



## REQUEST FOR TENDER

|                                 |  |
|---------------------------------|--|
| <b>Request for Tender (RFT)</b> | <b>Purchase of New Water Truck</b>   |
| <b>Deadline:</b>                | <b>2:00pm Thursday 18<sup>th</sup> March 2021</b>  |
| <b>Address for Delivery:</b>    | <p><b>All Tenders must be lodged</b></p> <p><b>By mail in a sealed envelope marked "Tender - T02-2021 PURCHASE OF NEW WATER TRUCK and addressed to the CEO, Shire of York, PO Box 22, York WA 6302; or</b></p> <p><b>Hand delivered to the Shire's Administration Offices at 1 Joaquina Street, York WA; or</b></p> <p><b>Uploaded to WALGA E-Quotes.</b></p> <p><b>Tenders lodged by any other means will not be accepted</b></p> |
| <b>RFT Number:</b>              | <b>T02-2021</b>  |

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# 1 PRINCIPAL'S REQUEST

## 1.1 CONTRACT REQUIREMENTS IN BRIEF

Purchase a new six wheel water truck with a capacity of 14000 litres

A full statement of the goods required under the proposed contract appears in the Specification.

## 1.2 TENDER DOCUMENTS

This Request for Tender is comprised of the following parts:

- (a) Part 1 – Principal's Request (read and keep this part);
- (b) Part 2 – Specification and/or plans/drawings (read and keep this part);
- (c) Part 3 – Tenderer's Offer (complete and return this part);
- (d) Part 4 – Appendix A – Special Conditions of Contract (read and keep this part); and
- (e) Part 5 – Appendix B – General Conditions of Contract (read and keep this part).

## 1.3 DEFINITIONS

Below is a summary of some of the important defined terms used in this Request:

|  |  |
|--|--|
| <b>Attachments:</b>                    | The documents you attach as part of your Tender;   |
| <b>Contractor:</b>                     | Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations; |
| <b>Deadline:</b>                       | The deadline for lodgement of your Tender;   |
| <b>General Conditions of Contract:</b> | Means the General Conditions of Contract nominated in Part 1;  |
| <b>Offer:</b>                          | Your offer to be selected to supply the Requirements;  |
| <b>Principal:</b>                      | Shire of York  |
| <b>Request:</b>                        | This document;   |
| <b>Requirements:</b>                   | The goods and/or services requested by the Principal;  |
| <b>Selection Criteria:</b>             | The criteria used by the Principal in evaluating your Tender;  |
| <b>Special Conditions:</b>             | The additional contractual terms;  |
| <b>Specification:</b>                  | The statement of Requirements that the Principal requests you to provide if selected;  |
| <b>Tender:</b>                         | Completed Offer form, response to the Selection Criteria and Attachments;  |
| <b>Tenderer:</b>                       | Someone who has or intends to submit an Offer to the Principal.  |

## 1.4 HOW TO PREPARE YOUR TENDER

- (a) Carefully read all parts of this document.
- (b) Ensure you understand the Requirements.
- (c) Complete and return the Offer (Part 3) in all respects and include all Attachments.
- (d) Make sure you have signed the Offer Form and responded to all of the Selection Criteria.
- (e) Lodge your Tender before the Deadline.

## 1.5 CONTACT PERSONS

Tenderers should not rely on any information provided by any person(s) other than those listed below:

| Contractual Enquiries |                                      | Specification Enquiries |                                      |
|-----------------------|--------------------------------------|-------------------------|--------------------------------------|
| Name:                 | <b>Darren Wallace</b>                | Name:                   | <b>Lindsay Slater</b>                |
| Telephone:            | <b>96410513</b>                      | Telephone:              | <b>0457 231 828</b>                  |
| Email:                | <b>darren.wallace@york.wa.gov.au</b> | Email:                  | <b>lindsay.slater@york.wa.gov.au</b> |

## 1.6 EVALUATION PROCESS

This is a Request for Tender (RFT).

Your Tender will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request:

- Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (eg completed Offer form and Attachments) may be excluded from evaluation.
- Tenders are assessed against the Selection Criteria. Contract costs are evaluated, eg tendered prices and other relevant whole of life costs are considered.
- The most suitable Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection. Referees may also be contacted prior to the selection of the successful Tenderer.

A contract may then be awarded to the Tenderer whose Tender is considered the most advantageous Tender to the Principal.

## 1.7 SELECTION CRITERIA

The Contract may be awarded to a sole Tenderer who best demonstrates the ability to provide quality products and/or services at a competitive price. The tendered prices will be assessed together with qualitative and compliance criteria to determine the most advantageous outcome to the Principal.

The Principal has adopted a best value for money approach to this Request.

This means that, although price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.

