

# **Contract**

**Retail Complex**

**271-311 Garth Rd, Wynwood**

For

**ComLand Developments**

***ComLands Developments Pty Ltd***  
***Contract Conditions***  
***And***  
***Tender Documents***  
***Retail Complex***  
***Moffat Close, Kings Hill***

To be read with Part 2 and Part 3

Nov 2015

Works No.: ..... 20361  
Description of Works: ..... Retail Complex  
Location of Works: ..... 271-311 Garth Rd, Wynwood  
Tender Closing Date: Not later than 2.00 p.m. on Thursday: ..... 5/5/2016  
Consultant's Name: ..... GenY Projects P/L  
Consultant's Telephone No.: ..... 61 408 718 006  
Project Manager: ..... ComLand Developments P/L  
Project Manager's Telephone No.: ..... 02 9988 4434

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Tender Form 1

ComLand Developments P/L  
Tender Form

To THE TENDER BOX,  
L31, 50 Martin Place, Sydney, NSW, 2001

Tenders close not later than 2.00  
PM on:

5/5/2016

Tender receiving facsimile machine (03) 9096 9260

Works No: ..... 20361

Description of Works: ..... Retail Complex

Location of Works: ..... 271-311 Garth Rd, Wynwood

I / We, [Name of Tenderer] Builders Academy Builders Pty Ltd .....

of [Address of Tenderer] L4 570 St Kilda Rd, Melbourne 3004.....

ABN No: 43 234 876 904 012.....ACN No [if applicable] .....

Telephone No: 03 9926 3181.....Mobile No: 61 42 9407 568. Facsimile No: 03 9926 3182

Builder Registration No. [Domestic]: ..... [Commercial: CBU31265.....

hereby offer to carry out the whole of the Works described in the tender documents and Addenda if any:  
(Addenda Nos:.....)

for the total tender sum (GST inclusive) of [in words]...one million, one hundred and twenty seven thousand  
six hundred dollars and no cents

.....[in figures]\$ 1,127,600.00

and bring the Works to practical completion by the date or within the time stated in the Annexure to the  
General Conditions of Contract for Minor Works.

Signature of Tenderer:.....Date: 4/5/2016...

Name: Anthony Shannon.....

Company: Builders Academy Builders LTD .....

Tenders received other than on this Form will not be considered.

Annexure to the General Conditions of Contract for Medium Works

Clause 1

The Principal is: Comland Developments P/L

The Principals Representative is: GenY Projects P/L

Clause 7

Time for completion: Within 300 working days of Acceptance.

Clause 10

Defects Liability period shall be: 12 calendar months.

Clause 14

Contract security shall be: \* Retention of 5% of the value of the works.

(\* Strike through non applicable.) \* or Security in the form of two unconditional Bank Undertakings of  
equal value, totalling 5% of the value of the works.

\* or Retention \$ .....

Clause 15

Liquidated Damages per week: \$ 3000.00

1. DEFINITIONS: In this Contract the "Principal" means the person occupying the position stated on the Annexure. The "Principal" means the person occupying the position stated on the Annexure. The "Principals Representative" means the person nominated by the Principal as stated on the Annexure. The "Works" shall be the whole of the works to be executed in accordance with the Contract including all variations provided for by this Contract. The Contract shall be governed by and construed with reference to the laws for the time being in force in the Commonwealth of Australia.

2. GENERAL REQUIREMENTS: The Contractor shall execute the Works in accordance with the Contract and associated documentation and in accordance with any directions of the Principal pursuant to the provisions of the Contract. Should any discrepancy in the Contract be discovered, the Principal shall interpret the true meaning of the documents and the decision given will be final. Until the Works have been completed to the satisfaction of the Principal the Contractor shall be liable for any loss or damage to the Works from any cause whatsoever except loss or damage caused by any negligent act, omission or default of the Principal, its servants or agents and shall at own cost make good any such loss or damage. The Contractor shall comply with the requirements of public and all other authorities having jurisdiction by law over any matter affecting the Works, and shall pay all fees and obtain certificates required. The Contractor shall on the written request of the Principal produce evidence that all on-site employees of the Contractor and sub-contractors have current registration with the Construction Industry Long Service Leave Board (where appropriate) and when requested to do so produce wages books, receipts, evidence of tax deductions for P.A.Y.G. and any other item which may reasonably be requested by the Principal.

