



**Bulloo
Shire**

Part 4

GENERAL CONDITIONS OF CONTRACT

Request for Tender (RFT):	Thargomindah Swimming Pool Shade Structure Supply and Installation
Closing Time:	4.00 pm Thursday 2nd May 2024
RFT Number:	T2023-2024-126

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1 Construction of Contract

A reference to a party to the Contract includes:

- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
- (b) in the case of a corporation, the corporation, its successors and assigns (transferees).

Where a party is composed of 2 or more persons, each item of agreement by the party binds:

- (a) all of those persons collectively; and
- (b) each of them as an individual.

A reference to:

- (a) the singular includes the plural, and vice versa;
- (b) a gender includes each other gender;
- (c) a person includes a corporation, a firm, and a voluntary association;
- (d) an Act includes an Act that amends, consolidates or replaces the Act;
- (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
- (f) money is a reference to Australian dollars and cents;
- (g) a time of day is a reference to Australian Eastern Standard Time;
- (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.

Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.

All information delivered as part of the goods and/or services supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.

If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

2 Definitions

In the Contract, except where the context otherwise requires:

Act means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

BSC means Bulloo Shire Council

Clause means a clause of the Contract.

Contract

- a) 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; and
- b) if the Specification is partly or completely verbal – includes the verbal component of the Specification.

Contract Commencement Date means the date specified as the contract commencement date in the letter of acceptance.

Contract Material means new Contract Material and existing Contract Material.

Contract Price means for the purpose of this contract all pricing is related to the schedule of rates provided by the Contractor and agreed upon by all parties in the Formal Instrument of Agreement.

Date for Practical Completion means that date on which the Contractor is to achieve Practical Completion taking into account any extensions of time granted to the Contractor.

Date of Practical Completion means the date certified by the Superintendent in a Certificate of Practical Completion to be the date upon which Practical Completion was reached.

Defective Goods and/or Services see clause 10.

Dispute Notice see clause 20.

Existing Contract Material means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

Force Majeure means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

General Conditions of Contract means these General Conditions of Contract.

Goods and/or Services means the goods, services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification including all variations to the goods, services, tasks, work and requisites provided for by the Contract or such of them as shall be described in the Purchase Order.

GST means the goods and services tax under the GST Act.

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

Intellectual Property Rights means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

Letter of Acceptance means a letter from the Principal to the Contractor advising the Contractor of the Principal's acceptance of the offer.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before commencement of the Contract or which may come into existence on or after the Contract commencement date.

New Contract Material means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

Principal means Bulloo Shire Council.

Purchase Order means the Purchase Order for the goods and/or services placed by the Principal with the Contractor under the terms and conditions of the Contract.

Schedule of Rates means any schedule included in the Contract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution

of that work and which may also include lump sums, provisional sums, other sums, quantities and prices.

Site means the land and other places specified in a Purchase Order which are to be made available to the Contractor by the Principal for the purposes of the supply and execution of goods and services under the Contract.

Specification

- a) means the Specification for the goods and/or services delivered by the Principal to the Contractor; and
- b) if the Specification is partly or completely verbal – includes the verbal component of the Specification; and
- c) if the Principal delivers a written Request for Tender to the Contractor – includes the written component of the Request for Tender that specifies or describes the goods and/or services.

Term means the period for which the Contract will be in effect as specified in Clause 4, including any period of extension under Clause 4.

Tender

- a) means the Tender submitted to the Principal by the Tenderer to provide the goods and/or services and, if applicable, as amended in writing by any post offer negotiations; and
- b) if the Tender is partly or completely verbal – includes the verbal component of the offer.

3 Joint and Several Obligations

If the Contractor comprises 2 or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

- the obligations and liabilities of the Contractor under this Contract bind those persons jointly and severally;
- those persons must notify the Principal of their leader, who must have authority to bind the Contractor and each of those persons; and
- the Contractor must not alter its legal status without the prior written consent of the Principal.