A scoring system will be used as part of the assessment of the qualitative criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the qualitative criteria and in the overall assessment of value for money.

### 1.7.1 COMPLIANCE CRITERIA

These criteria are detailed within Part 3 of this document and will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of “No” against any criterion may eliminate the Tender from consideration.

### 1.7.2 QUALITATIVE CRITERIA

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within Part 3 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

**NOTE: It is essential that Tenderers address each qualitative criterion.** Information that you provide addressing each qualitative criterion will be point scored by the Evaluation Panel.

Failure to provide the specified information may result in elimination from the tender evaluation process or a low score.

### 1.7.3 PRICE CONSIDERATIONS

#### WEIGHTED COST CRITERIA

The weighted price method is used where price is considered to be crucial to the outcome of the contract. The price is then assessed with quality.

| Criteria                       | Weighting |
|--------------------------------|-----------|
| Tendered price                 | 70%       |
| Relevant Experience            | 15%       |
| After Sales Service and Backup | 15%       |

## 1.8 PRICE BASIS

#### FIXED PRICE

All prices for goods offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated prices tendered must include delivery, unloading and all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

## 1.9 THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION

The following policies may affect this selection:

Policy F1.2 PROCUREMENT, section 14.2 Local Price Preference. The policy document can be accessed via the following link;

<https://www.york.wa.gov.au/Profiles/york/Assets/ClientData/Document-Centre/Council-Policy-Manual/Policy Manual - Final 24 Oct 16 - adopted 25 November 2019A.pdf>

## 1.10 CONDITIONS OF TENDERING

### 1.10.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline. The Deadline for this Request is Thursday 18 March, 2021 at 2:00pm AWST.

All Tenders must be lodged :

- By mail in a sealed envelope marked "Tender - T02-2021 PURCHASE OF NEW WATER TRUCK and addressed to the CEO, Shire of York, PO Box 22, York WA 6302; or
- Hand delivered to the Shire's Administration Offices at 1 Joaquina Street, York WA; or
- Uploaded to WALGA E-Quotes

Tenders lodged by any other means will not be accepted

Electronic mail Tenders and Tenders submitted by facsimile will not be accepted.

All copies must be bound, and the original must be unbound and clipped (not stapled). All pages must be numbered consecutively and the Tender must include an index.

### 1.10.2 REJECTION OF TENDERS

A Tender will be rejected without consideration of its merits in the event that:

- (a) it is not submitted before the Deadline; or
- (b) it is not submitted at the place specified in the Request; or

- (c) it may be rejected if it fails to comply with any other requirements of the Request.

### **1.10.3 LATE TENDERS**

Tenders received:

- (a) after the Deadline; or  
(b) in a place other than that stipulated in this Request;

will not be accepted for evaluation.

### **1.10.4 ACCEPTANCE OF TENDERS**

Unless otherwise stated in this Request, Tenders may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted.

### **1.10.5 DISCLOSURE OF CONTRACT INFORMATION**

Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992* or under a Court order.

All Tenderers will be given particulars of the successful Tenderer(s) or advising that no Tender was accepted.

### **1.10.6 ALTERNATIVE TENDERS**

**All Alternative Tenders MUST be accompanied by a conforming Tender.**

Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases arising be clearly marked "ALTERNATIVE TENDER".

The Principal may in its absolute discretion reject any Alternative Tender as invalid.

Any printed "General Conditions of Contract" shown on the reverse of a Tenderer's letter or quotation form will not be binding on the Principal in the event of a Contract being awarded unless the Tender is marked as an Alternative Tender.

### **1.10.7 TENDER VALIDITY PERIOD**

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the Deadline or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

### **1.10.8 GENERAL CONDITIONS OF CONTRACT**

Tenders will be deemed to have been made on the basis of and to incorporate the General Conditions of Contract for the Supply of Goods and/or Provision of Services (**refer to Appendix B**).

### **1.10.9 PRECEDENCE OF DOCUMENTS**

In the event of there being any conflict or inconsistency between the terms and conditions in this Request and those in the General Conditions of Contract, the terms and conditions appearing in this Request will have precedence.

### **1.10.10 TENDERERS TO INFORM THEMSELVES**

Tenderers will be deemed to have:

- (a) examined the Request and any other information available in writing to Tenderers for the purpose of tendering;  
(b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;  
(c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;

- (d) acknowledged that the Principal may enter into negotiations with a chosen Tenderer and that negotiations are to be carried out in good faith; and
- (e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

### **1.10.11 ALTERATIONS**

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

The Principal will issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.

### **1.10.12 RISK ASSESSMENT**

The Principal may have access to and give consideration to:

- (a) any risk assessment undertaken by Dun and Bradstreet; or any other credit rating agency; and
- (b) any information produced by the Bank, financial institution, or accountant of a Tenderer;

so as to assess that Tender and may consider such materials as tools in the Tender assessment process.

