amount of Public Liability Insurance shall be not less than (clause 17.1) | $ (If nothing stated – $20 million) |