



## **1 CONTRACT**

(a) The following documents form the entire Agreement between the parties:

- (i) the Order;
- (ii) these terms and conditions; and
- (iii) other documents referred to in the Order.

If there is any inconsistency, discrepancy or ambiguity between the documents listed in this clause 1(a), it will be resolved by giving precedence to the document highest in the list except to the extent otherwise determined by Shamrock Civil Engineering (SCE).

(b) The Supplier agrees that the supply of the Goods or Services by the Supplier to SCE is subject to the terms and conditions of the Agreement. By commencing to supply the Goods or Services, the Supplier unconditionally accepts that the terms and conditions of the Agreement will apply exclusively to the supply of the Goods or Services to SCE and any terms or conditions proposed by the Supplier are expressly excluded, whether in any term or condition in any prior or subsequent purchase order, document or other communication from the Supplier.

(c) The Supplier acknowledges that:

- (i) an offer to acquire the Goods or Services by SCE is conditioned on the Supplier's unconditional acceptance of the terms and conditions in this document; and
- (ii) any acceptance by SCE of an offer by the Supplier to supply the Goods or Services is conditioned on the Supplier unconditionally accepting the terms and conditions in this document.

(d) To the extent permitted by Law, any statement, representation or promise made in any document, negotiation, discussion or prior Quotation has no effect except to the extent expressly set out or incorporated by reference in this agreement.

(e) SCE may direct the Supplier at any time to vary, amend, increase, decrease, omit or change the quality, character, extent or amount of Goods or Services (**Variation**). If the parties cannot agree the adjustment to the Price or Delivery Date for a Variation, SCE will determine a reasonable increase or decrease to both the Delivery Date and Price, if applicable.

## **2 QUALITY**

(a) The Supplier must supply all Goods and Services to SCE in accordance with the Agreement.

(b) The Supplier must obtain all permits, approvals and licences required by Law to supply the Goods and perform the Services.

(c) The Supplier must ensure that the Goods or Services:

- (i) comply with the Law and applicable Australian Standards of Standards Australia Ltd;
- (ii) conform precisely in quality, quantity, specification and all other respects with any description provided to SCE by the Supplier or nominated by SCE to the Supplier;
- (iii) are fit for the purposes for which goods and services of the same kind are commonly supplied and for any other purpose made known to the Supplier; and
- (iv) meet the standards that would be expected of a skilled and experienced Supplier who supplies goods and services similar to the Goods and Services.

(d) The Supplier must ensure that the Goods:

- (i) are new, of merchantable quality and free from defects in materials and workmanship;
- (ii) are free from all liens, charges and encumbrances of any kind; and
- (iii) comply with any samples inspected by SCE prior to or after the Order was issued.

(e) In performing its obligations, the Supplier must act reasonably and honestly, must perform the Services in a good and workmanlike manner and generally perform its obligations to the standard of care expected of a supplier regularly engaged in the business of supplying similar goods and services.

## **3 DELIVERY AND COMPLETION**

(a) The Supplier must at its own cost properly pack and protect all Goods to ensure safe arrival, and safely transport the Goods along appropriate routes, in accordance with industry best practice.

(b) Delivery will have occurred only when the Supplier has:

- (i) delivered the Goods to the Site, and unless otherwise specified in the Order, unloaded the Goods at the location designated by SCE' representative or in the Order, and received written confirmation of receipt from SCE;
- (ii) completed the Services and SCE has received all documentation it requires including a Form 16 and any third party warranties required under clause 5(e); and



- (iii) completed the Services (including the provision of all deliverables and products of the Services to SCE) and received written confirmation of completion from SCE.
- (c) The Supplier must achieve Delivery by the Delivery Date and in any case expeditiously and without delay.
- (d) If the Goods and Services are not Delivered by the Delivery Date, the Supplier will be indebted to SCE for liquidated damages at the rate set out in the Order for each day that Delivery is delayed beyond the Delivery Date, until the earlier of:
  - (i) liquidated damages incurred meet the limit, if any, set out in the Order;
  - (ii) the Agreement is terminated by SCE; or
  - (iii) Delivery is completed,but if no rate is set out in the Order, SCE will be entitled to common law damages for the delay.
- (e) SCE:
  - (i) may postpone the Delivery Date for any duration and for any reason in its absolute discretion, at any time before or after the Delivery Date; or
  - (ii) must postpone the Delivery Date for a Delay Event but only if the Supplier notifies SCE in writing of the cause, expected duration and its efforts to minimise the effect of the Delay Event, within 3 Business Days of when the Supplier should have become aware of it, failing which the Supplier will not be entitled to any postponement of the Delivery Date.
- (f) Any delay by SCE in postponing the Delivery Date under clause 3(e)(ii) will not set time at large but may entitle the Supplier to damages.
- (g) The Supplier may not subcontract any of its obligations without the prior consent of SCE. Despite any consent, the Supplier remains responsible for all acts and omissions of its subcontractors and must ensure that they comply with all applicable terms and conditions of the Agreement.