### **1.10.13 OWNERSHIP OF TENDERS**

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

### **1.10.14 CANVASSING OF OFFICIALS**

If a Tenderer, whether personally or by an agent, canvasses any of the Principal's Commissioners or Councillors (as the case may be) or Officers with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tenderer from consideration.

### **1.10.15 IDENTITY OF THE TENDERER**

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 3 and whose execution appears on the Offer Form in Part 3 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

### **1.10.16 TENDER OPENING**

Tenders will be opened in the Principal's offices, following the advertised Deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.

The names of the persons who submitted a Tender by the due Deadline will be read out at the tender opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender opening will be held on Tuesday 11 February, 2020 at 2:00pm AWST.

### **1.10.17 IN-HOUSE TENDERS**

The Principal does not intend to submit an in-house Tender.

## 2 SPECIFICATION

### 2.1 INTRODUCTION

This tender is for the purchase of one new six wheel water truck with a capacity of 14000 litres as per attached specifications.

### 2.2 BACKGROUND INFORMATION

The Shire presently hire a water truck during the main road construction period.

### 2.3 SCOPE OF WORK

The tender is for the supply, delivery, registration and all applicable levies, duties, taxes and licences of one six wheel water truck to the Shire of York depot 13 Maxwell Street York

The plant must be made available for inspection by Shire staff prior to delivery.

A full induction by the supplier is to be carried out on, or within one week of delivery to the Shire of York.

### 2.4 SPECIFIC REQUIREMENTS OF THE CONTRACT

Specifications For Water Truck

#### TRUCK

- New 2021 plated 6x4 Truck
- 6 Speed auto transmission or equivalent
- 300hp (224kw) Common rail diesel engine (approximately)
- Factory fitted reversing camera
- 26000 kg GVM
- PTO switch through controller
- Canvas seat covers
- Rubber floor mats
- Spare wheel and tyre
- Stainless steel toolbox mounted to chassis 500x400x600mm Long
- Bituminous chassis coating for rust protection, from behind cab to end of chassis.

#### TANK AND FITTINGS

- 14000 Litre steel water cart tank (Baffled)
- Tank blasted to class 2.5 and painted with 2 pack epoxy tank liner internally, high gloss automotive finish exterior
- Fitted with lockable inspection hatch on top of tank.
- Splash guard around front of tank preventing water run off over front of tank
- **PUMPING EQUIPMENT AND HYDRAULICS**
- Southern Cross water pump size 100x65x250 hydraulically driven by Permco 48cc hydraulic motor close coupled, low maintenance with no coupling required or equivalent
- Powerauto Hot shift PTO and pump for hydraulic circuit or equivalent
- Pressure relief valve on hydraulic circuit, set on commissioning
- Behind cab hydraulic tank with 200 litres of 68 grade hydraulic oil with high flow spin on return filter



- 3x3” Spray head valves air operated from in cab control box left, right, centre sprays
- 4” dribble bar gravity fed with removable ends for cleaning, to have left and right or full bar options air operated from in cab control box
- Quick exhaust valves fitted to all valves for quicker action
- Heavy duty aluminium manual rewind hose reel with 20 meters of 25mm rubber hose and adjustable fire firefighting nozzle
- 1x 50mm discharge outlet with a manual valve and a male camlock fitting and cap for water transfer duties
- 50mm rear fill point at chassis level with ball valve, camlock fitting and cap
- Pressure relief valve on water circuit to prevent cavitation of water pump when valves are closed

**ELECTRICAL WORKS**

- 4x Hella LED taillights fitted, 2 to rear bumper and 2 on top of tank
- 2x LED work lights
- 2x LED revolving beacons, 1 on ROPS or cab of truck if ROPS not fitted, 1 on rear top of tank
- Reversing alarm
- Number plate light
- Pad lockable battery and starter isolators
- emergency stops, 1 inside cab 1 outside
- LED side clearance lights
- External jump start receptacle with rubber boot to fitted
- Rubber mat to cover batteries under cover
- UHF 2-way radio 80 channel GME TX3500 compact or equivalent

**SAFETY**

- Safety labels around the vehicle and on the tank module for identification of safety and electrical components
- Safety railing with stairway, new quick fold system, lays down in one motion saving time and eliminates lost railing during transport blasted and painted safety yellow
- Non slip surface to top of tank
- 2x 9kg dry powder type fire extinguishers fitted
- Operator and spare parts manuals to be supplied at delivery
- Wheel nut tension indicators to be fitted
- Certified ROPS fitted to suit 6x4 in accordance to ISO 3471: 2008 and ISO 3449: 20 (Option)

**LICENSING**

- The truck is to be licensed to The Shire of York until 30/06 and comply with all relevant WA traffic regulations
- Estimated delivery time to be advised

## **2.5 IMPLEMENTATION TIMETABLE**

Provide details of the proposed schedule, including commencement date, milestones, completion of deliverables, and a completion date.

