

TEMPLATE B



REQUEST FOR TENDER

Request for Tender (RFT)	Supply of second hand landfill compactor
Deadline:	4.00 pm Wednesday 11 November 2009
Address for Delivery:	52 Hesse Street Waroona WA 6215 (PO Box 20) <i>ELECTRONIC MAIL AND FACSIMILE TENDERS WILL BE ACCEPTED</i>
RFT Number:	12/2009

TABLE OF CONTENTS

<u>1</u>	<u>PRINCIPAL'S REQUEST</u>	<u>3</u>
1.1	CONTRACT REQUIREMENTS IN BRIEF	3
1.2	TENDER DOCUMENTS	3
1.3	DEFINITIONS	3
1.4	HOW TO PREPARE YOUR TENDER	3
1.5	CONTACT PERSONS	4
1.6	PRE QUALIFICATION REQUIREMENTS	ERROR! BOOKMARK NOT DEFINED.
1.7	TENDER BRIEFING/SITE INSPECTION	ERROR! BOOKMARK NOT DEFINED.
1.8	EVALUATION PROCESS	4
1.9	SELECTION CRITERIA	4
1.10	PRICE BASIS	5
1.11	THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION	5
1.12	CONDITIONS OF TENDERING	5
<u>2</u>	<u>SPECIFICATION</u>	<u>9</u>
2.1	INTRODUCTION	9
2.2	BACKGROUND INFORMATION	9
2.3	SCOPE OF WORK	9
2.4	SPECIFIC REQUIREMENTS OF THE CONTRACT	9
2.5	IMPLEMENTATION TIMETABLE	9
<u>3</u>	<u>TENDERER'S OFFER</u>	<u>10</u>
3.1	OFFER FORM	10
3.2	TENDERER'S RESPONSE	11
3.3	SELECTION CRITERIA	13
3.4	PRICE INFORMATION	14
<u>4</u>	<u>APPENDIX A – SPECIAL CONDITIONS OF CONTRACT</u>	<u>16</u>
4.1	PERIOD OF CONTRACT AND TERMINATION	16
4.2	INSURANCES	16
<u>5</u>	<u>APPENDIX B – GENERAL CONDITIONS OF CONTRACT</u>	<u>17</u>

1 PRINCIPAL'S REQUEST

1.1 CONTRACT REQUIREMENTS IN BRIEF

The Shire of Waroona seeks the supply of a second hand landfill compactor for use at the Buller road Landfill site. The Shires current landfill machine is beyond its economic life and requires replacement

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:

Attachments:	The documents you attach as part of your Tender;
Contractor:	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;
Deadline:	The deadline for lodgement of your Tender;
General Conditions of Contract:	Means the General Conditions of Contract nominated in Part 1;
Offer:	Your offer to be selected to supply the Requirements;
Principal:	Shire of Waroona
Request:	This document;
Requirements:	The goods requested by the Principal;
Selection Criteria:	The criteria used by the Principal in evaluating your Tender;
Special Conditions:	The additional contractual terms;
Specification:	The statement of Requirements that the Principal requests you to provide if selected;
Tender:	Completed Offer form, response to the Selection Criteria and Attachments;
Tenderer:	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 & Specification Enquiries

Name: **Steve Cleaver Director Community Services**
Telephone: **97337800**
Facsimile: **97331883**
Email: **dcs@waroona.wa.gov.au**

1.6 N/A

1.7 N/A

1.8 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:

- (a) 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.
- (b) Tenders are assessed against the Selection Criteria. Contract costs are evaluated, eg tendered prices and other relevant whole of life costs are considered.
- (c) 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.

1.9 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.

1.9.1 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.

1.9.2 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.

1.9.3 PRICE CONSIDERATIONS

CLAUSE A: 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	40%

1.10 PRICE BASIS

OPTION A-FIXED PRICES

All prices for **goods/services** 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.

1.11 THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION

The following policies may affect this selection:

Local Purchasing Policy

Purchasing Policy

1.12 CONDITIONS OF TENDERING

1.12.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline. The Deadline for this Request is [Wednesday 11 November 2009 4.00 pm](#)

The Tender is to be:

- (a) placed in a sealed envelope clearly endorsed with the tender number and title as shown on the front cover of this Request; and
- (b) delivered by hand and placed in the Tender Box at [52 Hesse Street Waroona](#) (by the Tenderer or the Tenderer's private agent) or sent through the mail to the Chief Executive Officer [PO Box 20, Waroona WA 6215](#).