4 Term

The term of the contract shall begin on the contract commencement date and, unless terminated earlier in accordance with the terms and conditions of the Contract, continue until the goods and services have been supplied and executed in accordance with each Purchase Order placed by the Principal with the Contractor under the Contract.

5 Evidence of Contract

The Contract between the Principal and the Contractor is constituted by the following documents:

- a) Purchase Order;

- b) Formal Instrument of Agreement;
- c) Correspondence passing between the Principal and the Contractor clarifying any aspect of the Tender, the Specification or the Purchase Order;
- d) Specification;
- e) General Conditions of Contract;
- f) Tender.

Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (f) in clause 5.

6 Supply of Goods and/or Services by Purchase Order

Where a Purchase Order is placed with the Contractor, the Contractor must supply goods and/or services:

- a) in accordance with the terms and conditions of the Purchase Order; and
- b) that comply with the Specification.

7 Quality of Goods and/or Services

Unless the Specification states otherwise, all goods and/or services supplied must be in accordance with Australian Standards where such exist. Where Australian Standards do not exist the relevant Australian industry standards shall apply.

If no sample or standard is stated in the Specification, the goods and/or services must be of the highest standard and carried out promptly with all due skill, care and diligence.

The Contractor must:

- a) engage and retain personnel who are able to competently provide the goods and/or services; and
- b) ensure that all personnel engaged in the supply of the goods and/or services have all skills and qualifications necessary to supply the goods and/or services.

8 Supply of Goods and/or Services

The Contractor must supply the goods and/or services punctually. However, if a time for supply of the goods and/or services is stated in the Purchase Order, the Specification or the Contract, the goods and/or services must be supplied within the time stated in the Purchase Order, the Specification or the Contract, as the case may be.

Time shall be of the essence in all cases.

Upon it becoming evident to the Contractor that supply of the goods and/or services is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the goods and/or services by the due date or from any other obligation under the Contract, unless the Principal agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.

The Contractor shall not be entitled to any extension of time for supply of the goods and/or services except with the prior written consent of the Principal. The Principal may in its sole discretion:

- a) grant its consent; or
- b) refuse its consent.

Unless otherwise provided in the Contract, the Contractor must pay all packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of goods and/or services and the return of goods wrongly supplied and all packaging.

Delivery and receipt of goods and/or services shall not of itself constitute acceptance of the goods and/or services by the Principal, with acceptance being subject to the approval of the Principal's Representative.

Where it is a term of the Contract that goods and/or services must be installed or commissioned, the Principal shall not be deemed to have accepted the goods and/or services unless the goods and/or services are satisfactorily installed or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.

The Principal may conduct any examination or testing of the goods and/or services. If the testing shows that the goods and/or services do not comply with the Specification, the Purchase Order or the Contract or are otherwise defective, the cost of the testing shall be a debt due and payable by the Contractor to the Principal.

The risk of any damage, deterioration, theft or loss of the goods and/or services 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 any agent or employee of the Principal.

If the goods or any part of the goods is a hazardous substance, the Contractor must:

- a) prepare or provide a SDS for the substance; and
- b) give a copy of the SDS to the Principal when first supplying the substance to the Principal; and
- c) otherwise comply with the obligations of the supplier as a supplier of a hazardous substance in the *Work Health and Safety Act 2011*.
- d) In clause 8, "hazardous substance" and "SDS" have the meaning given in the *Work Health and Safety Regulation 2011*.

9 Insurance

The Contractor must have and maintain:

- a) insurance under the *Workers Compensation and Rehabilitation Act 2003* (Qld) to cover workers, eligible persons, self-employed contractors, directors, trustees and partners; and
- b) public liability insurance in an amount not less than \$20,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
- c) product liability insurance in an amount not less than \$20,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and

- d) professional indemnity insurance in an amount not less than \$20,000,000.00 in respect of any one occurrence and for an unlimited number of claims.

The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this clause 9 have been affected and maintained.