### 3 TENDERER'S OFFER

#### 3.1 OFFER FORM

The Chief Executive Officer  
Shire of York  
1 Joaquina St York WA 6302

I/We \_\_\_\_\_  
(BLOCK LETTERS)

of \_\_\_\_\_  
(ADDRESS)

ABN/GST Status \_\_\_\_\_ ACN (if any) \_\_\_\_\_

Telephone No: \_\_\_\_\_ Facsimile No: \_\_\_\_\_

E-mail (if any): \_\_\_\_\_

**In response to RFT T02-2021 Purchase of a New Water Truck:**

I/We agree that I am/We are bound by, and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

The tendered price is valid up to ninety (90) calendar days from the date of the tender closing or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered consideration is as provided under the schedule of rates of prices in the prescribed format and submitted with this Tender.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Signature of authorised signatory of Tenderer: \_\_\_\_\_

Name of authorised signatory (BLOCK LETTERS): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name of witness: (BLOCK LETTERS): \_\_\_\_\_

Address: \_\_\_\_\_

## 3.2 TENDERER'S RESPONSE

The following checklist has been provided to assist you with your submission. Where it is necessary to provide additional information please ensure that all documents are clearly marked with the relevant attachment title to assist the evaluation panel with their assessment.

(NOTE: All pages within Part 3 are to be completed and returned to the Principal as they form part of your Tender submission).

### 3.2.1 ORGANISATIONAL PROFILE

|   |                                 |  |
|---|---------------------------------|--|
| Attach a copy of your organisation structure and provide background information on your company and label it <b>“Organisation Structure”</b> .          | <b>“Organisation Structure”</b> | Tick if attached<br><input type="checkbox"/> |
| If companies are involved, attach their current ASC company extracts search including latest annual return and label it <b>“ASC Company Extracts”</b> . | <b>“ASC Company Extracts”</b>   | Tick if attached<br><input type="checkbox"/> |

### 3.2.2 REFEREES

|   |                   |  |
|---|-------------------|--|
| Attach details of your referees, and label it <b>“Referees”</b> . You should give examples of work provided for your referees where possible. | <b>“Referees”</b> | Tick if attached<br><input type="checkbox"/> |
|---|-------------------|--|

### 3.2.3 AGENTS

|  |                 |  |
|--|-----------------|--|
| Are you acting as an agent for another party?  | Yes / No        |  |
| If Yes, attach details (including name and address) of your principal and label it <b>“Agents”</b> . | <b>“Agents”</b> | Tick if attached<br><input type="checkbox"/> |

### 3.2.4 TRUSTS

|  |                 |  |
|--|-----------------|--|
| Are you acting as a trustee of a trust?  | Yes / No        |  |
| If Yes, in an attachment labelled <b>“Trusts”</b> :<br>(a) give the name of the trust and include a copy of the trust deed (and any related documents);and<br>(b) if there is no trust deed, provide the names and addresses of beneficiaries. | <b>“Trusts”</b> | Tick if attached<br><input type="checkbox"/> |

### 3.2.5 SUBCONTRACTORS

|  |                         |  |
|--|-------------------------|--|
| Do you intend to subcontract any of the Requirements?  | Yes / No                |  |
| If Yes, in an attachment labelled <b>“Subcontractors”</b> provide details of the subcontractor(s) including:<br>(a) the name, address and the number of people employed; and<br>(b) the Requirements that will be subcontracted. | <b>“Subcontractors”</b> | Tick if attached<br><input type="checkbox"/> |

### 3.2.6 CONFLICTS OF INTEREST

|   |          |
|---|----------|
| Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract? | Yes / No |
|---|----------|

**PART 4****READ AND KEEP THIS PART**

|  |                                |  |
|--|--------------------------------|--|
| If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it “ <b>Conflicts of Interest</b> ”. | <b>“Conflicts of Interest”</b> | Tick if attached<br><input type="checkbox"/> |
|--|--------------------------------|--|

**3.2.7 FINANCIAL POSITION**

|  |                             |  |
|--|-----------------------------|--|
| Are you presently able to pay all your debts in full as and when they fall due?  | Yes / No                    |  |
| Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?   | Yes / No                    |  |
| If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?  | Yes / No                    |  |
| In order to demonstrate your financial ability to undertake this contract, in an attachment labelled “ <b>Financial Position</b> ” include a profit and loss statement and the latest financial return for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant. | <b>“Financial Position”</b> | Tick if attached<br><input type="checkbox"/> |