#### **4 SECURITY**

- (a) If required by SCE, the Supplier must provide the Security specified in the Order.
- (b) Within 10 Business Days of Delivery, SCE shall release part of the Security so that the total value of the Security held shall not be more than 2.5% of the Price.
- (c) Within 10 Business Days of the end of the Warranty Period, SCE shall release any Security then held by SCE provided that there are no moneys owed from the Supplier to SCE.

#### **5 DEFECTIVE GOODS AND SERVICES**

- (a) If SCE determines that any Goods or Services are unsatisfactory, defective, of inferior quality or workmanship or fail to meet any requirements of the Agreement, (**Defective**) the Supplier must do any of the following, at its cost, as determined by SCE in its absolute discretion:
  - (i) re-take possession of the Defective Goods and refund the Price for the Defective Goods to SCE;
  - (ii) Deliver replacements of the Defective Goods or re-perform the Defective Services; or
  - (iii) repair the Defective Goods or remedy the Defective Services,and reimburse SCE any damages it has suffered as a direct result of the supply of the Defective Goods or Services.
- (b) The rights under clause 5(a) are in addition to any other rights of SCE under the Agreement, at Law or in equity.
- (c) If SCE requires the Supplier to re-take possession of Defective Goods, the Supplier must collect the Defective Goods within 14 days from the date when SCE so notifies the Supplier, failing which SCE may (but is not obliged to) return the Defective Goods to the Supplier at the Supplier's cost and risk.
- (d) Unless otherwise stated in the Order, the Supplier warrants that for the period offered by the Supplier or a period of 12 months, whichever is longer, from the completion of Delivery (**Warranty Period**), it will at its cost repair or replace any defective Goods or Services which become apparent under normal working conditions during such period. Such replacements or repairs must be carried out at the times notified by SCE and so as to minimise any inconvenience to users of the Site.
- (e) The Supplier must do all things to ensure that SCE has the benefit of any warranties given by any third parties in respect of the Goods and must give SCE all documentation relating to such warranties. Such third party warranties are in addition to the warranties of the Supplier.
- (f) If the Supplier fails to take action as and when directed under clause 5(a), SCE may, without further notice to the Supplier, engage another to replace or repair Defective Goods or re-perform Defective Services and all costs and damages suffered by SCE in connection with the Supplier's failure shall be a debt due and payable to SCE.

#### **6 TITLE AND RISK**

- (a) Risk in the Goods passes to SCE on Delivery.
- (b) Title to the Goods passes to SCE on payment or Delivery (whichever occurs first).



## **7 SAFETY AND ENVIRONMENT**

- (a) The Supplier must perform its obligations under the Agreement with due regard for the health and safety of all persons and the protection of environment and must take all precautions necessary to protect the health and safety of persons and the environment.
- (b) Clause 7(c) and 7(d) apply where the Supplier is required to perform work (including the delivery of the Goods) at the Site.
- (c) While carrying out Services or performing Delivery at the Site, the Supplier must, and must ensure that its employees, agents and subcontractors:
  - (i) attend any inductions SCE requires before they enter the Site or before they use any plant or equipment at the Site, as determined by SCE;
  - (ii) comply with all applicable policies and procedures of SCE and the Site in relation to health, safety and the environment;
  - (iii) comply with all directions issued by the Site Project Manager or any other authorised Site supervisor;
  - (iv) cooperate with others carrying out work at the Site and coordinate its work with the work of others so as to avoid disruption to others; and
  - (v) if required by SCE, complete and return an executed copy of SCE's HS-FRM-17;20;21 & 39 - Health and Safety (HS) Conditions of Contract.
- (d) The Supplier must immediately advise SCE, and within 3 days provide a written report to SCE, if:
  - (i) it reasonably believes that any of the Site or any plant or equipment at the Site is unsafe;
  - (ii) any person engages in work practices that are likely to put safety, health or the environment at risk; or
  - (iii) an incident or accident occurs.
- (e) Entry to the Site by the Supplier and the Supplier's employees, agents and subcontractors is at their own risk and SCE is not responsible for any loss or damage suffered by the Supplier and the Supplier's employees, agents and subcontractors while on the Site or any other place provided by SCE in connection with Goods or Services.
- (f) The Supplier must, at its cost, immediately and permanently remove from the Site any person SCE considers (in its absolute discretion) is behaving in an unsafe or offensive manner.

