



**BLUESCOPE
STEEL**

**Conditions of Tender
(Purchase Order)**

CONDITIONS OF TENDER

1 Definitions and Interpretation

1.1 In these Conditions of Tender:

- (a) “Closing Time” means the date and time identified in Tender Document 2;
- (b) “Contract” means the contract which may be entered into as a consequence of this tender process;
- (c) “Principal” means the person so identified in Tender Document 2;
- (d) “Principal’s Representative” means the person so identified in Tender Document 2;
- (e) “Purchase Order” means the Principal’s order for Work, which is the Principal’s acceptance of the Tenderer’s tender to perform the Work.
- (f) “Returnable Tender Schedules” means the numbered schedules forming Tender Document 3;
- (g) “Site” means the place or places where the Work is to be executed;
- (h) “Tender Documents” means the documents described in Clause 2.2;
- (i) “Tenderer” means any person who submits a tender for the Work; and
- (j) “Work” means the work to be performed by the successful Tenderer which is described in the Technical Specification (Tender Document 4).

1.2 Headings will not be used in the interpretation of these Conditions of Tender.

1.3 In these Conditions of Tender, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) one gender includes all genders;
- (c) a person includes a partnership and a body corporate;
- (d) an act, code or standard includes that act, code or standard as amended, rectified or replaced from time to time; and
- (e) terms used but not defined in these Conditions of Tender have the same meaning given to those terms in the Contract.

2 Tender Documents

2.1 Each Tenderer must comply with the requirements of the Tender Documents.

2.2 The Tender Documents are:

- (a) the documents listed in Tender Document 2; and
- (b) any annexure, addendum or amendment to the documents listed in Tender Document 2 which is issued by the Principal pursuant to Clause 2.8.

2.3 One set of Tender Documents is available to each Tenderer free of charge.

2.4 Within 14 days of receipt of a notice from the Principal under Clause 12.7 stating that they have been unsuccessful, a Tenderer must return all copies of the Tender Documents to the Principal.

2.5 The Tender Documents must be read and construed together. The documents comprising the Tender Documents are intended to be mutually explanatory.

- 2.6 The Tender Documents must be used solely for the purpose of tendering for the Work and for no other purpose.
- 2.7 The Principal may, at any time prior to the Closing Time, issue any amendment, annexure or addendum to the Tender Documents. No amendment, annexure or addendum to the Tender Documents will be binding on the Principal unless it is in writing and identified as forming part of the Tender Documents.
- 2.8 Any information provided to a Tenderer by or on behalf of the Principal (including as part of the Tender Documents) is:
- (a) provided for the convenience of the Tenderer only and unless expressly incorporated into the Contract will not form part of the Contract;
 - (b) not warranted or held out by the Principal as accurate, correct or adequate for the purposes of tendering; and
 - (c) must not be relied upon by the Tenderer except to the extent provided for in the Tender Documents.
- 2.9 The Tender Documents do not purport to contain all relevant information in relation to the Work and are provided solely on the basis that a Tenderer will be responsible for making its own assessment of the matters referred to in the Tender Documents. Each Tenderer is advised to verify all relevant representations, statements and information (including those contained or referred to in the Tender Documents or made orally during the course of any discussions with the Principal, its employees or agents). No person has been authorised by the Principal to make any representation or warranty in connection with the Tender Documents and any such representation or warranty, if given or made, must not be relied on as having been authorised by the Principal.
- 2.10 In particular, the Principal has relied on the reports prepared for it by various consultants and other parties. The Principal has not independently verified the information contained in those reports. The Principal and its directors, employees and agents do not make any representation or warranty (express or implied) as to the accuracy or completeness of the information provided to a tenderer.

