



## **DELTA ELECTRICITY – STANDARD TERMS AND CONDITIONS FOR WORKS**

### **Conditions of Quoting**

**Clause (A) Lodging Quotations** - Completed Quotation Forms with attachments (if any) shall be sealed in an envelope or other appropriate sealed cover endorsed with the Quotation Number and Closing Date and placed in the Quotation and Tender Receptacle located at Vales Point Power Station, Vales Road, Mannering Park on or before the closing date specified or be posted so as to reach the Secretary before the closing time. Facsimile quotations must contain sufficient detail to identify the Quotation Number, the Works and price(s) quoted and must be received before closing time.

Any Quotation (including comments and departures) which is not lodged in the Quotation and Tender Receptacle by the prescribed time and date will be deemed "Post Tender" and will be excluded from consideration.

After the closing date for the submission of Quotations Delta Electricity reserves the right to contact Tenderers and seek additional information for the purpose of clarification of any matter contained in the Quotation. This right is not mutual. Any unsolicited information submitted by Tenderers after the closing date for submission of Quotations, either by way of clarification or amendment of a Quotation will not be considered.

**Clause (B) Irregular Quotations** - The Tenderer shall submit offers which are fully in compliance with the requirements of this Quotation Form including these Conditions of Quoting, the Principal's Conditions of Order and the documents referred to under the heading "Particulars" in the Quotation Form. The Tenderer is therefore discouraged from including Conditions of Sale or other documents which include commercial departures or add special conditions to the Principal's Conditions of Order. The Tenderer submitting such documents shall be requested to withdraw them and failure by the Tenderer to do so may result in the quotation being excluded from further consideration.

**Clause (C) Alternative Quotations** - The Tenderer is permitted to submit alternative offers and shall state specifically in what respect each alternative is not in compliance with the documents referred to in Clause B above and any advantage to the Principal which the Tenderer's opinion is likely to be derived therefrom. Except in the respects so stated, the alternative offer shall be deemed to comply with the abovementioned documents. The Tenderer shall state a separate price for each alternative proposed.

**Clause (D) Acceptance of Quotation** - The Principal shall indicate acceptance of a quotation by issue of a Purchase Order to establish a binding Contract. The Principal is not bound to accept the lowest quotation and shall not be in any circumstances responsible for any costs incurred by a Tenderer in preparing and submitting a quotation. The receipt of conforming quotation will not be taken to create a binding contract between the Principal and the Tenderer. The Principal reserves the right to accept a quotation on an item by item basis.

**Clause (E) Base Date** - Quotations shall be based upon the costs and prices ruling on the fifth Bank trading day prior to the final closing time of quotations.

**Clause (F) Precedence of Documents** - Statements on the face of the Quotation Form or in the Specification Form or in any other document issued by the Principal with the Quotation Form which is inconsistent with a provision in the Conditions of Order shall prevail over such provision.

**Clause (G) NSW Government Code of Practice for Building and Construction** - The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to the tendered works. By submitting a quotation, the Tenderer acknowledges its understanding and agreement that:

- compliance with the NSW Code and NSW Guidelines is an essential condition to being considered for the quotation;
- by submitting a quotation response, the Tenderer agrees to comply with the NSW Code and NSW Guidelines on all future projects, including privately funded projects, to which the NSW Guidelines apply, whether or not successful in this quotation; and
- any party which is precluded from performing works to which the NSW Code and NSW Guidelines apply is excluded from consideration for the quotation.

### **Conditions of Order**

**Clause (1) Legal Construction** - The Contract established by the issue of the Principal's Purchase Order shall be deemed to have been made in the State of New South Wales.



Titles, clauses or paragraph headings in any document forming party of the Contract shall not affect the construction thereof.

For the purpose of these Conditions of Order, the Works shall not be deemed to be completed until the Contractor has fulfilled all obligations under the Contract except those in relation to Defects Liability Period.

#### **Clause (2) Glossary of Terms**

“Principal” means Delta Electricity

“Work under the Contract” means the work which the Contractor is or may be required to execute under the Contract and includes variations, remedial work, Constructional Plant and Temporary Works.

“Works” means the whole of the work to be executed in accordance with the Contract, including variations approved by the Principal which is to be handed over to the Principal on Practical Completion.

“Practical Completion” is that stage in the execution of the work under the Contract when the Works are substantially complete except for minor omissions and minor defects which do not prevent the Works from being reasonably capable of being used for their intended purposes.

“Portion” means a portion of the work under the Contract.