Electronic mail Tenders and Tenders submitted by facsimile *will* be accepted.

Tenderers must ensure that they have provided **one** signed copies of their Tender (one to be marked “ORIGINAL” and bound, the other(s) to be marked “COPY”. Any brochures or pamphlets must be attached to both the original and the copies.

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.

1.12.2 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.

1.12.3 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.

1.12.4 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.

1.12.5 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.

1.12.6 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.

1.12.7 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.

1.12.8 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**).

1.12.9 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.

1.12.10 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.

1.12.11 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.

1.12.12 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.

1.12.13 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.

1.12.14 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.

1.12.15 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.

1.12.16 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 [Wednesday 11 November 2009](#)

1.12.17 IN-HOUSE TENDERS

The Principal [\[does not\]](#) intend to submit an in-house Tender.

2 SPECIFICATION

2.1 INTRODUCTION

The Shires Class II landfill requires replacement of its current landfill machine with a suitable landfill compactor. The site is licensed to receive 5000 tonnes per annum.

2.2 BACKGROUND INFORMATION

Utilisation of the current machinery is approximately 500 hours per annum and research has revealed that a second hand machine is suitable.

The Shire of Waroona also has a 1991 Volvo L150 wheel loader on site to complement the compactor machine.

2.3 SCOPE OF WORK

- Full Service history including oil samples to be provided.
- Detail any warranties, insurances to be provided.
- Delivered to Buller rd landfill site lot 1701 (No 702) Buller rd Waroona.

2.4 SPECIFIC REQUIREMENTS OF THE CONTRACT

- Technical information
 - Operational Weight between 23000 kg and 24000 kg.
 - Gross power between 180 kW and 200 kW.
- Steel drum wheels with near new abrasion resistant teeth.
- Machine to be in excellent working order.

2.5 IMPLEMENTATION TIMETABLE

To be supplied within 60 days.

3 TENDERER'S OFFER

3.1 OFFER FORM

The Chief Executive Officer
 Shire of Waroona
 52 Hesse Street WA 6215

I/We _____
(BLOCK LETTERS)

of _____
(ADDRESS)

ABN/GST Status _____ ACN (if any) _____

Telephone No: _____ Facsimile No: _____

E-mail (if any): _____

In response to RFT 12/2009:

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 N/A

3.2.2 N/A

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 "Agents".	"Agents"	Tick if attached <input type="checkbox"/>

3.2.4 TRUSTS

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

3.2.5 SUBCONTRACTORS

Do you intend to subcontract any of the Requirements?	Yes / No	
If Yes, in an attachment labelled "Subcontractors" provide details of the subcontractor(s) including: (a) the name, address and the number of people employed; and (b) the Requirements that will be subcontracted.	"Subcontractors"	Tick if attached <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	
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 "Conflicts of Interest".	"Conflicts of Interest"	Tick if attached <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

PART 3**COMPLETE AND RETURN THIS PART**

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 “Financial Position” 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.	“Financial Position”	Tick if attached <input type="checkbox"/>

3.2.8 QUALITY ASSURANCE

Does your organisation have any quality assurance or quality assurance systems?	Yes / No	
If you propose to subcontract, does your subcontractor have a “third party” quality management system in place?	Yes / No	
Supply evidence or details of your quality assurance position and where relevant of your supplier’s or subcontractor’s position, in an attachment labelled “Quality Assurance” .	“Quality Assurance”	Tick if attached <input type="checkbox"/>

3.2.9 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 “Insurance Coverage” . A copy of the Certificate of Currency is to be provided to the Principal within 14 days of acceptance.				“Insurance Coverage”	Tick if attached <input type="checkbox"/>
<i>Type</i>	<i>Insurer – Broker</i>	<i>Policy Number</i>	<i>Value (\$)</i>	<i>Expiry Date</i>	
Public Liability					
[insert applicable type]					
[insert applicable type]					

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
(c) Compliance with attendance at any mandatory tender briefing or site inspection.	Yes / No
(d) Compliance with the Quality Assurance requirement for this Request.	Yes / No
(e) Compliance with the Delivery Date.	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) Relevant Experience Describe your experience in completing /supplying similar Requirements. Tenderers must, as a minimum, address the following information in an attachment and label it “ Relevant Experience ”:	Weighting <15%>	
	(a) Provide details of similar work; (b) Provide scope of the Tenderer’s involvement including details of outcomes; (c) Provide details of issues that arose during the project and how these were managed; (d) Demonstrate sound judgement and discretion; and (e) Demonstrate competency and proven track record of achieving outcomes.	“Relevant Experience”