Each public liability insurance policy must either insure the Principal and the Contractor severally, for their respective entitlements and interests under the Contract, and for this purpose accept that the insured comprises at least the Principal and the Contractor as if a separate insurance policy were issued to each of them (but not so as thereby to increase the sum insured) or be endorsed to note the interest of the Principal under the Contract.

Each insurance policy must:

- (a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
- (b) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
- (c) contain no exclusions, endorsements or alterations not approved in writing by the Principal (that approval not to be unreasonably withheld); and
- (d) otherwise contain provisions acceptable to, or required by the Principal (but the Principal may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
- (e) remain current at all times during the supply of the goods and/or services.

If the Contractor is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Contractor and its servants and agents for liability under the Contract for the amount specified in clause 9. The Contractor must maintain the professional indemnity insurance on terms and conditions no less favourable to the Principal than those approved under this clause 9, for the duration of the supply of the goods and/or services and, after expiry or termination of the Contract upon request in writing.

If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.

The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this clause 9.

The Contractor must give the Principal upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this clause 9.

The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this clause 9 within 7 days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.

This clause 9 shall survive termination or expiration of the Contract.

10 Defective Goods and/or Services

Where, at any time during the supply of the goods and/or services or any part of the goods and/or services pursuant to the Purchase Order, or after the supply of the goods and/or services

pursuant to the Purchase Order, a Principal's Representative determines, acting reasonably, that the goods and/or services or a part of the goods and/or services do not comply with the Specification, the Purchase Order or the Contract ("Defective goods and/or services"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the goods and/or services or such part of the goods and/or services as do not comply.

The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Goods and/or Services until the Superintendent has certified that the resupplied goods and/or services comply with the Specification, the Purchase Order or the Contract, as the case may be.

If the Contractor fails to comply with a requirement of a notice given under clause 10, the Principal reserves the right to arrange for the supply of the goods and/or services from another supplier.

All costs and expenses incurred by the Principal in exercising the rights of the Principal under clause 10 in excess of the Contract Price shall be a debt due and payable by the Contractor to the Principal.

11 Obligations of Contractor

The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the goods and/or services.

The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the goods and/or services.

If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.

If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.

The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from; material that is not the subject of the Contract.

For the purposes of this clause 11, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

12 Variations of Goods and/or Services

The Principal may, by written notice given to the Contractor, require the Contractor to vary the goods and/or services in nature, scope or timing.

Without limiting the generality of clause 12, the Principal may direct the Contractor to:

- (a) increase, decrease or omit any part of the goods and/or services; or
- (b) change the character or content of any part of the goods and/or services; or
- (c) change the direction or dimensions of any part of the goods and/or services; or
- (d) perform additional work.

Where the Principal requires a variation to the goods and/or services, the parties will in the first instance refer to the additional rates provided by the Contractor must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the goods and/or services and failing agreement, either party may invoke the dispute resolution procedure in clause 20.

The Contractor must not commence work on the variation to the goods and/or services unless and until the variation is agreed in writing by the Principal and the Contractor.

13 Invoicing

The Contractor must submit an invoice/delivery docket to the Superintendent upon completion/delivery of the supply and delivery of the goods and/or services unless otherwise specified in the Specification. The Principal will not have any obligation to pay the Contractor for goods and/or services until the Superintendent has been given correctly rendered documentation.

A correctly rendered invoice must:

- (a) identify the goods and/or services the subject of the invoice; and
- (b) specify the Purchase Order number allocated to the Contract by the Principal; and
- (c) where services are charged on a time basis, be supported by records of time spent by individual persons on the services, verified by the Principal's Representative; and
- (d) specify details of the Purchase Order; and
- (e) specify details of the Contract Price requested by the Principal; and
- (f) provide sufficient detail to enable the Superintendent to assess progress against targets (if any) set out in the Purchase Order or the Specification; and
- (g) specify the Australian Business Number of the Contractor; and
- (h) specify the address for payment of the Contractor; and
- (i) specify the date of supply of the goods and/or services identified in the invoice; and
- (j) specify the Contractor's invoice number and invoice date; and
- (k) specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
- (l) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- (m) A copy of this invoice must be posted "Attention Accounts Payable" to the Principal at the following addresses:

Bulloo Shire Council
PO Box 46
THARGOMINDAH QLD 4492

Upon receipt of an invoice, the Superintendent may require the Contractor to provide additional information to assist the Superintendent to determine whether or not an amount is payable.