“Possession of Site” means the date the Principal gives the Contractor Possession of Site or sufficient of the Site to enable the Contractor to commence work.

*and like words have a corresponding meaning.*

**Clause (3) Nature of Contract** - The Principal shall pay the Contractor

- For work where the Principal accepts a lump sum, the lump sum;
- In a Schedule of Rates Contract the Principal will be liable to pay to the Contractor only for the actual measured quantity of each respective kind of work done whether such measured quantity shall be less or more than the quantity, if any, stated in the Schedule of Rates attached to the Specification. The Principal believes that the quantities given in the Schedule of Rates are approximately correct but the Principal does not guarantee the accuracy of such quantities.

Where there is in the priced Schedule of Rates a discrepancy between a rate and the extended amount in relation thereto the rate shall be deemed to be correct.

If there is no applicable rate in the Schedule of Rates the work shall be paid for at such rates as is reasonable in the circumstances of the case.

**Clause (4) Lodgement of Invoices and Place of Payment – Australian Tax Office compliant Tax Invoices** should be lodged in the name of Delta Electricity with the Finance Officer of the power station to which the order refers. However, payments pursuant to the Contract will be made at the office of the Principal or at the option of the Principal by cheque drawn on a bank in New South Wales and posted to the Contractor at the business address last known to the Principal. Where advantage is taken of Electronic Funds Transfer the payment will be remitted to a nominated bank account of the Contractor.

**Clause (5) Terms of Payments** - The Contractor shall be entitled to claim and be paid progressively 100% value of work done during each calendar month for work delivered to Site and erection/installation work done at the Site.

When the Contractor has fulfilled all obligations under the Contract (except those in relation to any Defects Liability Period), the Contractor shall notify the Principal in writing that the Works are complete and have reached Practical Completion.

In all cases the Contractor shall lodge with the Principal a Tax Invoice for work performed, which shall show the Principal's order number for identification purposes. **Except where advantage is taken of the Settlement Discount, payment will be made by the Principal not later than the end of the month following the month in which a Tax Invoice is received by the Principal.**

**Clause (6) Payment of Wages and Allowances -**

**(a) Statements of Wages and Allowances Paid or Unpaid -** Before payment of moneys to the Contractor by the Principal under the Contract, the Principal may require from the Contractor reasonable evidence that all employees of the Contractor engaged on the work under the Contract have been paid in full all amounts due to them as wages and allowances of every kind required to be paid under an industrial award or industrial agreement or an award of a Court or certified by a Court or an agreement approved by the Principal and to the latest date at which such wages and allowances are due. If any wages or allowances remain unpaid and the Principal is given reasonable evidence of the details and amounts of such unpaid wages or allowances, payment shall be made to the Contractor, but sufficient money to satisfy such unpaid wages and allowances may be withheld from that payment or any other payment then or thereafter due to be made to the Contractor until reasonable evidence is supplied that all wages and allowances have been paid.

**(b) Failure of Contractor to Pay Wages and Allowances -** If the Contractor fails or omits to pay the wages or allowances of an employee, and upon reasonable evidence of a judgement of a Court of competent jurisdiction in favour of the employee in relation thereto the Principal may pay the amount of such judgement to the employee concerned and the amount so paid may be recovered as a debt due to the Principal by the Contractor.

**Clause (7) Manner of Execution and Quality Assurance Requirements -** The work under the Contract shall be executed in the best and most substantial and workmanlike manner and with new and unused materials of the best or approved qualities for their respective uses.

Unless otherwise stated in the Specification appended hereto the Contractor shall provide everything necessary or usually supplied for the satisfactory completion of the work under the Contract whether or not such thing is mentioned in the Specification or Drawings.

The Contractor shall comply with reasonable requirements of the Principal in relation to the Works, Construction Plan, Temporary Works, materials and things used or to be used in connection with the execution of the work under the Contract on the Site.

Subject to the Contract not otherwise requiring and to any requirements of or pursuant to the foregoing paragraphs of this Clause, the materials supplied and workmanship employed by the Contractor for or in relation to the work under the Contract shall be in accordance with the appropriate Standards issued by Standards Australia current at the date of issue of the Quotation stated on the face of the Quotation Form or where there is not appropriate Australian Standard current at that date, the materials and workmanship shall be in accordance with the appropriate International Standards Organisation (ISO) Standard current at that date.

**Clause (8) Site Conditions**

**(a) Definition of Site -** Subject to the provisions of any Specification and/or Site Conditions appended hereto, the Site shall mean the lands or other places to be made available and any other lands and place made available to the Contractor by the Principal for the purpose of the Contract.