B) Key Personnel skills and experience Tenderers should provide as a minimum information of proposed personnel to be allocated to this project, such as:	Weighting <15%>	
	(a) Their role in the performance of the Contract; (b) Curriculum vitae; (c) Membership to any professional or business association; (d) Qualifications, with particular emphasis on experience of personnel in projects of a similar requirement; and (e) Any additional information. Supply details in an attachment and label it “ Key Personnel ”.	“Key Personnel”

<p>C) Tenderer's Resources Tenderers should demonstrate their ability to supply and sustain the necessary:</p> <p>(a) Plant, equipment and materials; and</p> <p>(b) Any contingency measures or back up of resources including personnel (where applicable).</p> <p>As a minimum, Tenderers should provide a current commitment schedule and plant/equipment schedule in an attachment and label it "Tenderer's Resources".</p>	Weighting <15%>	
	"Tenderer's Resources"	Tick if attached <input type="checkbox"/>

<p>D) Demonstrated Understanding Tenderers should detail the process they intend to use to achieve the Requirements of the Specification. Areas that you may wish to cover include:</p> <p>(a) A project schedule/timeline (where applicable);</p> <p>(b) The process for the delivery of the goods/services;</p> <p>(c) Training processes (if required); and</p> <p>(d) A demonstrated understanding of the scope of work</p> <p>Supply details and provide an outline of your proposed methodology in an attachment labelled "Demonstrated Understanding".</p>	Weighting <15%>	
	"Demonstrated Understanding"	Tick if attached <input type="checkbox"/>

3.4 PRICE INFORMATION

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

3.4.1 DISCOUNTS

Are you prepared to allow a discount for prompt settlement of accounts?	Yes / No	
If you are offering different discounts for different periods, or other discounts such as volume discounts, detail them in an attachment labelled "Discounts" .	"Discounts"	Tick if attached <input type="checkbox"/>

3.4.2 PRICE BASIS**OPTION A**

Are you prepared to offer a fixed price?

Yes / No

3.4.3 PRICE SCHEDULE**LUMP SUM –GOODS**

Item Description	Tender Unit	Quantity Required (pa)	Manufacturers Name/Item Code/Model No	Place of Origin (Regional Preference)	Price Tendered (ex GST)	GST Component	Price Tendered (inc GST)

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.

4.2 INSURANCES

The Contractor and its subcontractor(s) (if any) will be required to effect and maintain the insurance policies referred to in the General Conditions of Contract in the following sums:

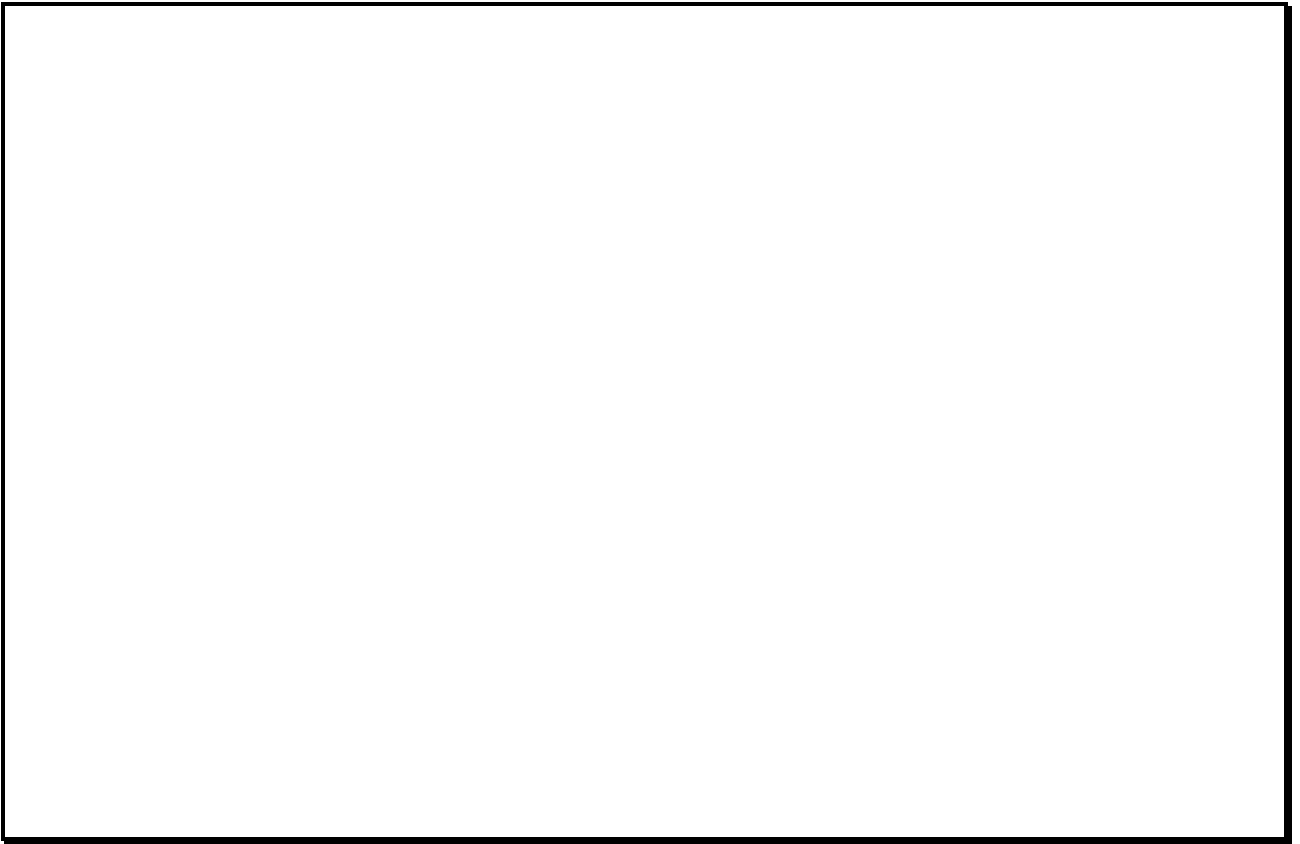
- (a) Public liability insurance in the sum of at least \$10 000 000 respect of any one occurrence and for an unlimited number of claims.

SAMPLE GENERAL CONDITIONS OF CONTRACT

5 APPENDIX B – GENERAL CONDITIONS OF CONTRACT

FOR THE SUPPLY OF GOODS

SAMPLE GENERAL CONDITIONS OF CONTRACT



SAMPLE GENERAL CONDITIONS OF CONTRACT

5.1.1.1.1.1 TABLE OF CONTENTS

1.	CONSTRUCTION OF CONTRACT	20	
2.	DEFINITIONS	20	
3.	EVIDENCE OF CONTRACT	21	
4.	NOTICES	21	
5.	CONTRACTOR TO HAVE INFORMED ITSELF	21	
6.	COMPLYING WITH STATUTORY REQUIREMENTS	22	
7.	ASSIGNMENT AND SUBCONTRACTING	22	
8.	INDEMNITY	22	
9.	PATENT RIGHTS/COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS	23	23
10.	SPECIFIED BRANDS	23	
11.	QUALITY OF GOODS	23	
12.	SUPPLY OF GOODS BY ORDER	23	
13.	PACKAGING	24	
14.	DELIVERY OF GOODS	24	
15.	EXPENSES OF DELIVERY	24	
16.	RECEIPT AND ACCEPTANCE OF GOODS	24	
17.	REJECTION AND REMOVAL OF GOODS	25	
18.	PROPERTY IN THE GOODS	25	
19.	DEFICIENT GOODS	26	
20.	WARRANTIES	26	
21.	VARIATION TO CONTRACT TERMS	26	
22.	PRICE BASIS	26	
23.	SPECIAL PRICING AND OFFERS	27	
24.	PAYMENT	27	
25.	DEDUCTIONS OF CHARGES OR DEBTS	27	
26.	GOODS AND SERVICES TAX	27	
27.	CUSTOMS AND EXCISE DUTIES	28	
28.	SETTLEMENT OF DISPUTES	28	
29.	TERMINATION OF CONTRACT	29	
30.	WAIVER	29	
31.	ENTIRE AGREEMENT	29	
32.	RIGHTS AND REMEDIES	30	

5.2 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.

5.3 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 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.