If a delivery docket is provided with delivery of goods and services, then it must contain all information as required for an invoice, but at the discretion of the Contractor it is not required to list pricing details.

14 Payment

Subject to the Superintendent's certification that:

- (a) the goods and/or services supplied by the Contractor comply with the relevant Purchase Order, the Specification and the Contract; and
- (b) the goods and/or services supplied by the Contractor are complete; and
- (c) the Contractor's invoice is in accordance with the Contract,

the Principal must pay the amount due to the Contractor within 15 business days of receipt of an invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Superintendent, within 15 business days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.

Payment of money to the Contractor does not constitute an admission by the Principal that goods and/or services have been supplied in accordance with the Contract.

Upon payment for the goods and/or services, property in that part of the goods and/or services comprising the goods shall pass to the Principal.

Payment shall include credit by way of set off.

Failure by the Principal to pay the amount payable by the due time will not be grounds to invalidate or void the Contract.

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.

15 Site

The Principal must use reasonable endeavours to provide the Contractor with access to the site as is necessary to enable the Contractor to supply and execute the goods and services.

The Contractor may only access the site so far as is necessary to enable the Contractor to supply and execute the goods and services.

The Contractor shall be deemed to have satisfied itself of and be responsible for the physical conditions of the site and in particular the suitability of the site for the supply and execution of the goods and services.

16 Temporary Suspension of Supply

The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the goods and/or services for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the goods and/or services.

The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the goods and/or services suspended by written notice given under clause 16.

Where the Contractor is required to suspend the supply of the goods and/or services pursuant to clause 16:

- (a) The Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and

- (b) any previously agreed date for completion of the supply of the goods and/or services will be postponed by a period equal to the duration of the suspension.

The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the goods and/or services. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in clause 20.

17 Goods and Services Tax

Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

The Contract Price includes the Principal's liability for GST on the supply of the goods and/or services. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the goods and/or services.

The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this clause 17 does not apply if the supply of the goods and/or services is not a taxable supply.

18 Duty

The Contractor must pay all duty imposed under the *Duties Act 2001* (QLD) on the Contract.

19 Termination

If the Contractor:

- (a) breaches any clause of the Contract; or
- (b) suspends payment of its debts or is unable to pay its debts; or
- (c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
- (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
- (e) has a receiver appointed for all or any part of the assets of the Contractor; or
- (f) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
- (g) ceases to carry on business,

the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.

If within 14 days of receiving a notice under clause 19 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.

In addition, or as an alternative to termination of the Contract in accordance with clause 19, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with clause 19:

- (a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
- (b) suspend or cease all payments otherwise due to the Contractor.

This clause 19 shall survive termination or expiration of the Contract.

Upon termination of the Contract pursuant to clause 19, all money which has been paid and all money to be paid for goods and/or services supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

20 Dispute Resolution

The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.

If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.

A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Principal's Representative.

Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.

If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be referred to arbitration.

Arbitration shall be effected by an arbitrator who shall be nominated by the Principal. The arbitration must be conducted in accordance with the provisions of the *Commercial Arbitration Act 1990* (QLD).

Nothing in this clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 20 or any matter arising under the Contract.

21 Clauses to Survive Expiration or Termination

The following clauses survive the expiration or termination of the Contract:

- (a) clause 22 – Intellectual Property Rights; and
- (b) clause 23 – Release and Indemnity; and
- (c) clause 24 – Confidentiality.

22 Intellectual Property Rights

The Contractor warrants that the supply of the goods and/or services by the Contractor to the Principal under the Contract will not infringe the intellectual property rights of any third party.