3. CARE AND PROTECTION: The Contractor shall provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs, and lighting and provide and maintain all watching and traffic flagging lawfully required by any public or other authority or necessary for the protection of the Works or of other property or for the safety and convenience of the public and others and shall remove them when no longer required. The Contractor shall avoid interference with or damage to property on or adjacent to the Works and shall provide temporary protection for and shall repair and reinstate all damage caused thereto by the Contractors' employees, agents, or sub-contractors, or the employees of such agents or sub- contractors.

4. INSURANCE CONTRACTOR INITIATED: The Contractor before commencing work on the site must hold or effect policies of insurance covering: (a) Workcover; (b) Public Liability to an amount not less than \$50,000,000 for any single occurrence; (c) Loss or damage to an amount of not less than the Contract price for the Works plus 20%, materials provided by the Principal, any temporary works and materials, constructional plant and other things that are brought on to the site by or on behalf of the Contractor. The insurances shall be maintained until the Works have been completed. The Contractor must on request of the Principal, promptly provide all the policies required under this clause.

5. MATERIALS AND WORKMANSHIP: Unless otherwise specified all materials to be incorporated in the Works shall be previously unused and of a kind which is suitable for its purpose and is consistent with the nature and character of the work in the Contract. Construction methods and standards of finish shall be in accordance with all relevant Australian Standards. Workmanship shall be in accordance with recognised methods and standards of trade practice to a satisfactory level as determined by the Principal. All work is to be carried out or supervised by experienced and qualified tradesmen. The Contractor shall be represented on site at all times when any part of the Works is being executed. The Contractor shall at the request of the Principal immediately dismiss from the site any person employed thereon who may in the opinion of the Principal be incompetent or misconducts themselves and such person shall not again be employed on the site without the express permission of the Principal.

6. COMMENCEMENT OF WORK: The Contractor shall commence the Works within seven days of acceptance or within such extended time as agreed in writing by the Principal and shall give at least two days' notice to the Principal prior to the commencement of work.

7. COMPLETION OF THE WORKS: The Contractor shall ensure that progress is maintained on the Works to the satisfaction of the Principal by the time specified in the Annexure or within such extended time as agreed in writing by the Principal.

8. PURCHASING POLICY: All goods purchased must be in accordance with the Comland Pty Ltd purchasing Policy, intended to encourage growth in Australian industry, employment and technology.

9. VARIATIONS: The Principal may in writing direct a variation to the Works and such direction shall not invalidate the Contract. The variation shall be valued by mutual agreement between the Contractor and the Principal and failing agreement by the Principal.

10. DEFECTS LIABILITY: Upon completion of the Works to the satisfaction of the Principal, a Practical Completion Certificate shall be issued and the Defects Liability Period (as stated in the Annexure) shall commence. As directed by the Principal, the Contractor shall, during the Defects Liability Period, make good at the Contractors expense, all defective workmanship or materials and all damage to the Works occasioned by faulty workmanship or materials.

11. SITE CLEANING: The Contractor shall keep the Works clean and tidy and regularly remove from the site rubbish and surplus materials arising from the execution of the Works. On completion of the Works the Contractor shall clear away and remove from the site all constructional plant, surplus materials, rubbish and temporary works of every kind and shall leave the site of the Works existing structures and areas adjacent thereto in as good a state of repair as when the Works commenced.

12. PRINCIPALS' DIRECTIONS: Any direction, requirement or determination given by the Principal pursuant to the Contract shall be binding upon the Contractor.

13. ASSIGNMENT: The Contractor shall not assign the whole of the Contract without the approval in writing of the Principal.

14. PAYMENTS: The Contractor may submit to the Principal not more than monthly a detailed statement supporting claims for progress payment in a form satisfactory to the Principal, and showing the Contract value of the work carried out in the performance of the Contract and incorporated in the Works. This statement must include a valid GST invoice. After the receipt by the Principal of such a statement the Principal shall determine the value of the work so carried out and incorporated and issue a payment schedule. Payment of moneys due under a payment schedule shall be made by the Principal within twenty eight days after the receipt of the detailed statement. The amount of the progress payment will be the gross value shown in the payment schedule less: (a) the retention stated in the Annexure; (b) any progress payment already made in respect of work covered by that payment schedule; and (c) any other amount that the Principal may be entitled to deduct. The payment of moneys under a payment schedule shall not be taken as evidence against or an admission by the Principal that any work specified in any payment schedule has been executed in accordance with the Contract, but shall be taken to be a payment on account only. Retention amount will be released when all the Contractors' obligations under the Contract have been fulfilled and a Final Certificate issued.