3 Tenderer to inform itself

- 3.1 Each Tenderer will, by submitting its tender, be deemed to have fully acquainted itself with the contents of the Tender Documents and any documents which are referred to in the Tender Documents.
- 3.2 A Tenderer must notify the Principal in writing immediately of any ambiguities, errors, omissions, discrepancies, inconsistencies or other faults in the Tender Documents, with full details of those ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.
- 3.3 If a Tenderer has any queries or doubts about the meaning of the Tender Documents it must either:
- (a) at least five (5) working days prior to the Closing Time make a request in writing to the Principal Tender Contact for clarification (which where considered appropriate by the Principal will be issued with the written response of the Principal to all Tenderers and other participants in the tender process) which includes:
 - (i) the Tenderer's name and address;
 - (ii) the clause number and page number in question;
 - (iii) a clear definition of the issue and response required; and
 - (iv) phone and fax numbers of the Tenderer's representative; or

- (b) when submitting its tender, include a statement in Returnable Tender Schedule 9 of the interpretation upon which it relies and on which its tender has been prepared.
- 3.4 The Principal may require a Tenderer to inspect any property (whether or not owned by the Principal) which relates to the Work in the company of a person nominated by the Principal.
- 3.5 Each Tenderer warrants to the Principal that, by submitting its tender, it has:
- (a) carefully assessed and, where relevant, verified the contents of the Tender Documents and any other information made available by the Principal for the purpose of tendering;
 - (b) carefully assessed and, where relevant, verified all information relevant to the risks, contingencies and other circumstances having an effect on its tender;
 - (c) informed itself of the nature of the Work and other obligations to be performed under the Contract, including the labour, plant and equipment, materials, mechanical plant and other resources necessary, suitable or desirable to perform those obligations; and
 - (d) satisfied itself as to the correctness and sufficiency of its tender for the performance of the Work and other obligations in the Tender Documents and that its rates and other prices include compliance with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract.
- 3.6 Each Tenderer acknowledges that the Principal will rely upon the warranties given in Clause 3.5.
- 3.7 The Principal will not consider or be liable for claims made by a Tenderer that its tender was disadvantaged by lack of information or inability to resolve ambiguities.

4 Site Inspection

- 4.1 Each Tenderer must, before submitting its tender, inspect the Site for the purpose of ascertaining:
- (a) the conditions of access to the Site;
 - (b) the conditions upon the Site; and
 - (c) the conditions below and within the Site for which, under the Tender Documents, the Tenderer will, if successful, take the risk.
- 4.2 Each Tenderer will be deemed to have conducted the inspections referred to in Clause 4.1 in submitting its tender.
- 4.3 Failure by a Tenderer to conduct the inspections referred to in Clause 4.1 will not relieve the Tenderer (if successful) of its liability to perform and complete the Contract in accordance with its terms, and in particular, in accordance with the rates or at the price tendered.
- 4.4 Each Tenderer must contact the Principal Tender Contact in order to make arrangements to inspect the Site. The Principal may, in the Principal's sole discretion, arrange for Site inspections to take place by all Tenderers at the same time.
- 4.5 The Principal may require the Site inspections to be made in the company of a person nominated by the Principal.

5 Alternative Materials

- 5.1 If a Tenderer is aware that any material specified in the Tender Documents is not available, the Tenderer must:
- (a) include advice of that in its tender; and

(b) include an alternative material and price.

5.2 Where material specified in the Tender Documents is unavailable and a Tenderer complies with Clause 5.1, its tender will be a conforming tender in relation to that material.

6 Tenders

6.1 Each Tenderer must submit to the Principal 1 bound copy of its tender, the number of loose copies of the tender described in Tender Document 2, and the number of copies on CD Rom described in Tender Document 2. The bound copy is to be marked "ORIGINAL" and all other copies are to be marked "COPY". A Tenderer must ensure that the copies of its tender are true copies of the original in all respects. In the event of any discrepancies between the copies, the tender marked "ORIGINAL" will prevail.

6.2 Tenders must:

- (a) include all information required by the Tender Documents;
- (b) be completed (in every detail); and
- (c) comply with the requirements of the Tender Documents.

6.3 Tenders must also:

- (a) include Tender Document 3 which must be fully completed by the Tenderer;
- (b) be in English and be legible (and any alteration must be initialled by the Tenderer);
- (c) be executed in the manner indicated below:
 - (i) if the Tenderer is not a corporation, by signature of the Tenderer; or
 - (ii) if the Tenderer is a single corporate entity, by signature of one person authorised by the corporation to bind it in contract. In such circumstances, a copy of the authorisation of that person by the corporation must be submitted with the tender; and
 - (iii) in the case of a joint bid by parties in an unincorporated joint venture or consortium, by signature of one person authorised by each party to the joint venture or consortium to bind them in contract. In such circumstances a copy of the authorisation of that person by each party must be submitted with the tender;
- (d) be enclosed in a sealed envelope with the tender number and the project name marked clearly on it; and
- (e) be received by the Principal in accordance with Clauses 8.1 and 8.2.