**(b) Site Conditions -** Site Conditions appropriate to the Principal's Site are detailed where necessary in the Specification and/or Site Conditions appended hereto.

**(c) Site Security -** The Principal's Site is maintained under a security system. Those provisions affecting the Contractor in meeting the Principal's security conditions are where necessary appended hereto or shall be advised to a Contractor prior to commencing work under the Contract at the Site.

**Clause (9) Defects Liability Period -** The Defects Liability Period shall commence on the Date of Practical Completion and in the absence of any statement to the contrary in any detailed Specification appended hereto shall expire 12 months afterwards. At any time prior to the expiration of the Defects Liability Period, the Principal may direct the Contractor to rectify any omission or defect in the work under the Contract existing at Practical Completion or becoming apparent prior to the expiration of the Defects Liability Period. Such rectification shall be at the Contractor's own cost and shall be conducted with all due diligence so as to remedy the damage or defect by repairing, replacing or renewing the damaged or defective portions of the Works so that they will comply with the requirements of the Contract.

If the Contractor fails to do anything which by this Clause the Contractor is required to do, the Principal may proceed to do the thing at the Contractor's risk and expense but without prejudice to any other rights which the Principal may have against the Contractor arising out of such failure on the part of the Contractor.



The Contractor shall not be responsible for any defects or damage arising out of faulty materials, workmanship or design provided by the Principal or arising out of improper usage by the Principal.

If it becomes necessary for the Contractor to replace, renew, repair, modify or otherwise make good any damaged or defective work the provisions of this clause shall apply to the work as if it had been the subject matter of the Contract in the first place.

**Clause (10) Compliance with Statutory Requirements and Requirements of Local and other Authorities -**

Throughout the execution of the work under the Contract, the Contractor shall conform, at own expense, with all relevant Acts of Parliament, Proclamations, Ordinances, Regulations and By-Laws, and with the orders, directions or requirements of Local and other Authorities which shall be applicable to the Works and shall pay all fees involved. Particular attention is drawn to the need to comply with all requirements of the WorkCover Authority of New South Wales.

The Contractor shall provide the Principal copies of their Site Specific Management Plan together with Risk and Hazard Assessments and Safe Work Procedures prior to commencement of work.

The Contractor shall, if so required by the Principal and within a reasonable time after such request demonstrate at own expense that compliance with the requirements of this clause have been met.

**Clause (11) Care of Works and Principal's Property During Construction -** The Contractor shall, during the progress of the work under the Contract properly cover up and protect the Works and also all materials and other things entrusted or delivered to the Contractor by the Principal for or in relation to the Works, from injury by exposure to the weather, and shall take every reasonable and timely precaution to prevent damage to or loss of the same from any cause, and shall be and remain answerable and liable for all damage thereto or loss thereof which may occur prior to the Practical Completion of the Works and notification in writing by the Contractor to the Principal that the Works have reached Practical Completion. If the Principal shall so require, in the case of any particular damage or loss, the Contractor shall make good the same in the most complete and substantial manner at the Contractor's sole cost and to the reasonable satisfaction of the Principal.

**Clause (12) Insurance** The Contractor shall prior to commencing work under the Contract, take out and hold current insurance policies covering (a) the Works, (b) Public and Products Liability and (c) the Employees of the Contractor (ie Workers Compensation).

**(a) the Works** - An insurance policy covering the Works shall include remedial work done or performed by the Contractor pursuant to Clause (9) "Defects Liability Period" and plant, materials, tools, tackle and other things brought to or delivered to the Site by the Contractor or a Subcontractor for the purpose of the Works against any loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care. Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under the Contract and things in storage off Site and in transit to Site.

The insurance policy shall be in the joint names of the Principal and the Contractor and shall cover all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld and the policy will also include a waiver of subrogation clause. Before the Contractor commences work the Contractor must provide copies of the policy wording for the Principal's review.

**(b) Public and Products Liability** - The Contractor must obtain a policy of Public and Product Liability insurance with an insurer approved by the Principal prior to commencing the performance of the services and must maintain that policy for the duration of this Contract.

The policy must:

- i. include a Principal indemnity extension in which Delta Electricity is named as the Principal,
- ii. be for an amount not less than \$10,000,000 in respect of any single occurrence.

**(c) the Employees of the Contractor** - Before commencing work the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by Statute and at Common Law. The insurance cover



shall be in accordance with the Workers Compensation Act 1987 as amended and shall be maintained until all work including remedial work is completed.

The Contractor shall ensure that every Subcontractor is insured in the same manner.

