

Infrastructure Building and Construction Panel

**Special Conditions of Contract – Infrastructure Contract
Conditions A2 – Security of Payment**

To be read in conjunction with Infrastructure Contract Conditions A2

November 2022

Copyright

© The State of Queensland (Department of Transport and Main Roads) 2022.

Licence



This work is licensed by the State of Queensland (Department of Transport and Main Roads) under a Creative Commons Attribution (CC BY) 4.0 International licence.

CC BY licence summary statement

In essence, you are free to copy, communicate and adapt this work, as long as you attribute the work to the State of Queensland (Department of Transport and Main Roads). To view a copy of this licence, visit: <https://creativecommons.org/licenses/by/4.0/>

Translating and interpreting assistance



The Queensland Government is committed to providing accessible services to Queenslanders from all cultural and linguistic backgrounds. If you have difficulty understanding this publication and need a translator, please call the Translating and Interpreting Service (TIS National) on 13 14 50 and ask them to telephone the Queensland Department of Transport and Main Roads on 13 74 68.

Disclaimer

While every care has been taken in preparing this publication, the State of Queensland accepts no responsibility for decisions or actions taken as a result of any data, information, statement or advice, expressed or implied, contained within. To the best of our knowledge, the content was correct at the time of publishing.

Feedback

Please send your feedback regarding this document to: tmr.techdocs@tmr.qld.gov.au

Contents

CONDITIONS OF CONTRACT1

1 GENERAL1

2 INTERPRETATION1

SPECIAL CONDITIONS OF CONTRACT2

1 Contract documents2

1.1 Documents comprising the Contract 2

1.2 Interpretation 2

2 Term2

2.1 Contract Term 2

2.2 Extension of Term 2

2.3 Continuation after end of SOA 2

3 No exclusivity2

4 Supplier obligations and warranties2

4.1 Performance obligations 2

4.2 No reliance on information and data supplied by Customer 2

4.3 Keep Customer informed 2

4.4 Warranties 2

4.5 Compliance with Laws 2

4.6 Work health and safety 2

4.7 Cooperation 2

4.8 Ethical Supplier Threshold 3

5 Customer’s Site and Customer Materials3

5.1 Compliance with policies 3

5.2 Access to Customer’s Site 3

5.3 Customer Materials 3

5.4 Customer assistance 3

6 Subcontracting and Personnel3

6.1 Subcontracting 3

6.2 Supplier’s Personnel 3

6.3 Removal of Supplier Personnel 3

6.4 Key Personnel 3

6.5 Customer’s Personnel 3

6.6 Non-solicitation 3

7 Project management3

7.1 Management committee 3

7.2 Performance reviews 3

7.3 Staged Implementation 3

7.4	Delay	4
7.5	Changes.....	4
8	Fees and Payment	4
8.1	Fees	4
8.2	Expenses	4
8.3	Invoices	5
8.4	Time for payment.....	5
8.5	Disputed invoices.....	5
8.6	Underpayments and overpayments.....	5
8.7	Set-off	6
9	GST.....	6
9.1	Construction.....	6
9.2	GST exclusive.....	6
9.3	Tax invoice.....	6
9.4	Adjustment event	6
9.5	Reimbursements.....	6
10	Intellectual Property Rights	6
10.1	Pre-Existing Material.....	6
10.2	Customer owned Deliverables	6
10.3	Supplier owned Deliverables	6
10.4	Third Party Material	6
10.5	Moral Rights.....	6
11	Data, models and analytical tools	6
12	Confidentiality	6
12.1	Mutual obligations of confidentiality	6
12.2	Permitted disclosures	6
12.3	Publicity.....	7
12.4	Confidentiality and privacy deed.....	7
12.5	Return or destruction of material	7
13	Privacy	7
13.1	Supplier’s privacy obligations	7
13.2	Notification of breach	7
14	Warranties	7
14.1	Supplier warranties	7
14.2	Intellectual Property Rights.....	7
15	Liability	7
15.1	Limitation of liability.....	7
15.2	Exclusions from limitation of liability	7
15.3	Duty to mitigate	7