The Contractor must indemnify the Principal against any claim by a third party in relation to infringement of the intellectual property rights of the third party of or incidental to the supply of the goods and/or services by the Contractor to the Principal under the Contract.

In respect of the supply of the goods and/or services by the Contractor under the Contract, the Contractor must at all times indemnify and keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's intellectual property rights) by any person against the Principal where the loss or liability arose out of, or in connection with, or in respect of, the supply of the goods and/or services by the Contractor under the Contract.

The indemnities in the previous paragraph will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.

Unless otherwise specified in the Contract, title to and intellectual property rights in all new Contract Material provided to the Principal, including each and every stage of design and production of it, will upon its creation vest in the Principal.

The Contract does not affect intellectual property rights in existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:

- (a) to use, reproduce, communicate to the public and adapt for its own use; and
- (b) to perform any other act with respect to copyright; and
- (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,

the existing Contract Material but only as part of the Contract Material (and any further development of that material).

Where specified in the Specification, right and title to the intellectual property rights in the Contract Material so specified will vest in the Contractor and the Contractor grants to the Principal, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Specification.

Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this clause 222 that might otherwise constitute an infringement of the moral rights of the Contractor.

Without limiting clause 22, the Contractor consents, in relation to the Contract Material:

- (a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
- (b) to the specific acts or omissions set out in the Contract.

Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:

- (a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this clause 22; and

- (b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the moral rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

23 Release and Indemnity

The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of goods and/or services under the Contract.

The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from:

- (a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
- (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
- (c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.

In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of goods and/or services supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.

24 Confidentiality

The Contractor must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.

However, the Contractor may disclose any information:

- (a) which it is legally required or entitled to disclose; or
- (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

25 Work Health and Safety

The Contractor must comply with (and ensure that its employees, sub-contractors and suppliers comply with):

- (a) the provisions of the *Qld Work Health & Safety Act 2011* (WHS Act 2011), *Qld Work Health & Safety Regulations 2011* (WHS Regulation 2011), relevant Australian Standards and Codes of Practice;

- (b) the provisions of the Principal's Work Health and Safety Management System, when providing services to the Principal.

The Contractor must at all times exercise their duty of care and due diligence obligations for the health and safety of all persons at the job site and, for other persons who may be affected by the supply of any goods and/or services.

The Contractor must indemnify and keep indemnified the Principal against all liabilities which may be imposed under or, which may arise out of, enforcement of any provision of the WHS Act 2011, WHS Regulation 2011, applicable 'Code of Practice' or relevant/applicable Australian Standard/s.

If a notifiable incident occurs as a result of, or incidental to the supply and execution of the goods and/or services, the Contractor must give written notice of the occurrence of the notifiable incident to the Principal at the same time or, immediately after notification to the Qld WHS regulator.

All accidents and safety incidents/events must be recorded and reported to the Principal within 24 hours of the occurrence. This will enable the Principal to review and possibly instigate/assist incident investigations which will allow possible follow up and corrective actions to be implemented. Such records may be requested and inspected by the Principal at any reasonable time.

The Contractor must provide information, instruction/training and supervision to its employees, to enable them to perform their work in a manner that is safe and without risk to their health and safety. Accordingly, all employees of the Contractor, either present at the job site or engaged in work at the job site, or regularly visiting the job site, must hold a General Construction Induction (White/Blue Card) and must receive a Site Specific Induction before coming onto the job site.

For construction work activities/contracts, the Contractor must ensure its employees have successfully completed General Construction Induction Training and hold the general construction induction card (White/Blue) as per Part 6.5 of the Work Health and Safety Regulation 2011.

Where applicable under legislation or the Principal policy the Contractor must supply, and all workers must wear, appropriate personal protective equipment and appropriate attire including but not limited to protective clothing, protective eyewear, ear muffs, sun screen, safety footwear, hats and reflective clothing. Note: The Principal is not responsible for the provisions of any such equipment to the Contractor.