## **8 PRICE & PAYMENT**

- (a) The Price is fixed and not subject to any increase whatsoever except to the extent expressly set out in the Agreement.

- (b) The Price includes all things necessary to supply the Goods or Services in accordance with the Agreement including:
  - (i) labour, tools, equipment and materials;
  - (ii) complying with all Laws and obtaining all permits, licences and insurance;
  - (iii) packaging and transport; and
  - (iv) all taxes, duties, levies, excise and other government fees and charges (other than GST).
- (c) Subject to these Terms, SCE will pay the Supplier for Goods and/or Services according to the rates and prices in the Purchase Order, adjusted by any additions or deductions made under these Terms and less any applicable withholding taxes.
- (d) The Supplier may issue a **Tax Invoice** to SCE for payment for the Goods and/or Services:
  - (i) Provided that the Goods and/or Services have been accepted in writing by SCE;
  - (ii) At the times specified in a Purchase Order (if any), or otherwise:
    - A. For Goods, after the Goods have been delivered to the Delivery Place;
    - B. For Services, on the last Business Day of each month, for the Services performed to the 25th day of that month.
- (e) **Tax Invoices** must be addressed to SCE as follows:  
ACCOUNTS PAYABLE  
Shamrock Civil Engineering PTY LTD  
PO BOX 207  
Carole Park  
QLD 4300  
Email: [payables@shamrockcivil.com.au](mailto:payables@shamrockcivil.com.au)
- (f) Tax Invoices must:
  - (i) Contain a valid Purchase Order Number;
  - (ii) Attach a copy of SCE acceptance of the Goods and/or Services; and
  - (iii) Be calculated using the rates and prices in the Purchase Order.
  - (iv) All invoices must be sent to the above address and email contact details, irrespective of the site contact details provided, invoices may additionally be sent to SCE site personnel.
  - (v) Invoice must be dated to reflect the month in which the work or delivery occurred.
  - (vi) Invoices are required to be received by SCE accounts department by the 7<sup>th</sup> of each month to be considered a previous month's invoice.  
  
Invoices received late (after the 7<sup>th</sup> of each month) will be considered an invoice pertaining to the month in which the invoice is received.
  - (vii) Statements are to be sent to



[payables@shamrockcivil.com.au](mailto:payables@shamrockcivil.com.au) by the COB  
7<sup>th</sup> of each month.

- (g) SCE may set off against any payment due to the Supplier any amount which SCE determines the Supplier is liable to SCE, whether for expenses or damages, howsoever that liability may have arisen.
- (h) If SCE notifies the Supplier of a deduction or set-off under clause 8 (g) or that it does not agree with the amount of a Tax Invoice issued by the Supplier, the Supplier must immediately retract its Tax Invoice and issue a replacement Tax Invoice which complies with clauses 8(c) and 8(e) in the amount directed by SCE.
- (i) If the Supplier does not issue a Tax Invoice to SCE in accordance with clause 8(h), SCE may issue a RCTI to the Supplier for the amount directed by it under clause 8(h).