16	Indemnity by Supplier	7
17	Insurance	7
18	Security	7
18.1	Provision of security	7
18.2	Enforcement	8
18.3	Release of security	8
18.4	Adverse changes	8
19	Anti-competitive conduct, conflict of interest and criminal organisations	8
19.1	Anti-competitive conduct	8
19.2	Conflict of Interest	8
19.3	Criminal organisation	8
19.4	Warranties are ongoing	8
20	Modern Slavery	8
20.1	Compliance	8
20.2	Provision of assistance	8
21	Disputes	8
22	Termination	8
22.1	For cause – by Customer	8
22.2	For cause – by Supplier	8
22.3	For convenience	8
22.4	Suspension	8
22.5	Consequences	9
23	Contract Administration	9
23.1	Reporting	9
23.2	Records	9
23.3	Authorised Representatives	9
23.4	Inspections	9
23.5	Notice of Change in Control	9
23.6	Material Adverse Events	9
23.7	Notices	9
23.8	Force Majeure Events	9
24	Assignment and novation	9
24.1	By Supplier	9
24.2	By Customer	9
24.3	Acting reasonably	9
24.4	Transferability and portability of Services	9
25	General	9
25.1	Entire agreement	9
25.2	Waiver	10

25.3 Rights cumulative 10

25.4 Variations 10

25.5 Relationship of the parties 10

25.6 Survival 10

25.7 Costs 10

25.8 Joint and several liability 10

25.9 Governing law 10

26 Definitions and Interpretation..... 10

26.1 Definitions 10

26.2 Interpretation..... 10

Annexure Part A – Statutory Declaration by Supplier 11

Annexure Part B – Information for subcontractors 13

CONDITIONS OF CONTRACT

1 GENERAL

The Conditions of Contract shall be the *Infrastructure Contract Conditions A2* as amended by the *Special Conditions of Contract – Infrastructure Contract Conditions A2 – Security of Payment*.

2 INTERPRETATION

In the event of conflict or inconsistency between the provisions of the *Infrastructure Contract Conditions A2* and the *Special Conditions of Contract – Infrastructure Contract Conditions A2 – Security of Payment*, the *Special Conditions of Contract – Infrastructure Contract Conditions A2 – Security of Payment* shall take precedence.

References to “Annexures” shall be read as reference to Annexures attached to the *Special Conditions of Contract – Infrastructure Contract Conditions A2 – Security of Payment*.

SPECIAL CONDITIONS OF CONTRACT

To be read in conjunction with the Infrastructure Contract Conditions A2.

1 Contract documents

1.1 Documents comprising the Contract

No amendment.

1.2 Interpretation

No amendment.

2 Term

2.1 Contract Term

No amendment.

2.2 Extension of Term

No amendment.

2.3 Continuation after end of SOA

No amendment.

3 No exclusivity

No amendment.

4 Supplier obligations and warranties

4.1 Performance obligations

No amendment.

4.2 No reliance on information and data supplied by Customer

No amendment.

4.3 Keep Customer informed

No amendment.

4.4 Warranties

No amendment.

4.5 Compliance with Laws

No amendment.

4.6 Work health and safety

No amendment.

4.7 Cooperation

No amendment.

4.8 Ethical Supplier Threshold

No amendment.

5 Customer's Site and Customer Materials

5.1 Compliance with policies

No amendment.

5.2 Access to Customer's Site

No amendment.

5.3 Customer Materials

No amendment.

5.4 Customer assistance

No amendment.

6 Subcontracting and Personnel

6.1 Subcontracting

No amendment.

6.2 Supplier's Personnel

No amendment.

6.3 Removal of Supplier Personnel

No amendment.

6.4 Key Personnel

No amendment.

6.5 Customer's Personnel

No amendment.

6.6 Non-solicitation

No amendment.

7 Project management

7.1 Management committee

No amendment.

7.2 Performance reviews

No amendment.

7.3 Staged Implementation

No amendment.

7.4 Delay

No amendment.

7.5 Changes

No amendment.

8 Fees and Payment

8.1 Fees

Delete Clause 8.1(e).