**3.2.8 INSURANCE COVERAGE**

| The insurance requirements for this Request are stipulated in the Special Conditions. Tenderers are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled “ <b>Insurance Coverage</b> ”. A copy of the Certificate of Currency is to be provided to the Principal 14 days of acceptance. |                         |                      |                   | <b>“Insurance Coverage”</b> | Tick if attached<br><input type="checkbox"/> |
|--|-------------------------|----------------------|-------------------|-----------------------------|--|
| <i>Type</i>  | <i>Insurer – Broker</i> | <i>Policy Number</i> | <i>Value (\$)</i> | <i>Expiry Date</i>          |  |
| Public Liability   |                         |                      |                   |                             |  |
| Workers Compensation   |                         |                      |                   |                             |  |
| Product Liability  |                         |                      |                   |                             |  |

### 3.3 SELECTION CRITERIA.

#### 3.3.1 COMPLIANCE CRITERIA

Please select with a yes or no whether you have complied with the following compliance criteria:

| Description of Compliance Criteria                              |          |
|---|----------|
| (a) Compliance with the Specification contained in the Request. | Yes / No |
| (b) Compliance with the Conditions of Tendering this Request.   | Yes / No |
| (f) Compliance with and completion of the Price Schedule.       | Yes / No |

#### 3.3.2 QUALITATIVE CRITERIA

Before responding to the following qualitative criteria, Tenderers must note the following:

- All information relevant to your answers to each criterion are to be contained within your Tender;
- Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience;
- Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria; and
- Tenderers are to address each issue outlined within a qualitative criterion.

| A) <b>Relevant Experience</b>   | Weighting<br><15%>           |   |
|---|------------------------------|---|
| Describe your experience in completing /supplying similar Requirements. Tenderers must, as a minimum, address the following information in an attachment and label it “ <b>Relevant Experience</b> ”: |                              |   |
| (a) Provide details of similar work;  | <b>“Relevant Experience”</b> | <b>Tick if attached</b><br><input type="checkbox"/> |
| (b) Provide references;   |                              |   |
| (c) Provide scope of the Tenderer’s involvement including details of outcomes;  |                              |   |
| (d) Provide details of issues that arose during the project and how these were managed;   |                              |   |
| (e) Demonstrate sound judgement and discretion; and   |                              |   |
| (f) Demonstrate competency and proven track record of achieving outcomes.   |                              |   |

| B) <b>After Sales Service and Backup</b>  | Weighting<br><__%>     |   |
|---|------------------------|---|
| Tenderers should provide as a minimum information to allow assessment of after sales service and backup, such as: |                        |   |
| (a) Full warranty details;  | <b>“Key Personnel”</b> | <b>Tick if attached</b><br><input type="checkbox"/> |
| (b) Parts availability;   |                        |   |
| (c) Details of workshop and servicing options; and  |                        |   |
| (d) Any additional information.   |                        |   |
| Supply details in an attachment and label it “ <b>After Sales Service and Backup</b> ”.                           |                        |   |

### 3.4 PRICE INFORMATION

**PART 4****READ AND KEEP THIS PART**

Tenderers **must** complete the following “Price Schedule”. Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.

**3.4.1 PRICE BASIS**

|   |  |                                    |   |
|---|--|------------------------------------|---|
| Are you prepared to offer a fixed price?  | Yes / No   |                                    |   |
| If No, please indicate how your proposed price variation mechanism differs from the one outlined above. Supply details and label it “ <b>Price Variation Mechanism</b> ”. | <table border="1"> <tr> <td><b>“Price Variation Mechanism”</b></td> <td><b>Tick if attached</b><br/><input type="checkbox"/></td> </tr> </table> | <b>“Price Variation Mechanism”</b> | <b>Tick if attached</b><br><input type="checkbox"/> |
| <b>“Price Variation Mechanism”</b>  | <b>Tick if attached</b><br><input type="checkbox"/>  |                                    |   |

**3.4.2 PRICE SCHEDULE**

| Item Description   | Manufacturers Name/Item Code/Model No | Claiming Local Price Preference (Yes/No) | Price Tendered (ex GST) | GST Component | Price Tendered (inc GST) |
|--|---------------------------------------|--|-------------------------|---------------|--------------------------|
| Supply and Delivery of one (1) Water Truck Complete to specification |                                       |  |                         |               |                          |
|  |                                       |  |                         |               |                          |

## 4 APPENDIX A – SPECIAL CONDITIONS OF CONTRACT

### 4.1 PERIOD OF CONTRACT AND TERMINATION

The Contract is to be completed on supply of the Requirements and the expiration of any warranty period..

