

ADDITIONAL CONDITIONS OF CONTRACT

1. Application and interpretation

- (a) These Additional Conditions of Contract apply to the Purchase Order Terms and Conditions, the Purchase Order Terms and Conditions (Executable), the Contract for Works, Services or the Minor Services, the Standing Order for Works, Services or Goods and the Standing Order for Minor Services, Goods or Works Contract (whichever is applicable) between the Contractor and Sunwater Limited (**Contract**) if, and to the extent that, the Contract indicates that these Additional Conditions of Contract are applicable.
- (b) In the event of any inconsistency between these Additional Conditions of Contract and the conditions of the Contract, the conditions of the Contract will apply.
- (c) In these Additional Conditions of Contract, capitalised terms have the same meaning as in the Contract unless the context otherwise requires.
- (d) In these Additional Conditions of Contract, references to "Contractor" must be read as references to "Vendor" for the purposes of the Purchase Order Terms and Conditions, the Purchase Order Terms and Conditions (Executable) and the Standing Order for Minor Services, Goods or Works Contract.

2. Best Practice Principles

- (a) The Contractor must fulfil any commitments in relation to the Best Practice Principles made in its tender for work under the Contract when executing and completing the Supply and must ensure that its subcontractors fulfill commitments in relation to the Best Practice Principles in their tenders.
- (b) When subcontracting work under the Contract, the Contractor must:
 - (i) prepare subcontract tender documentation which sets out clear evaluation criteria;
 - (ii) ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;
 - (iii) record all evaluation findings and, if requested, submit these to Sunwater at the completion of each subcontract evaluation;
 - (iv) include within subcontract tender documentation non-priced evaluation criteria the best practice principles of:
 - A. workplace health and safety systems and standards;
 - B. a commitment to apprentices and trainees; and
 - C. best practice industrial relations.
 - (v) provide subcontract tenderers with these or other guidance examples in relation to the non-priced criteria referred to in clause 2(b)(iv):
 - A. detail whether the tenderer has been subject to any adverse findings or penalties pursuant to the *Work Health and Safety Act 2011* (Qld);
 - B. detail the number of current employees, apprentices and trainees anticipated to be working on the subcontract;
 - C. provide an outline of the conditions of employment for the employees to be associated with the subcontract; and
 - D. collective agreements that provide wages and conditions that attract a high quality and skilled workforce and tenderers may obtain further examples of such agreements at the following page on the Fair Work Australia website <https://www.fwc.gov.au/awards-and-agreements/>;
 - (vi) apply the weightings nominated by Sunwater acting reasonably for non-priced criteria relating to the Best Practice Principles;
 - (vii) if required by Sunwater, require tenderers to provide a deed in the form elected by Sunwater; and
 - (viii) include provisions in any resulting subcontract requiring the subcontractor to:
 - A. comply with any commitments in its tender relating to the Best Practice Principles; and
 - B. if required by Sunwater, execute a deed in favour of the Sunwater in the form elected by Sunwater where such a deed has not already been provided as part of the subcontractor's tender.

3. Commonwealth Code for Tendering and Performance of Building Work 2016.

- (a) In this clause 3:
 - (i) **ABC Commissioner** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act;
 - (ii) **BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
 - (iii) **Building Code** means the *Code for the Tendering and Performance of Building Work 2016* (Cth);
 - (iv) **Building Contractor** has the same meaning as in the BCIIIP Act;
 - (v) **Building Industry Participant** has the same meaning as in the BCIIIP Act;
 - (vi) **Building Work** has the same meaning as in subsection 3(4) of the Building Code;
 - (vii) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code;
 - (viii) **Subcontractor** means a Building Contractor or Building Industry Participant who the Contractor has entered, or proposes to enter, into a subcontract with to undertake any of the Works; and
 - (ix) **Works** means Commonwealth Funded Building Work that is the subject of this Contract.
- (b) The Contractor:
 - (i) declares, as at the date of commencement of the Contract; and
 - (ii) must ensure that during the term of the Contract, that it and its Subcontractors will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
- (c) Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any defect in the Supply arising from compliance with the Building Code.
- (d) The Contractor acknowledges the powers and functions of the ABC Commissioner under the BCIIIP Act and the Building Code and will ensure that it and its Subcontractors comply with any requests made by the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act and requests to produce records or documents under sections 74 and 77 of the BCIIIP Act.