'Contractor' means the party named in the Contract as the seller of the Goods.

'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' means the goods, the subject of the Contract or such of them as shall be described in the Order.

'Local Government' means any local government established under the Local Government Act 1995 or than 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.

'Principal' means the [\[insert local government name\]](#).

'Specification' means any technical specification, drawing and schedule forming part of the Contract.

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.

5.4 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.

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

2

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.

5.5 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.

5.6 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 all documents and any other information made available in writing by the Principal to the Contractor for the purpose of tendering; and

(b) 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; and

- (c) satisfied itself as to the correctness and sufficiency of its tender and that the Contract Price covers the cost of complying with all its obligations under the Contract.

- 3 5.2 Failure by the Contractor to have done all or any of the forgoing shall not relieve the Contractor of its obligation to perform the Contract in accordance with the terms of the Contract.

5.7 6. COMPLYING WITH STATUTORY REQUIREMENTS

The Contractor shall comply with the requirements of all applicable Acts, statutes and laws and all ordinances, rules, regulations, by-laws, orders and proclamations, throughout the performance of the Contract. If a requirement is at variance with a term of the Contract the Contractor shall notify the Principal in writing. 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.

5.8 7. ASSIGNMENT AND SUBCONTRACTING

- 7.1 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.

5.9 8. INDEMNITY

- 8.1 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 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.
- 8.2 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.

5.109. PATENT RIGHTS/COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Contractor warrants that neither the Goods 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 and shall indemnify the Principal against any action, suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

5.1110. SPECIFIED BRANDS

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.

5.1211. QUALITY OF GOODS

- 11.1 All Goods delivered shall conform to the Specification and to samples provided (if any) specified in the Contract.
- 11.2 Where no standards are specified in the Contract the Goods 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 International Standards Organisation.
- 11.3 If no samples or standards are specified, Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use.

5.1312. SUPPLY OF GOODS BY ORDER

- 12.1 The Contractor shall fulfil all Orders for Goods placed by the Principal during the term or currency of the Contract.
- 12.2 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.

- 12.3 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.

5.1413. PACKAGING

The Contractor shall ensure that all Goods are properly, safely and securely packaged and labelled for identification and safety.

5.1514. DELIVERY OF GOODS

- 14.1 The Contractor shall deliver the Goods 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 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.

5.1615. EXPENSES OF DELIVERY

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

5.1716. RECEIPT AND ACCEPTANCE OF GOODS

- 16.1 Delivery and receipt of Goods, shall not of itself constitute acceptance of the Goods 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 when the Officer notifies the Contractor that the Goods have been accepted or 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).

5.1817. 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.
- 4 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.

5.1918. PROPERTY IN THE GOODS

Upon payment for the Goods property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.

5.2019. DEFICIENT GOODS

- 19.1 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;
- 19.2 Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.
- 19.3 Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.
- 19.4 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.
- 19.5 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 28.2 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 28.2 were set out herein.

5.2120 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.

5.2221 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.

5.2322 PRICE BASIS

Unless otherwise stated in the Contract, the Contract Price shall be firm and not subject to rise and fall.

5.2423 SPECIAL PRICING AND OFFERS

5.25

Any special price, licence fee, rate or charge in relation to the Goods or goods 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.

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.

5.2624 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 have been accepted 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.

5.2725 DEDUCTIONS OF CHARGES OR DEBTS

The Principal may deduct from monies due to the Contractor under the Contract or on any other account, any monies due from the Contractor to the Principal, under the Contract or on any other account, and if those monies are insufficient, the Principal may have recourse to any security under the Contract.

26 GOODS AND SERVICES TAX

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 A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the first time being in the State of Western Australia.
- (c) "Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act.
- 26.1 Where the supply of Goods or any part thereof is a taxable supply under the GST Act:
the Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

5.2827 CUSTOMS AND EXCISE DUTIES

- 27.1 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.
- 27.2 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.
- 27.3 The Contractor shall:
- (a) if the Principal so requires, pay any dumping duty or security therefor 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.

5.2928 SETTLEMENT OF DISPUTES

- 28.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 28.2 Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods 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.
- 28.3 Subject to the provisions of 28.2 of this clause, 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).
- 28.4 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.

5.3029 TERMINATION OF CONTRACT

- 29.1 Subject to Clause 28, 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;

5

- 6 **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.

- 29.2 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.

5.3130 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.

5.3231 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.

5.3332 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.