### 4.2 INSURANCES

Without limiting its obligations and responsibilities, the contractor shall take out insurance for the entire contract period under the following headings;

(a) Public Liability:

A Public Liability policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Public Liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of Death, Property Damage and Bodily Injury.

(b) Workers Compensation:

The Contractor shall effect and keep in effect during the currency of the Contract such Insurance as may be necessary to adequately protect the Contractor and the Principal in respect of liability for payment of compensation to any Employee of the Contractor or of a Subcontractor of the Contractor under the Workers' Compensation and Injury Act 1981 or at Common Law.

(c) Product Liability:

Product liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of any one occurrence and for an unlimited number of claims.

The contractor is to provide the principle with certificates of currency and/or a copy of the policy wording confirming as laid down within the tender document that the above insurance policies are in place for the entire contract period.

The contractor at the discretion of the principle may be required to detail the principle as a joint named insured under some or all of the insurances detailed under clause 4.2 and/or detail the principles interest by way of notation on certificates of currency.



# **GENERAL CONDITIONS OF CONTRACT**

**FOR THE SUPPLY OF GOODS AND THE  
PROVISION OF GENERAL SERVICES**



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## 1. CONSTRUCTION OF CONTRACT

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

## 2. DEFINITIONS

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

**'Clause'** means a clause of these General Conditions.

**'Contract'** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**'Contract Price'** means:

- (a) the monetary consideration stated in the Contract for the sale of the Goods to the Principal whether expressed as a lump sum or price per unit or by weight or volume or otherwise;
- (b) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (c) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (d) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a), (b), (c) and (d) above,

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

**'Contractor'** means the party named in the Contract as the seller of the Goods and the supplier of the Services the subject of the Contract.

**'Date for Delivery'** means:

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

**'Goods and Services'** means the goods the subject of the Contract or such of them as shall be described in the Order and the whole of the services, tasks, work and requisites to be supplied rendered provided or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

**'Local Government'** means any local government established under the *"Local Government Act 1995"* or the Principal.

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

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

**'Principal'** means the Shire of York.

**'Specification'** means any Special Conditions, Technical Specification, Drawings and Schedules forming part of the Contract; and such Specification shall be read with these General Conditions as an integral part of the Contract, but in the event of any inconsistency between the Specification and these General Conditions the former shall (unless the Contract otherwise provides) prevail.

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

**3. EVIDENCE OF CONTRACT**

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

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

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

**4. NOTICES**

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

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

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

**5. CONTRACTOR TO HAVE INFORMED ITSELF**

5.1 The Contractor shall be deemed to have:

- (a) Examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Tendering, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) Examined the site and its surroundings (if applicable); and
- (c) Satisfied itself as to the correctness and sufficiency of its tender and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract; and
- (d) Obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its tender and which was obtainable by the making of reasonable enquiries.

5.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof.

**6. COMPLYING WITH STATUTORY REQUIREMENTS**

6.1 The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws, orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Services or the performance of the Contract.

6.2 Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the "*Occupational Health, Safety and Welfare Act 1984*" and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

- 6.3 If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Principal specifying the departure from such provisions which he considers necessary to comply with such requirements.
- 6.4 If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

#### **7. ASSIGNMENT AND SUBCONTRACTING**

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

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

#### **8. INDEMNITY**

**THE CONTRACTOR SHALL INDEMNIFY AND KEEP INDEMNIFIED THE PRINCIPAL AGAINST ALL LOSS OF OR DAMAGE TO THE PROPERTY OF THE PRINCIPAL AND FROM AND AGAINST ANY CLAIM, DEMAND, ACTION, SUIT OR PROCEEDING THAT MAY BE MADE OR BROUGHT BY ANY PERSON AGAINST THE PRINCIPAL OR EMPLOYEES, PROFESSIONAL CONSULTANTS OR AGENTS OF THE PRINCIPAL OR ANY OF THEM IN RESPECT OF PERSONAL INJURY TO OR THE DEATH OF ANY PERSON WHOMSOEVER OR LOSS OF OR DAMAGE TO ANY PROPERTY WHATSOEVER ARISING OUT OF OR AS A CONSEQUENCE OF THE SALE OR DELIVERY OF THE GOODS OR THE SUPPLY OR PROVISION OF THE SERVICES BY THE CONTRACTOR OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS AND ALSO FROM ANY COSTS AND EXPENSES THAT MAY BE INCURRED IN CONNECTION WITH ANY SUCH CLAIM, DEMAND, ACTION, SUIT OR PROCEEDING.**