The Contractor must ensure they abide by section 42 of the Work Health and Safety Regulations being the provision of first aid equipment; facilities and first aid trained personnel appropriate for the execution of the services.

The Contractor must ensure they abide by section 43 of the Work Health and Safety Regulations being the provision of an emergency plan and appoint, train and rehearse workers appropriate for the execution of the plan.

For construction activities involving an accumulative sun exposure period of 15 minutes or more, Contractors must ensure its employees follow The Principal's Sun Safety Policy:

Long pants (trousers), high visibility long sleeved shirts, broad brim hat, steel capped safety boots.

26 Assignment and Novation

The Contractor must not assign, novate or subcontract any of the rights or obligations of the Contractor under the Contract (either for the supply of the goods and/or services or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:

- (a) may be conditional; and
- (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.

The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.

27 Negation of Employment Agency etc

The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.

The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.

Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or Principal and agent, between any of the parties to the Contract.

28 Notices

Notices under the Contract may be delivered by pre-paid postage or certified mail, by electronic mail or by hand. Notices are deemed given 5 days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by electronic mail, upon completion of sending. Where a notice is given by electronic mail the original document must be posted on the same day as the electronic mail is sent. The addresses for service of notices is:

Bulloo Shire Council
PO Box 46
THARGOMINDAH QLD 4492

A party may change its address for service of notices by giving written notice to every other party to the Contract.

29 Force Majeure

A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:

- (a) is caused by Force Majeure; or
- (b) continues for less than 3 days.

Without limitation, where the event of Force Majeure continues for a period of more than 14 days, the Principal may terminate the Contract by giving written notice to the Contractor.

30 Principal's Representative

The Principal may, in the Purchase Order, or by giving written notice to the Contractor, appoint a representative (the "Principal's Representative") who shall be responsible for delivery of the Contract on behalf of the Principal and will liaise with the Contractor for site matters pertaining to the respective Principal's program. The Principal may change the identity of the Principal's Representative from time to time. The appointment of a Principal's Representative does not prevent the Principal from exercising any of its rights under the Contract.

31 Security and Access

The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or the Principal's Representative, including those relating to security and work health and safety which are in effect at the premises or facility.

32 Industrial Disputes

The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

33 Right to Information and Disclosure

The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).

The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.

Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.

If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including personal information, this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

34 Information Privacy

Where the Contractor or its subcontractors have access to or are responsible for holding personal information, the Contractor must:

- (a) comply with parts 1 and 3 of chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
- (b) ensure that the personal information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
- (c) not use the personal information other than for the purpose of the Contract, unless required or authorised by law; and

- (d) not disclose the personal information without the written agreement of the Principal, unless required or authorised by law; and
- (e) not transfer the personal information outside Australia without the consent of the Principal; and
- (f) ensure that its personnel do not access, use or disclose the personal information other than in the performance of their duties; and
- (g) immediately notify the Principal if it becomes aware that a disclosure of personal information is, or may be, required or authorised by law; and
- (h) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's personal information and to privacy complaints; and
- (i) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.

Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for personal information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 34 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

35 Miscellaneous

The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the goods and/or services.

The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the courts of that state and all courts competent to hear appeals there from.

No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.

None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.

The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.

The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.

The Contractor should not approach Councillors, officers or agents of the Principal (other than the Principal's Representative) to discuss the Contract. Any approach or known evidence of canvassing, breach of confidentiality or collusion by a Contractor will be reported to the Chief Executive Officer. If a Contractor is found to have participated in any of these actions the Contractor may be considered in breach of Contract.

Section 237 of the *Local Government Regulations 2012* imposes upon the Principal the obligation to publish details of contracts worth \$100,000 or more. For the purpose of this Contract, all Purchase Orders provided to the Contractor over \$100,000 will be advertised on the Principal's

website and placed on a notice board in the customer service area of the Principal. The advertisement will detail name of Contractor, nature of contract and value of Purchase Order.

If the Principal comprises 2 or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons), the obligations and liabilities of the Principal are the several obligations and liabilities of each person comprising the Principal.