If the Building and Construction Industry Security of Payment Act 2002 (Vic) ('Security of Payment Act') applies: (a) The Contractor must ensure that, within 24 hours after any notice is given or received under the Security of Payment Act by the Contractor or any subcontractors, a copy of that notice is given to the Principal and the Principal;

(b) The amount (if any) set out in a payment schedule is the amount the 'progress payment' (as defined in the Security of Payment Act) which the Contractor is entitled to be paid; and

(c) The parties agree that for the purpose of the Security of Payment Act the authorised nominating authority shall be a person authorised by the Building Commission under section 42 of the Security of Payment Act to nominate persons to determine adjudication application.

15. LIQUIDATED DAMAGES: If the Contractor fails to complete the Works by the time required by the Contract, the Contractor shall be liable to the Principal for liquidated damages calculated at the rate set out in the Annexure until the Works have been completed. The amount of Liquidated Damages under this contract shall be a debt due from the Contractor to the Principal and may be deducted by the Principal from any moneys which may or thereafter become payable to the Contractor by the Principal. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction. Should no amount for liquidated damages be referred to in the Annexure, the Principal reserves the right to claim damages from the Contractor in the event that the Contractor fails to complete the Works by the time required by the Contract.

16. PENALTY CLAUSE: A penalty amount of 5% of contract price (\$108,595.00) Additional interest will be added this being the sum of 1% (\$1,085.95) for every 5 full working days that Penalties are not settled. This will be imposed upon the contractor enforceable by a court of law brought upon the contractor through Anglo-Australian common law principles. All Liquidated damages calculated at the set rate deemed appropriate at the signing to this contract must be honoured by the party in breach of its duties of contract. Upon failure of payment of set rate of liquidated damages the contractor shall be dealt in writing by the principle contractor or a legal entity acting on behalf of the principle contractor a penalty notice including reasoning for penalty, terms of payment, date for payment. The contractor may wish to lodge a grievance for the set penalty he/she has fourteen (14) full working days to lodge all documents to the principle contractor or peoples acting on their behalf.

17. DEFAULT: If the Contractor: (a) commits any breach of the Contract; or (b) defaults in the performance of any requirement of the Contract or refuses or neglects to comply with any direction issued in accordance with the Contract; or (c) becomes insolvent or bankrupt, or being a company goes into liquidation; the Principal may suspend payment under the Contract and may take over by notice in writing the whole or any part of the Works out of the control of the Contractor, exclude the Contractor from the site, and complete the Works by any means decided. On completion of the Works in accordance with the Contract the Principal will certify the cost of the Works to the Principal comprising payments to the Contractor and all losses, costs, charges, and expenses incurred by the Principal. Should the amount so certified be greater than the amount which would have been paid to the Contractor if the whole of the Works had been completed by the Contractor, the difference between the two amounts shall be a debt due from the Contractor to the Principal and recoverable at law.

18. Clause deleted.

19. BUILDER'S REGISTRATION: Prior to commencement of the Works and whenever requested by the Principal, the Contractor must provide proof that the Contractor is registered as a building practitioner under the Building Act 1993, or where the Contractor is a corporation, proof that the directors of the Contractor are so registered.

20. SETTLEMENT OF DISPUTES: Any dispute arising out of the contract shall be resolved in accordance with the DOMESTIC BUILDING CONTRACTS AND TRIBUNAL ACT 1995 where applicable.

21. SUB-CONTRACTORS: Prior to subcontracting any part of the work under this contract, the Contractor shall submit to the Principal a written request for approval, providing particulars of the work to be subcontracted and the name and address of the proposed subcontractor.

22. OCCUPATIONAL HEALTH AND SAFETY:

22.1 Obligations to Prevent Risk of Injury or Damage: The Contractor shall:

(a) Conduct a general hazard identification, risk assessment and control process in relation to the work under the Contract;

(b) Conduct a job specific hazard identification and risk assessment and control process at each place where the work under the Contract will be performed;

(c) Train, induct and brief all the Contractor's employees, agents and subcontractors and employees of contractors on safe work practices and their environmental and workplace health and safety obligations and responsibilities before they commence any work under the Contract, as is necessary to enable the employees, agents, sub-contractors and employment of sub-contractors to perform their work in a safe manner;

(d) Maintain: (i) An environmental system consistent with the requirements of AS/NZS ISO 14001:1996 – Environmental Management; and (ii) A workplace health and safety system consistent with the requirements of AS 4801:2001 – Occupational Health and Safety Management Systems. Contractors may elect to use any management system framework, structure, or audit tool as required.