6.4 Any tender which does not comply with the requirements of Clauses 6.1, 6.2 and 6.3 may be rejected by the Principal.

6.5 Joint tenders for the whole of the Work may be submitted by more than one person, firm or company on the basis that each joint tenderer will be jointly and severally liable under the Contract. Where there is a joint tender, each joint tenderer must complete and return a separate Returnable Tender Schedule 5 with the joint tender.

6.6 A Tenderer must not submit a tender for part of the Work unless otherwise specified by the Principal.

7 Alternative Tenders

7.1 A Tenderer may submit a tender which:

- (a) does not comply with Clause 6.2 (but does comply with Clause 6.3);
- (b) is accompanied by a tender which complies with Clauses 6.2 and 6.3;

- (c) clearly identifies the respects in which it departs from the requirements of Clause 6.2; and
 - (d) is clearly marked “ALTERNATIVE TENDER”.
- 7.2 If all of the requirements of Clause 7.1 are complied with, the Principal may consider the alternative tender submitted in accordance with that Clause. However, each Tenderer acknowledges and agrees that the Principal may also, in its absolute discretion and without giving reasons, decline to consider or, after consideration, not accept any alternative tender.
- 7.3 If an alternative tender is offered by a Tenderer, the Tenderer must ensure that the alternative tender includes or is accompanied by sufficient detail so as to enable the Principal to:
- (a) assess the general acceptability of the alternative tender; and
 - (b) determine whether to seek additional information in order to evaluate the alternative tender for any benefits that it may give to the Principal.
- 7.4 The Principal may, at any time during the tender validity period referred to in Clause 9.1, request additional information from the Tenderer in respect of any aspect of the alternative tender and the Tenderer must provide that additional information within one week of the Principal’s request.

8 Receipt of Tenders

- 8.1 Tenders must be forwarded to the Principal by placing them in the tender box located at the place for submission of tenders nominated in Tender Document 2.
- 8.2 Tenders must be received by the Principal at the place identified in Clause 8.1 by the Closing Time.
- 8.3 The Principal may choose not to consider any tender which is received after the Closing Time. The Principal may consider a tender received after the Closing Time if it is satisfied that the integrity and competitiveness of the tendering process has not and will not thereby be compromised. To satisfy itself in that regard, the Principal may consider whether:
- (a) the late tender was received prior to the completion of the tender opening and recording process;
 - (b) the cause of the lateness was beyond the Tenderer’s control (although the Principal is under no obligation to make enquiries as to the cause of lateness of a tender received after the Closing Time);
 - (c) the late tender is significantly different such that information from other Tenderers could not have assisted in framing the late tender; and
 - (d) the late tender is the only tender which complies with the requirements of Clauses 6.2 and 6.3.

When a late tender is received, the time and date of receipt will be noted on the tender and endorsed by the Principal.

- 8.4 If a Tenderer wishes to submit a correction to its original tender or additional information following submission of its tender, it must submit the correction or additional information to the place identified in Clause 8.1 by the Closing Time.

9 Validity Period

- 9.1 All tenders submitted must remain valid for a minimum period of 120 days from the Closing Time.

- 9.2 In consideration of the administrative time and expense to the Principal in evaluating its tender, each Tenderer undertakes not to withdraw or amend its tender within the validity period referred to in Clause 9.1, without the prior written consent of the Principal.

10 Confidentiality

- 10.1 The Tender Documents and any other documents or information concerning the Work are confidential and may only be used for the sole purpose of tendering for, or carrying out, the Work and the performance of its other obligations under the Contract.
- 10.2 Each Tenderer must not and must ensure that its employees do not, up until the time that the Principal announces that it has accepted a tender, divulge to or discuss with any other person the terms of its tender except to the extent that it is necessary to discuss it with prospective subcontractors for the purpose of preparing and submitting the tender.
- 10.3 If a Tenderer, in complying with Clause 10.2, does discuss the terms of its tender with a prospective subcontractor, the Tenderer must first obtain undertakings from the prospective subcontractor that it will keep the terms of the discussion and the tender absolutely confidential.
- 10.4 The Principal must not divulge the terms of any tender to any person except to the extent:
- (a) necessary to consider the tenders;
 - (b) necessary to administer the Contract; or
 - (c) required by law.