In this regard, SCE and the Supplier agree:

- (j) (i) They are, and will remain, registered for GST until the discharge of all obligations under this clause;  
(ii) The Goods and/Services under the Purchase Order are of the type for which a RCTI can be issued;  
(iii) Where SCE issues a RCTI under this clause, the Supplier will not issue a Tax Invoice for those Goods and/or Services; and  
(iv) The Supplier and SCE will immediately notify the other if and when they cease to be registered for GST.
- (j) Subject to the remainder of sub-clauses in this clause 8, the amount Tax Invoice or RCTI (as applicable) will be paid on or before the day which is 45 calendar days from the end of the month in which the Tax Invoice for the correct amount was received by SCE or the RCTI was issued by SCE;

## 9 GST

The consideration for a Supply made under or in connection with this document does not include GST. document is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (i) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
- (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (b) If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (c) Capitalised terms in this clause 10 have the same meaning as in the GST Act.

## 10 INDEMNITIES

- (a) The Supplier indemnifies SCE from any claims, demands, suits, liabilities, actions, costs, losses, expenses, damages or penalties (including legal fees on an indemnity basis), which SCE may incur arising out of or in connection:
  - (i) loss of or damage to any property of SCE or third parties;
  - (ii) exercise of the rights under clause 15(b); or
  - (iii) personal injury or death,caused by the breach of contract or negligent act or omission of the Supplier, its employees, agents or subcontractors.

## 11 INSURANCE

- (a) The Supplier must take out and keep current all necessary insurance policies reasonably expected of a Supplier of Goods and Services including (without limitation):
  - (i) public liability insurance for not less than \$20,000,000, until end of the Warranty Period;
  - (ii) workers' compensation as required by Law;
  - (iii) third party comprehensive motor vehicle insurance until expiry of the Warranty Period;
  - (iv) insurance of the Supplier's plant & equipment; and
  - (v) if specified in the Order, professional indemnity for not less than \$2,000,000.
- (b) The Supplier must provide SCE with evidence of the insurances required to be effected in accordance with clause 12(a) within 3 days of request by SCE. Failing which, SCE may, after 3 days' notice in writing to the Supplier, take out such insurance itself and the cost of If a Supply made under or in connection with this doing so will be a debt due and payable by the Supplier.

## 12 RISKS

Entry to the Site by the Supplier and the Supplier's officers, employees, agents, servants and others engaged to supply the Goods or perform the Services is at their own risk and SCE shall not be responsible (to the extent permitted by Law) for any loss, damage or personal injury or death to those persons while on the Site.

## 13 CONFIDENTIAL INFORMATION

- (a) The Supplier must keep confidential all Confidential Information and not disclose it to any other person, except:
  - (i) with the prior written consent of SCE; or
  - (ii) to its professional advisers; or
  - (iii) to any of its workers who have a need to know in order to perform obligations under the



Agreement,

provided that the recipient agrees to keep the Confidential Information confidential.

- (b) Clause 14(a) does not apply to information that is required to be disclosed by Law or the requirements of a stock exchange, but only to the extent that the information is required to be disclosed.

#### **14 INTELLECTUAL PROPERTY**

(a) As between SCE and the Supplier, all information and materials given to the Supplier by SCE under this Agreement is the property of SCE and is only made available to the Supplier on the condition that:

- (i) the materials are to be used only for the purposes of the Agreement; and
- (ii) if requested by SCE, all such materials and copies are promptly returned to SCE.

(b) The Supplier gives SCE a non-exclusive, transferable, perpetual, royalty free licence (including the right to sub-licence) to use, modify, maintain or destroy the Goods and Services (to the extent applicable).

(c) The Supplier warrants that:

- (i) the supply and Delivery of the Goods and Services by it; and
- (ii) the exercise of the rights granted in clause 15(b) by SCE or any transferee through SCE,

will not infringe any patent, trademark, copyright or other intellectual property right.

#### **15 TERMINATION**

(a) SCE may terminate the Agreement immediately:

- (i) on written notice to the Supplier if the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller;
- (ii) if, in the unfettered opinion of SCE, the Supplier fails to show cause in accordance with clause 16(b); or
- (iii) for any reason in SCE' absolute discretion on 7 days' written notice to the Supplier or as otherwise specified by SCE in the notice.

(b) If the Supplier breaches any term of the Agreement, SCE may give to the Supplier a written notice:

- (i) setting out the alleged breach;
- (ii) requiring the Supplier to show cause in writing as to why SCE should not terminate the Agreement in accordance with clause 16(a)(ii); and
- (iii) setting out the time and date by which the Supplier must show cause.