(e) Ensure that its employees, agents and subcontractors and the employees of subcontractors comply with the provisions of all applicable environmental and workplace health and safety legislation regulations, Codes of Practice and Victorian WorkCover Authority and Environment Protection Authority Guidelines, Australian Standards and manufacturer's instructions and specifications; [Where work under contract includes demolition, clause (21.1.f) shall be applicable.]

(f) Prepare the work plan required to be prepared pursuant to AS 2601:2001 - The Demolition of Structures, to ensure, so far as is practicable, that the work under the Contract is performed without endangering the health and safety of any person.

## 22.2 Powers of Principal

(a) If the Principal becomes aware that the Contractor is: (i) Not executing work under the Contract in compliance with the Contractor's environmental or workplace health and safety obligations; or (ii) Undertaking work under the Contract in a manner which may endanger the environment or the health or safety of any person; The Principal shall direct the Contractor to immediately remedy that non-compliance or take such action as is reasonably necessary to prevent danger to the environment and/or the health or safety of any person.

(b) In the event that the Principal is required to issue a direction pursuant to clause 21.2(a), the Principal may direct the Contractor to suspend the performance of some or all of the work under the Contract and the Principal shall do so unless the Principal is satisfied that the non-compliance and/or undertaking of work will be adequately addressed by the issue of directions. In the event the Principal suspends the performance of some or all work under the Contract, the Principal may by notice in writing to the Contractor cease such suspension with effect from a nominated time. Any time so nominated shall be reasonably nominated.

(c) Notwithstanding any other provisions of the Contract: (i) The Principal shall not be required to make any payment to the Contractor during periods of suspension pursuant to the preceding provisions of this clause; (ii) The Contractor shall not be paid for any costs incurred by the Contractor as a result of a suspension nor entitled to any extension of time for Practical Completion.

22.3 Principal's Right to Terminate: Notwithstanding anything in clause 16 of General Conditions of Contract, in the event that the contractor fails to comply with a direction pursuant to clause 22.2(a):

(a) The Principal shall report that fact to the Principal; and

(b) The Principal may exercise any of the rights set out in clause 16 of General Conditions of Contract.

22.4 Contractor Shall Report Incidents: The Contractor must immediately notify the Principal of all environmental or workplace health and safety incidents occurring in the performance of work under the contract.

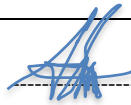


**Tender Form 1A - OCCUPATIONAL HEALTH & SAFETY CHECKLIST****To be completed by tenderers and prospective contractors**

Tick the box to indicate whether you have provided the minimum evidence required. Add comments where necessary.				Departmental Use Only	
Minimum Evidence Required	Yes	No	Comments	Acceptable evidence	Sighted? Yes No
1. The contractor's organisation-specific OHS Policy showing commitment to OHS and allocating responsibilities.	<input type="checkbox"/>	<input type="checkbox"/>		Copy of policy	<input type="checkbox"/> <input type="checkbox"/>
2. Curriculum Vitae of person(s) with relevant OHS qualifications engaged or employed to advise the contractor on OHS matters	<input type="checkbox"/>	<input type="checkbox"/>		CV's / details	<input type="checkbox"/> <input type="checkbox"/>
3. Identity of the firm's trained OHS representative / officer or other means assisting the identification of OHS concerns, their consideration and response. Details of training / qualifications and date qualified (must be within past 2 years) Employee elected under OHS Act (if required)	<input type="checkbox"/>	<input type="checkbox"/>		Training certificate(s) or other relevant information	<input type="checkbox"/> <input type="checkbox"/>
4. Current Insurer / VWA certificate including the premium paid. Premium must not exceed 150% of industry rate for the past 3 years. <i>(Not required self-employed person not having employees or deemed employees)</i>	<input type="checkbox"/>	<input type="checkbox"/>		Insurer / VWA certificate and acceptable explanation if premium exceeds 150%.	<input type="checkbox"/> <input type="checkbox"/>
5. Method used to update OHS information and maintain ongoing awareness of OHS regulations (for example relevant memberships / subscriptions)	<input type="checkbox"/>	<input type="checkbox"/>		Details of relevant memberships / subscriptions	<input type="checkbox"/> <input type="checkbox"/>
6. Incident notification process, form(s) and instructions to staff for both internal and external notification	<input type="checkbox"/>	<input type="checkbox"/>		Internal and external incident notification form(s) and instructions to staff	<input type="checkbox"/> <input type="checkbox"/>
7. Records of OHS induction and task specific training that has been provided to employees and sub-contractors	<input type="checkbox"/>	<input type="checkbox"/>		Records verifying nature and content of induction of employees and sub-contractors	<input type="checkbox"/> <input type="checkbox"/>
8. Emergency response procedures and employee first aid training	<input type="checkbox"/>	<input type="checkbox"/>		Copy of emergency response procedure and first aid training records	<input type="checkbox"/> <input type="checkbox"/>