Insert new Clause 8.1A:

“8.1A Payment of Workers and Subcontractors

8.1A.1 Payment Claim requirements

The Supplier must deliver to the Customer, with each payment claim a signed statutory declaration in the form attached to these Special Conditions at Annexure Part A – Statutory Declaration by Supplier completed by the Supplier, or where the Supplier is a corporation, by the representative of the Supplier who is in a position to know the facts attested to that:

- a) all subcontractors and any sub subcontractors performing Services have been approved by the Customer in accordance with Clause 6.1
- b) all subcontractors of the Supplier have been paid all that is due and payable to such subcontractors up to the date of submission by the Supplier of a payment claim in respect of Services performed under the Contract
- c) all its workers who at any time have been engaged to perform Services by the Supplier have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Supplier of a payment claim, in respect of their engagement on the Services under the Contract, and
- d) the Supplier has informed all subcontractors and any sub subcontractors performing Services under the Contract of the existence of the BIF Act and of the information for subcontractors contained in Annexure Part B – Information for subcontractors.”

8.2 Expenses

No amendment.

8.3 Invoices

Delete and replace with:

“8.3 Payment Claims

- a) On the last day of each month, the Supplier may issue to the Customer a Payment Claim stating the amount of payment which, in the Supplier’s opinion, is to be made by the Customer to the Supplier for the Services performed.
- b) The Supplier must provide a Correctly Rendered Invoice with each Payment Claim.
- c) The Supplier may not charge or pass through any fees, costs or charges associated with a payment method.”

8.4 Time for payment

Delete and replace with:

- a) Within 10 Business Days of receipt of a Payment Claim, the Customer will issue to the Supplier a Payment Schedule stating the amount of payment which, in the Customer’s opinion, is to be made by the Customer to the Supplier for the Services in respect of the Payment Claim.
- b) If the amount in the Payment Schedule is different from the amount in the Payment Claim, the Supplier must provide a Correctly Rendered Invoice to the Customer for the amount stated in the Payment Schedule within 2 Business Days of receipt of the Payment Schedule.
- c) The Customer will pay to the Supplier an amount not less than the amount shown in the Payment Schedule within 5 Business Days of issue by the Customer of the Payment Schedule.

8.5 Disputed invoices

Delete and replace with:

“8.5 Disputed Payment Claims

- a) The Customer will set out in the Payment Schedule the calculations employed to arrive at the amount, and, if the amount is less than the amount claimed by the Supplier, the reasons for the difference and any allowances made arising out of the Contract resulting in the balance due to the Supplier.
- b) If the Customer disputes the amount claimed by the Supplier in a Payment Claim, at the Customer’s election, the Customer may withhold payment of the disputed amount and pay the amount it believes is due for payment by the date that payment must be made under the Contract.
- c) The Supplier must continue to perform its obligations under the Contract despite any dispute about a Payment Claim.”

8.6 Underpayments and overpayments

No amendment.

8.7 Set-off

No amendment.

9 GST

9.1 Construction

No amendment.

9.2 GST exclusive

No amendment.

9.3 Tax invoice

No amendment.

9.4 Adjustment event

No amendment.

9.5 Reimbursements

No amendment.

10 Intellectual Property Rights

10.1 Pre-Existing Material

No amendment.

10.2 Customer owned Deliverables

No amendment.

10.3 Supplier owned Deliverables

No amendment.

10.4 Third Party Material

No amendment.

10.5 Moral Rights

No amendment.

11 Data, models and analytical tools

No amendment.

12 Confidentiality

12.1 Mutual obligations of confidentiality

No amendment.

12.2 Permitted disclosures

No amendment.

12.3 *Publicity*

No amendment.

12.4 *Confidentiality and privacy deed*

No amendment.

12.5 *Return or destruction of material*

No amendment.

13 *Privacy*

13.1 *Supplier's privacy obligations*

No amendment.

13.2 *Notification of breach*

No amendment.

14 *Warranties*

14.1 *Supplier warranties*

No amendment.

14.2 *Intellectual Property Rights*

No amendment.

15 *Liability*

15.1 *Limitation of liability*

No amendment.

15.2 *Exclusions from limitation of liability*

No amendment.

15.3 *Duty to mitigate*

No amendment.

16 *Indemnity by Supplier*

No amendment.

17 *Insurance*

No amendment.