(c) Except as expressly set out in clause 16(d), if SCE

terminates the Agreement in accordance with clause 16(a), the Supplier will not be entitled to any further payment and will have no claim, demand, suit, liability or action against SCE or its directors, officers and employees and is not entitled to any costs, losses, expenses, damages or penalties arising out of or in connection with the Agreement or its termination or the supply of the Goods or Services.

(d) If SCE terminates the Agreement in accordance with clause 16(a)(i) or (ii), any costs incurred by SCE in engaging another to complete the Supplier's obligations under this Agreement shall be a debt due and payable from the Supplier to SCE.

(e) If SCE terminates the Agreement in accordance with clause 16(a)(iii), the Supplier will be entitled to the reasonable costs incurred by the Supplier in supplying the Goods or Services up to the date of termination provided that SCE receives title to any Goods that are paid for in accordance with this clause.

(f) For the avoidance of doubt, nothing in clause 16(d) entitles the Supplier to any consequential, indirect or economic loss or damage, loss of actual or anticipated profits, loss of revenues or loss of use or productivity, in the event the Agreement is terminated under clause 16(a)(iii).

#### **16 RELATIONSHIP BETWEEN SUPPLIER AND SCE**

The Supplier performs its obligations as an independent contractor of SCE and not as an employee, agent or partner.

#### **18 NATIONAL CODE**

Unless otherwise notified to the Supplier in writing, the Code and the Guidelines, apply to this project. By agreeing to undertake work (including delivery of the Goods) at the Site, you will be taken to have read and to agree to comply with the Code and the Guidelines.

#### **19 GENERAL**

(a) Where the Supplier comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Supplier's obligations under the Agreement.

(b) Where any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.

(c) SCE and the Supplier agree that the Laws in force in the jurisdiction stated in the Order apply to the Agreement and both submit to the exclusive jurisdiction of the courts of that jurisdiction, except that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or the supply of Goods by the Supplier.

(d) The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.

(e) No obligation in the Agreement is waived unless it is



waived in writing and signed by the parties. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- (f) The Agreement may only be amended by written agreement between all parties.

## 20 Interpretation

In this Agreement:

**Code and Guidelines** means the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009.

**Confidential Information** means any information relating to the business or affairs of SCE or its customers, whether provided to or obtained by the Supplier prior to or after issue of the Order, except information in the public domain (other than due to breach of the Agreement) or information rightfully in the possession of the Supplier and not subject to an obligation of confidentiality at the time it was obtained by the Supplier.

**Delay Event** means:

- (i) an act or omission of SCE; or  
(ii) an event described in the Order, if any,

that prevents the Supplier from achieving Delivery by the Delivery Date.

**Deliver/Delivery** means delivery of the Goods or performance of the Services in accordance with clause 3(a).

**Delivery Date** means the date set out in the Order.

**Form 16** means the Queensland Government Department of Planning and Infrastructure Form 16 Inspection Certificate/Aspect Certificate/ QBSA Licensee Aspect Certificate.

**Goods** means the goods, if any, described in the Order and all applicable Technical Materials.

**GST** has the same meaning as in the GST Act.

**GST Act** means *A New Tax System (Goods and*

*Services Tax) Act 1999*(Cth).

**Law** includes legislation, regulations, by-laws, orders, permits, approvals or licences. the Site; or the Goods or Services.

**Order** means a purchase order for Goods or Services that is issued by SCE and includes the terms and conditions contained in this document.

**Payment Schedule** is a written notice that:

- (a) identifies the Tax Invoice to which it relates;
- (b) states the amount of the payment, if any, that SCE proposes to make; and
- (c) if the amount that SCE proposes to make is less than the claimed amount, state why the amount is less, and if any money is being withheld, gives reasons why it is being withheld.

**Price** means the amount payable for the Goods or Services specified in the Order.

**Services** means the services, if any, described in the Order.

**Site** means the site specified in the Order or any other place provided by SCE for the Supplier to perform work arising out of or in connection with the Goods or Services.

**Supplier** means the person described in the Order.

**Tax Invoice** has the same meaning as in the GST Act.

**Technical Materials** means all plans, designs, drawings, engineering information, data, specifications, reports, accounts, installation instructions, maintenance and operating manuals, spare parts lists and any other technical material reasonably required for the safe installation, use and maintenance of the Goods.

**SCE** means Shamrock Civil Engineering Pty. Ltd. ABN 68 066 655 856.