11 After Closing Time

- 11.1 After the Closing Time, the Principal may (without limitation to any other action that may be open to the Principal):
- (a) engage in clarification, discussions or negotiations with any Tenderer for the purpose of clarifying its tender;
 - (b) invite some or all Tenderers to change their tenders in response to any change in the Tender Documents;
 - (c) put forward to a Tenderer proposals for amendments to the Contract and require the Tenderer to respond to these within a specified time and in a specified format;
 - (d) issue to a Tenderer amended forms of the Contract (which may not be the same as those issued to any other Tenderer) and require the Tenderer to indicate within a specified time and in a specified format whether it agrees to the amended forms of the Contract, and if not, the precise reasons why it does not (including, without limitation, requiring the Tenderer to provide alternative drafting amendments);
 - (e) negotiate with one or more Tenderers as to the terms of their tenders;
 - (f) appoint a preferred tenderer, but still conduct negotiations with other Tenderers;
 - (g) decide not to proceed further with the tender process; or
 - (h) call fresh tenders for the same or similar scope of work.
- 11.2 A Tenderer must if requested by the Principal:
- (a) provide further information in relation to its tender, or the Tenderer's performance or financial capabilities;
 - (b) allow the Principal and/or its agents to inspect any facility or equipment proposed for use in the performance of the Work;

- (c) allow the Principal and/or its agents to contact any referee nominated by the Tenderer and authorise the Principal to obtain information about the Tenderer from any third party who the Principal reasonably considers may be able to provide information about the Tenderer or which is pertinent to its tender; and
 - (d) attend an interview or make a formal presentation of limited duration as part of the tender process.
- 11.3 A Tenderer must supply any further information in relation to its tender and the project reasonably requested by the Principal within the time nominated by the Principal.
- 11.4 Any information supplied by a Tenderer in response to a request for information, or at an interview, referred to in this Clause 11 will, if required by the Principal, form part of the Tenderer's tender.
- 11.5 Any documents submitted as part of a Tenderer's tender will remain the property of the Principal for the purposes of evaluation as the Principal sees fit.
- 11.6 A Tenderer (or its representatives) is not permitted to attend the opening of tenders.

12 Entry into Contract with Successful Tenderer

- 12.1 The Principal may, in its absolute discretion, accept any tender or no tender.
- 12.2 The Principal may accept an alternative tender as it is defined in Clause 7.
- 12.3 The lowest priced tender will not necessarily be accepted by the Principal.
- 12.4 The Principal may accept a tender on different terms to those contained in the Tender Documents.
- 12.5 A tender will not be deemed to have been accepted and no contract in respect of the Work will arise between any Tenderer and the Principal until the Principal issues a Purchase Order to the successful Tenderer.
- 12.6 The Principal reserves the right to allot contracts or orders for the Work or any part of it to any Tenderer it considers advantageous at the prices or rates submitted by the Tenderer in Returnable Tender Schedule 2.
- 12.7 Following the issue of a Purchase Order by the Principal to the successful Tenderer as contemplated by Clause 12.5, unsuccessful Tenderers will be advised. Reasons for non-acceptance of their tenders will not be disclosed and no further correspondence in connection with the Tender Documents or their tenders will be entered into.
- 12.8 Other than as stated in the Returnable Tender Schedule 1 and in Clauses 9.2 and 17.1 of these Conditions of Tender, no contract or other binding legal relationship will exist between the Principal and any Tenderer unless and until the Principal issues a Purchase Order to the successful Tenderer.

13 Licensing and Membership of Professional Bodies

- 13.1 Where, in order to perform the Work, a Tenderer is required by law or by the Tender Documents to have a licence or be a member of a professional body, the Tenderer must include with its tender all licence numbers and membership details which are necessary for it to perform the Work.
- 13.2 All licences and memberships must be current at the time of submission of the tender.