**NOTWITHSTANDING THE PRECEDING PARAGRAPH, THE CONTRACTOR SHALL NOT BE RENDERED LIABLE FOR PERSONAL INJURY TO OR THE DEATH OF ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY RESULTING FROM ANY BREACH BY THE PRINCIPAL OF ANY PROVISION OF THE CONTRACT OR ANY NEGLIGENT ACT OR OMISSION OF THE PRINCIPAL, OR THE EMPLOYEES, PROFESSIONAL CONSULTANTS OR AGENTS OF THE PRINCIPAL NOR FOR ANY CLAIMS, DEMANDS, ACTIONS, SUITS OR PROCEEDINGS, COSTS AND EXPENSES WHATSOEVER IN RESPECT THEREOF OR IN RELATION THERETO.**

**(THIS CLAUSE WAS AMENDED MAY 2008)**

#### **9. PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Contractor warrants that neither the Goods or Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right.
- 9.2 The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.
- 9.3 All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.

9.4 In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise there from and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

#### **10. SPECIFIED BRANDS OF GOODS**

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

#### **11. PRICE VARIATIONS**

- 11.1 Contract prices shall be firm unless otherwise stated in the Contract.
- 11.2 Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.
- 11.3 Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.
- 11.4 Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.
- 11.5 Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.
- 11.6 Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.
- (a) All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.
- (b) The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.
- 11.7 In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, facts and figures shall entitle the Principal to refuse the variation.
- 11.8 Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

#### **12. QUALITY OF GOODS AND SERVICES**

- 12.1 All Goods and Services shall conform to the Specification and the standards specified in the Contract.
- 12.2 Where no standards are specified in the Contract, the Goods and Services shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard

then with the appropriate and current standard of the British Standards Institution, the International Standards Organisation or such other standard as the Principal shall consider appropriate.

- 12.3 If no standards are applicable, the Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use and the Services shall be of the highest standard and carried out promptly with all due skill, care and diligence.

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

- 13.1 The Contractor shall fulfil all Orders for Goods and Services placed by the Principal during the term or currency of the Contract.
- 13.2 Where the Contract is for the supply of Goods by reference to:
- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed EXCEPT such of the Goods as may be ordered by the Principal.
  - (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
  - (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.
  - (d) The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.
- 13.3 Where the Contract is for the supply of Services by reference to:
- (a) A list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed EXCEPT such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
  - (b) Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.
  - (c) The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.
  - (d) Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

### **14. DELIVERY OF GOODS AND SERVICES**

- 14.1 The Contractor shall deliver the Goods and Services in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.
- 14.2 Upon it becoming evident to the Contractor that delivery of the Goods and Services is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.
- 14.3 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

**15. EXPENSES OF DELIVERY OF GOODS**

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

**16. RECEIPT AND ACCEPTANCE**

- 16.1 Delivery, receipt and completion of the Goods and Services shall not of itself constitute acceptance of the Goods or Services by the Principal, with acceptance being subject to the approval of the Officer.
- 16.2 The Principal shall be deemed to have accepted the Goods and Services when:
- (a) the Officer notifies the Contractor that the Goods and Services have been accepted; or
  - (b) when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 16.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.
- 16.4 Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

**17. REJECTION AND REMOVAL OF GOODS**

- 17.1 The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.
- 17.2 Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to:
- (a) Exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
  - (b) Sell the rejected Goods; or
  - (c) Have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.
- 17.3 The Principal shall not be responsible for the care or custody of any rejected Goods.
- 17.4 Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;
- (a) Shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
  - (b) Where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.

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

**18. DEFICIENT GOODS**

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



- (a) Remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
  - (b) Refund the price paid and thereupon to remove the deficient Goods from the Principal's premises;
- 18.2 Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.
- 18.3 Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.
- 18.4 The Principal shall not be entitled to exercise any rights under this clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance.
- 18.5 Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Sub-Clauses 17.2, 17.4 and 30.2 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Sub-Clauses 17.2, 17.3, 17.4 and 30.2 were set out herein.

#### **19. FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES**

Where a state of emergency exists or where the Contractor is unable or fails (for whatever reason) to supply and provide the goods and services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Goods and Services as it requires during the state of emergency or at that time or in that place (as the case may be) from any other supplier or provider thereof. The existence of a state of emergency shall be determined by the Principal in its sole discretion.

#### **20. POWER TO ACT FOR THE PRINCIPAL**

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

#### **21. WARRANTIES**

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

#### **22. VARIATION TO CONTRACT TERMS**

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

#### **23. SPECIAL PRICING AND OFFERS**

- 23.1 Any special price, licence fee, rate or charge in relation to the Goods and Services, or goods and services of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract, shall be made available to the Principal and all purchasers.
- 23.2 The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

#### **24. PAYMENT**

- 24.1 Unless otherwise provided in the Contract all payments shall be made within 30 days of receipt of the Contractor's invoice or claim, provided that the Goods and Services have been accepted and approved by the Officer.
- 24.2 Failure by the Principal to pay the amount payable at the due time, will not be grounds to invalidate or avoid the Contract.
- 24.3 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.