4. WHS Accreditation Scheme

- (a) In this clause 4, **WHS Accreditation Scheme** means the Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**BCIIP Act**).
- (b) The Contractor:
 - (i) warrants that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must:
 - A. maintain its accreditation under the WHS Accreditation Scheme; and
 - B. comply with all conditions of the WHS Accreditation Scheme accreditation and the National Construction Code performance requirements in relation to building materials, at all times whilst carrying out "building work" (as defined in section 6 of the BCIIP Act) in respect of the Supply.

5. Queensland Charter for Local Content

- The Contractor must, and must ensure its subcontractors, in carrying out the Supply:
- (a) comply with the principles of the Queensland Charter for Local Content (**Charter**) and any requirements under the Contract in this regard;
 - (b) comply with any statement of intent or equivalent local content statement under the Contract; and
 - (c) complete and submit a Charter for Local Content – Project Outcome Report as required by (and in the form approved by) the Charter to Sunwater at Practical Completion and at such other times as reasonably requested by Sunwater, with a copy provided to qclc@dsd.qld.gov.au.

6. Queensland Government Supplier Code of Conduct

- (a) The Contractor must comply with all expectations as contained in the Supplier Code of Conduct throughout the term of the Contract.
- (b) If, at any time during the term of this Contract, Sunwater reasonably suspects that the Contractor is in breach of clause 6(a), Sunwater may issue a written notice to the Contractor to show cause as to why the Contractor is not in breach.
- (c) If the Contractor has not within 14 days of receipt of written notice under clause 6(b), shown cause in writing to Sunwater demonstrating to the reasonable satisfaction of Sunwater that the Contractor is in compliance with all expectations as contained in the Supplier Code of Conduct, Sunwater may terminate the Contract immediately by notice in writing to the Contractor.

7. Ethical Supplier Mandate and Ethical Supplier Threshold

- (a) The Contractor must comply, and must ensure that its subcontractors comply, with the Ethical Supplier Threshold throughout the term of the Contract.
- (b) If, at any time during the term of the Contract, Sunwater reasonably suspects that the Contractor is in breach of clause 7(a), Sunwater may issue a written notice to the Contractor to show cause as to why the Contractor is not in breach.
- (c) If the Contractor has not within 14 days of receipt of written notice under clause 7(c), shown cause in writing to Sunwater demonstrating to the reasonable satisfaction of Sunwater that the Contractor and its subcontractors are in compliance with the Ethical Supplier Threshold, Sunwater may terminate this Contract immediately by notice in writing to the Contractor.
- (d) The Contractor acknowledges and agrees that:
 - (i) a failure by it or its subcontractors to comply with:
 - A. the applicable policies of Sunwater;
 - B. applicable regulatory requirements; or
 - C. the Contractor's obligations under the Contract relating to the Queensland Procurement Policy, may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to Sunwater under the Contract; and
 - (ii) the Queensland Government may publish information about sanctions imposed on the Contractor and its subcontractors for breaches of the Ethical Supplier Mandate.
- (e) If the Contractor is:
 - (i) a natural person, the Contractor irrevocably consents to Sunwater collecting and sharing personal information of the Contractor for the purposes of:
 - A. determining whether to impose demerits or sanctions on the Contractor's business under the Ethical Supplier Mandate; and
 - B. referrals to:
 - 1) the Tripartite Procurement Advisory Panel; and
 - 2) the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works, for the purposes of making a recommendation about compliance with the Ethical Supplier Mandate;
 - (ii) not a natural person, the Contractor warrants that the relevant Contractor personnel irrevocably consents to Sunwater collecting and sharing personal information of the relevant Contractor personnel for the purposes set out in clause 7(e)(i).
- (f) The Contractor:
 - (i) irrevocably consents to Sunwater to obtaining information about the Contractor relevant to the Ethical Supplier Mandate and the Ethical Supplier Threshold that may be held by any federal, state or local government department, agency, authority or instrumentality, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office and the Australian Building and Construction Commission; and
 - (ii) warrants that its subcontractors irrevocably consent to Sunwater obtaining the information contemplated under clause 7(f)(i).
- (g) Sunwater may, upon giving reasonable notice, enter the Contractor's premises or any place at which the Contractor is carrying out the Supply to audit the Contractor for the purposes of determining whether to impose demerit or sanctions on the Contractor under the Ethical Supplier Threshold. The Contractor must:
 - (i) provide all information requested during an audit, including information of any subcontractors; and
 - (ii) procure its subcontractors to permit Sunwater to enter the subcontractor's premises or any place at which the subcontractor is carrying out work in relation to the Supply to audit the subcontractor for the purposes contemplated by clause 7(g).