This submission is made by:

Signature and Date



Print Name and Position/Title Anthony Shannon – Project Manager

On behalf of Company Name Builders Academy Builders Pty Ltd

**Tender Form 1B - INDUSTRIAL RELATIONS CHECKLIST**

**To be completed by tenderers as part of a tender submission, or after short-listing by the Principal.**

Works No.: ..... 20361

Description of Works: ..... Retail Complex

Location of Works: ..... 271-311 Garth Rd, Wynwood

**Instructions for use:**

This checklist has been developed to assist in examining the key elements of industrial relations management by a company.

*Tenderers should also use it to verify that all key elements required for acceptable industrial relations management have been addressed for pre-qualification.*

*Tenderers should describe in the comment section for each PQ item, how they meet the requirement, and provide documentary evidence or examples for assessment by ComLand Developments P/L. Please use additional sheet if space is insufficient*

**Instructions** - please place a tick in o if you can provide, or place a cross in o if you cannot provide the following:

**PQ1 Policy Statement**

**Do you have a policy statement on industrial relations management which:**

- ☐ Has chief executive officer/senior management support?
- ☐ Sets enterprise goals for industrial and employee relations?
- ☐ Identifies responsible personnel for managing industrial and employee relations & provides contact details?
- ☐ Outlines communication processes with workers, unions, other contractors, and subcontractors?
- ☐ Outlines measures for assessing subcontractors' compliance with industrial relations and employment obligations?

Comment.....  
.....

**PQ2 Obligations**

**Do you have a statement of your legal and other obligations relating to industrial relations and employment, including the names and details of applicable:**

- ? Awards?
- ? Enterprise, workplace or other enforceable agreements?
- ? Federal, or Victorian legislation?
- ? Project agreement?    ? Applicable    ? not applicable    ? proposed

Comment.....  
.....

**PQ3 Industrial Relations Management and Responses**

**Do you have a plan that:**

- ? Identifies the industrial relations issues that will be relevant to the enterprise?
- ? Details actions to be taken in the event of incidents such as:
  - Grievance disputes?
  - Inclement weather?
  - Site issues?
  - Threatened or actual industrial action?
  - Other unforeseen risks?

Comment.....  
.....

**PQ4 Compliance**

Can you provide a signed declaration or statement, verifying compliance in the preceding twelve months with all employment and legal obligations including:

- ? Payment of remuneration to employees (including the location of time and wage records)?
- ? Annual leave?
- ? Long Service Payment Scheme registration?
- ? Workers' compensation insurance?
- ? Superannuation fund membership and contributions?
- ? Over-award payments (e.g. Redundancy Fund contributions)?

Comment.....  
.....

**PQ5 Subcontractors**

Do you have a procedure that provides an outline of:

- ? The measures that will be taken to select subcontractors who comply with industrial relations laws and employment obligations?
- ? How dealings with subcontractors and other contractors are to be managed?
- ? How ongoing subcontractor compliance with industrial relations requirements is to be monitored and assessed?

Comment.....  
.....

**Assessment**

Applicants should meet all the tests above to be eligible to pre-qualify. The Department may seek documentary evidence to substantiate the applicant's assessment and/or additional supporting information if necessary to ensure an applicant, tenderer, contractor or subcontractor has effective industrial relations management policies and practices. The Department may consult with Industrial Relations Victoria to clarify this policy or to discuss industrial relations material provided, or issues arising, through the pre-qualification process.

**This submission is made by:**

Signature and Date



.....4/5/2016

Print Name and Position/Title

Anthony Shannon – Project Manager

On behalf of Company Name

Builders Academy Builders Pty Ltd

**ComLand Developments Pty Ltd**  
**Form 2 - Schedule of Unit Costs)**

Works No.: ..... **20361**

Description of Works: ..... **Retail Complex**

Location of Works: ..... **271-311 Garth Rd, Wynwood**

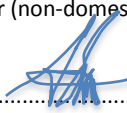
The sum of all the individual costs shall equal the Tender Sum (including GST).