18 *Security*

18.1 *Provision of security*

No amendment.

18.2 Enforcement

No amendment.

18.3 Release of security

No amendment.

18.4 Adverse changes

No amendment.

19 Anti-competitive conduct, conflict of interest and criminal organisations

19.1 Anti-competitive conduct

No amendment.

19.2 Conflict of Interest

No amendment.

19.3 Criminal organisation

No amendment.

19.4 Warranties are ongoing

No amendment.

20 Modern Slavery

20.1 Compliance

No amendment.

20.2 Provision of assistance

No amendment.

21 Disputes

No amendment.

22 Termination

22.1 For cause – by Customer

No amendment.

22.2 For cause – by Supplier

No amendment.

22.3 For convenience

No amendment.

22.4 Suspension

No amendment.

22.5 Consequences

No amendment.

23 Contract Administration

23.1 Reporting

No amendment.

23.2 Records

No amendment.

23.3 Authorised Representatives

No amendment.

23.4 Inspections

No amendment.

23.5 Notice of Change in Control

No amendment.

23.6 Material Adverse Events

No amendment.

23.7 Notices

No amendment.

23.8 Force Majeure Events

No amendment.

24 Assignment and novation

24.1 By Supplier

No amendment.

24.2 By Customer

No amendment.

24.3 Acting reasonably

No amendment.

24.4 Transferability and portability of Services

No amendment.

25 General

25.1 Entire agreement

No amendment.

25.2 Waiver

No amendment.

25.3 Rights cumulative

No amendment.

25.4 Variations

No amendment.

25.5 Relationship of the parties

No amendment.

25.6 Survival

No amendment.

25.7 Costs

No amendment.

25.8 Joint and several liability

No amendment.

25.9 Governing law

No amendment.

26 Definitions and Interpretation

26.1 Definitions

Insert the following after the definition of ‘Authorised Representative’:

Table 26.1 - Definitions

Terms	Definition
BIF Act	<i>Building Industry Fairness (Security of Payment) Act 2017 (Qld) and the regulations made under or in respect of that Act.</i>

26.2 Interpretation

No amendment.

Annexure Part A – Statutory Declaration by Supplier

STATUTORY DECLARATION BY SUPPLIER

Clause 8.1A

Oaths Act 1867

Queensland

To Wit

I, of
.....

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through

.....
("the Customer") and

.....
("the Supplier") for

.....
("the Contract").

1. I hold the position of
I am in a position to know the facts contained herein and to bind the Supplier by the terms of this declaration, and I am duly authorised by the Supplier to make this declaration on its / their behalf.
2. All subcontractors and subcontractors performing work under the Contract have been approved by the Customer in accordance with Clause 8.1 of the Contract.
3. All the Supplier's workers who at any time have been engaged on Services under the Contract by the Supplier have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim No
4. All subcontractors of the Supplier have been paid, including via the project bank account where required by the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* ("BIF Act"), all that is due and payable to them up to the date of submission by the Contractor of Payment Claim No in respect of their part of the Services under the Contract.
5. Where required by the BIF Act:
 - a. all retention moneys in relation to Subcontractors of the Supplier have been paid into the retention trust account of the project bank account in respect of the Services under the Contract
 - b. all amounts relating to a payment dispute have been paid into the disputed funds trust account of the project bank account, and
 - c. all withdrawals from the project bank account have been in accordance with the BIF Act.

6. All subcontractors and sub subcontractors performing Services under the Contract have been informed of the existence of the BIF Act.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* (Qld).

.....

Name of Supplier

Signature of Supplier

Taken and declared before me

at

in the State of

.....

this day of20.....

.....

A Justice of the Peace / Legal Practitioner /
Commissioner of Declarations

Annexure Part B – Information for subcontractors

The Queensland Government has enacted the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) to assist in providing security of payment and timely payments for subcontractors in the building and construction industry.

The *Building and Construction Industry Payments Act 2004* (Qld) and the *Subcontractors' Charges Act 1974* (Qld) have been repealed and have been replaced by the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

Further information on the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), including approved forms, can be accessed on the Queensland Building and Construction Commission website at www.qbcc.qld.gov.au.