**25. SUSPENSION OF PAYMENTS**

Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

**26. DEDUCTION OF CHARGES OR DEBTS**

- 26.1 Without limiting the Principal's rights under the any of the foregoing clauses hereof any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, and if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- 26.2 The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

**27. STAMP DUTY**

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

**28. GOODS AND SERVICES TAX**

- 28.1 For the purposes of this clause:
- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
  - (b) "GST Act" means "*A New Tax System (Goods and Services Tax) Act 1999*" and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
  - (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.
- 28.2 Where the supply of the Goods and Services or any part thereof is a taxable supply under the GST Act:
- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force or the time being.
  - (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.
  - (c) This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.
- 28.3 The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Goods and Services under the Contract.

**29. CUSTOMS AND EXCISE DUTIES**

- 29.1 The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of tenders.
- 29.2 The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

29.3 The Contractor shall:

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

### **30. SETTLEMENT OF DISPUTES**

- 30.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 30.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods and Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.
- 30.3 Subject to the provisions of 30.2, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).
- 30.4 If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected :
- (a) By an arbitrator mutually agreed upon between the parties; or
  - (b) In default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,

in accordance with the provisions of the "*Commercial Arbitration Act 1985*".

### **31. TERMINATION OF CONTRACT**

- 31.1 Subject to Clause 30, if the Contractor fails to duly and punctually observe perform and comply with any term, condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term, condition or stipulation or otherwise to remedy the breach; or
- (a) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
  - (b) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
  - (c) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
  - (d) If the Contractor includes in its Tender any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

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

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

**32. WAIVER**

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

**33. ENTIRE AGREEMENT**

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

**34. RIGHTS AND REMEDIES**

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

**35. INSURANCE**

- 35.1 WITHOUT LIMITING ITS OBLIGATIONS AND RESPONSIBILITIES, THE CONTRACTOR SHALL TAKE OUT INSURANCE FOR THE ENTIRE CONTRACT PERIOD UNDER THE FOLLOWING HEADINGS;**

(a) **Public Liability:**

A Public Liability policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Public Liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of Death, Property Damage and Bodily Injury.

(d) **Workers Compensation:**

The Contractor shall effect and keep in effect during the currency of the Contract such Insurance as may be necessary to adequately protect the Contractor and the Principal in respect of liability for payment of compensation to any Employee of the Contractor or of a Subcontractor of the Contractor under the *Workers' Compensation and Injury Act 1981* or at Common Law.

(e) **Professional Indemnity:**

Where the Contract involves the provision of professional services and/or advice, the Contractor is to take out a Professional Indemnity Insurance policy with an Insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia.

The policy of Professional Indemnity Insurance taken out by the Contractor will have a limit of Liability based upon a figure agreed by the Principal and Contractor as per the attached Schedule however; the limit of Liability will not be less than \$5 million (AUD\$5,000,000).

(f) **Product Liability:**

Product liability Insurance taken out by the Contractor is to provide a minimum limit of liability of \$10 million (AU\$10,000,000) in respect of any one occurrence and for an unlimited number of claims.

- 35.2 THE CONTRACTOR IS TO PROVIDE THE PRINCIPAL WITH CERTIFICATES OF CURRENCY AND/OR A COPY OF THE POLICY WORDING CONFIRMING AS LAID DOWN WITHIN THE TENDER DOCUMENT (IF NOT MENTIONED, WITHIN SEVEN (7) DAYS) THAT THE ABOVE INSURANCE POLICIES ARE IN PLACE FOR THE ENTIRE CONTRACT PERIOD.**

- 35.3 THE CONTRACTOR AT THE DISCRETION OF THE PRINCIPAL MAY BE REQUIRED TO PROVIDE THE PRINCIPAL WITH A RISK MANAGEMENT PLAN RELATING TO THE CONTRACT IN ACCORDANCE WITH AS/NZS 4360-2004 RISK MANAGEMENT.
- 35.4 THE CONTRACTOR AT THE DISCRETION OF THE PRINCIPAL MAY BE REQUIRED TO DETAIL THE PRINCIPAL AS A JOINT NAMED INSURED UNDER SOME OR ALL OF THE INSURANCES DETAILED UNDER CLAUSE 35.1 AND/OR DETAIL THE PRINCIPALS INTEREST BY WAY OF NOTATION ON CERTIFICATES OF CURRENCY.

(THIS CLAUSE WAS AMENDED 23 MAY 2008)

**36. INDUSTRIAL AWARDS**

- 36.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.
- 36.2 Failure by the Contractor to comply with sub clause 36.1 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.