14 Advertising

- 14.1 Tenderers must not take out advertisements relating to the Work in any publication without the prior written consent of the Principal Tender Contact.
- 14.2 Tenderers must not issue any information, publication, document or article for publication concerning the Work in any media without the prior written consent of the Principal Tender Contact.
- 14.3 If a Tenderer receives any enquiries pertaining to the Work from the media, the Tenderer must immediately refer the person making the enquiry to the Principal Tender Contact and must notify the Principal Tender Contact of the fact that an enquiry was made. Tenderers must not make any other comment in response to such an enquiry.

15 Financial and Legal Capacity

- 15.1 The Principal may ask a Tenderer to provide it with written evidence of its financial capacity to perform the Work or of its legal capacity. Written evidence of its financial capacity must come from a bank or financial institution. Written evidence of its legal capacity must comprise a copy of an official document such as company registration and names of office bearers issued by the Australian Securities and Investments Commission or a statement confirming the legal entity signed by a practicing solicitor.
- 15.2 The Principal may refuse to consider a tender by:
- (a) any body other than a corporation or a person; and
 - (b) any body which cannot show that it has the financial capacity to perform the Work.
- 15.3 A Tenderer must provide the written evidence (as applicable):
- (a) of financial capacity within 14 days of a request under Clause 15.1; or
 - (b) of legal capacity, within 3 days of a request under Clause 15.1.

16 Costs and Expenses

- 16.1 The Principal is not responsible for any costs and expenses incurred by Tenderers in the preparation and submission of tenders including, but not limited to, any Site investigations, attendance at meetings and providing any additional information required by the Principal, which may or may not lead to the Principal issuing a Purchase Order for the Work.
- 16.2 All such costs incurred by a Tenderer will be borne entirely and exclusively by that Tenderer.

17 Collusive Tendering

- 17.1 In consideration of being invited to tender, each Tenderer promises as a fundamental condition that it will not engage in any uncompetitive behaviour or other practice which denies legitimate business opportunities to other Tenderers or other participants in the tender process, including but not limited to the following matters:
- (a) it has, at the time of submission of its tender, no knowledge of the tender price of any other Tenderer;
 - (b) it has not, at the time of submission of its tender, entered into any contract, arrangement or understanding with other Tenderers as to who should be the successful Tenderer;
 - (c) it has not, at the time of submission of its tender, been involved in any meetings of Tenderers to discuss tenders prior to the submission of the tenders if the Principal or a representative of the Principal was not present;

- (d) it has not, at the time of submission of its tender, been involved in the exchange of information with other Tenderers about any tender for the Work;
 - (e) it has not, at the time of submission of its tender, entered into any contract, arrangement or understanding pursuant to which there is or will be a payment or allowance of money or the securing of reward or benefit for unsuccessful Tenderers by the successful Tenderer;
 - (f) it has not, at the time of submission of its tender, entered into any contract, arrangement or understanding with other Tenderers pursuant to which prices or conditions relating to any tender for the Work or the Contract or any part thereof are fixed;
 - (g) it will not submit a cover tender (that is, a tender submitted as genuine but which has been deliberately priced in order not to win the contract or commission) and will not provide any assistance to another Tenderer to do so;
 - (h) except as disclosed in its tender, it has not, at the time of submission of its tender, entered into any contract, arrangement or understanding to pay or allow any money or secure any reward or benefit directly or indirectly to a trade or industry association (above the published standard fees) in relation to its tender.
- 17.2 In the event that a Tenderer receives any money or allowance from or on behalf of another Tenderer in relation to this tender process, the Tenderer must immediately give the Principal written notice of such an event. Such money or the value of any allowance must be held on trust for and become immediately payable to the Principal.
- 17.3 In the event that a Tenderer pays or allows any money or secures any reward or benefit directly or indirectly to a trade or industry association or another Tenderer in breach of these conditions, the Tenderer must immediately give the Principal written notice of such an event. The Principal will be entitled to withhold from any payment due to the Tenderer on any account an equivalent sum as liquidated damages.
- 17.4 If a Tenderer fails to comply with this Clause 17, the Principal may:
- (a) refuse to consider its tender or tenders; and
 - (b) take such other action as it is entitled to take at law.