Further to Clause 12 (d) the Contractor shall provide a written statement that all workers compensation premiums applicable for the work has been paid. The Contractor shall ensure current statements are provided during the whole period of the Contract. WorkCover has developed a pro-forma for the statement which is available on their website <http://www.workcover.nsw.gov.au>.

(d) The Contractor shall ensure that all insurances required are effected prior to the commencement of any risks and that policies are available for inspection by the Principal if required from time to time. The Contractor shall provide to the Principal copies of the Certificates of Currency for these insurances within fourteen (14) days of the Date of the Purchase Order. For Contract Works Insurance per Clause 12 (a) the Contractor must provide copies of the policy wording for the Principal's review. The Principal may refuse payment of moneys due to the Contractor or withhold Possession of the Site should the Contractor fail to keep in force any of the insurances required by the Contract.

(e) The effect and keeping in force of insurance required by the above clauses shall not in any way limit the responsibilities and obligations of the Contractor under any other provisions of the Contract.

The following information must be completed:

**Clause (13) Cancellation** - Without prejudice to the Principal's rights of cancellation under any other provision of the Contract express or implied or by virtue of the Common Law, if the Contractor fails to comply with his obligations under the Contract including the time for Practical Completion of Works, the Principal shall be at liberty to cancel the Contract and such cancellation shall be without prejudice to the Principal's rights arising out of an antecedent breach of Contract including the right to be reimbursed by the Contractor for any additional costs incurred in obtaining the Principal's requirements from another source of supply. The Principal shall not exercise right of cancellation without giving consideration to the causes of the Contractor's failure to comply with obligations under the Contract provided the Contractor forthwith, after the occurrence of such failure, requests the Principal to give consideration to the causes and furnishes to the Principal particulars thereof.

**Clause (14) Patents** - The Contractor shall pay all royalties and expenses, and be liable for all claims, in respect of the use of patent rights, trade marks, or other projected rights, for or in connection with any Goods, Works or Service or the use of any goods, supplied under the Contract, and shall indemnify the Principal against any claims arising therefrom. The Principal shall indemnify the Contractor against claims arising from infringement of patent rights where such infringement results from compliance, by the Contractor, with the Principal's instructions in relation to designs prepared by the Principal.

**Clause (15) Risk and Property** - The Property in all materials and other things delivered to the Site for incorporation in the Works shall pass to the Principal upon such delivery but the works shall remain at the Contractor's risk until notification in writing by the Contractor to the Principal that the Works have reached Practical Completion.

**Clause (16) Assignment of Contract** - The Principal or the Contractor shall not without the written approval of the other and except on such terms and conditions as are determined in writing by the other, assign the Contract or any payment thereunder.

**Clause (17) Arbitration** - If at any time any question, dispute, difference or any failure to agree in respect of a matter which by the Contract agreement is required, shall arise between the Principal and the Contractor upon or in relation to or in connection with the Contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute, difference or failure to agree and the same shall be referred to the arbitration of a person to be mutually agreed upon, or, failing agreement, to some person nominated by the Principal for the time being of the Institute of Arbitrators, Australia, such nominee not being an employee of the Principal or of the Contractor. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts of the State of New South Wales.

**Clause (18) Country of Manufacture** - The Country of Manufacture of any materials or other things which are to be incorporated in the Works shall not be changed from that stated in the Contract without the approval in writing of the Principal.



**Clause (19) Goods and Services Tax – All prices quoted are to be exclusive of GST.**

The Contractor shall have the right to recover from the Principal an amount additional to the contract price to take account of the GST, such amount to be calculated in accordance with the GST Legislation and to be included on the Contractor's Tax Invoice.

The Contractor must be registered with the ATO for GST purposes and must use ATO compliant Tax Invoices which clearly show the base value of goods or services supplied the GST payable and the total amount payable including GST.

**Clause (20) Indemnity by the Contractor** The Contractor shall indemnify the Principal against:

- i. loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out, and
- ii. claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor or subcontractor and their employees and agents of the work under the Contract but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the negligent act or omission of the Principal or employees or agents of the Principal shall have contributed to the loss, damage, death or injury.

**Clause (21) Drawings** – Any drawings to be supplied as part of this quotation must be supplied in AutoCAD format. All CAD drawings must be fully AutoCAD release 2007 (or earlier) compatible, and be supplied as \*.DWG files. All files are to have any external reference files (XREFs), bound to the drawing and all CAD files shall have an AutoCAD audit performed and shall be purged of unnecessary data before submission.