Site Address	Net Cost	GST	Total
	\$	\$ 97,963.64	\$1,077,600.00
Plus provisional sums (if applicable)			\$ 50,000.00
Total Tender Sum (including GST)			<b>\$1,127,600.00</b>

Where the work the subject of this Tender includes both domestic building work and the carrying out of other work or provides for payment for any other reason, the Tenderer must separately show in the Tender the Tender price for the carrying out of such other work or value of such payment, which sum is made up as follows:

(a) Domestic building work: \$ .....

(b) Other (non-domestic) work: **\$1,127,600.00** .....

Signed:  ..... Date: ..... **4/5/2016**

Name: Anthony Shannon – Project Manager

Company: Builders Academy Builders Pty Ltd

**ComLand Developments Pty Ltd**  
**Form 3 - Statutory Declaration - Tendering**

Works No.: ..... **20361**

Description of Works: ..... **Retail Complex**

Location of Works: ..... **271-311 Garth Rd, Wynwood**

I (name) **Anthony Shannon** .....do solemnly and sincerely declare that:

1. In this statutory declaration -  
"The client" means the STATE OF VICTORIA;  
"The Tenderer" means; **Builders Academy Builders Pty Ltd** ..... (name of Tenderer)  
"The project" means the project identified by the Works No. and Works Name above;  
"Tender sum" means the amount indicated by a Tenderer as being the lowest amount for which that Tenderer is prepared to complete the Project;  
"Industry association" means any organisation of building or construction contractors and includes the Master Builders' Association of Victoria and the Australian Federation of Construction Contractors.
2. I hold the position: **Project Manager** ..... (Managing Director or other title) of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.
3. I make this declaration on behalf of the Tenderer and on behalf of myself.
4. Prior to the Tenderer submitting its Tender for the project, neither the Tenderer nor any of its servants or agents had any knowledge of the Tender sum or proposed Tender sum for the project of any other Tenderer who submitted, or of any other person or organisation proposing to submit, a Tender for the project.
5. Prior to the close of Tenders, neither the Tenderer nor any of its servants or agents disclosed the Tenderer's Tender sum for the project to any other Tenderer who submitted a Tender for the project, to any other person or organisation proposing to submit a Tender for the project, or to any other person or organisation connected with such a Tenderer, person or organisation.
6. Neither the Tenderer nor any of its servants or agents has provided information to any other Tenderer who submitted a Tender for the project, to any other person or organisation proposing to submit a Tender for the project, or to any other person or organisation for the purpose of assisting in the preparation of a Tender for the project, being a Tender known in the building and construction industry as a "cover bid", where the Tenderer was of the belief that the person or organisation proposing to submit the Tender did not intend to genuinely compete for the contract.
7. The Tenderer is genuinely competing for the contract for the project and its Tender is not a "cover bid".
8. Neither the Tenderer nor any of its servants or agents has entered into any contract, agreement, arrangement or understanding, other than as disclosed to the client, that the successful Tenderer for the project would pay any money to, or would provide any other benefit or other financial advantage to, an industry association in respect of the project.
9. Neither the Tenderer nor any of its servants or agents has entered into any contract, agreement, arrangement or understanding that the successful Tenderer for the project would pay any money to, or would provide any other benefit or other financial advantage to or for the benefit of any other Tenderer who unsuccessfully Tendered for the project.
10. Neither the Tenderer nor any of its servants or agents has entered into any contract, agreement, arrangement or understanding that the Tenderers for the project would include an identical or similar condition or conditions in their Tenders.

And I make this declaration conscientiously believing that it is true and correct and is made in the belief that a person making a false declaration is liable to the penalties of perjury.

**Declared at** .....North Hill

in the State of Victoria

) Signed.....

) Anthony Shannon

) John Wilson (J.P.)

This...3rd day of .....May, 20.....

) Before me \*.....

(\* A person authorised to witness a statutory declaration in accordance with the Evidence Act 1958, Victoria.)

## **SECTION A - TENDER CONDITIONS**

- A-01 TENDER LODGEMENT
- A-02 TENDERS SENT BY MAIL
- A-03 TENDERS SENT BY FACSIMILE
- A-04 TENDERS NOT ACCEPTED DUE TO INCORRECT LODGEMENT
- A-05 TENDER DOCUMENTS ISSUED BY THE PRINCIPAL
- A-06 DOCUMENTS TO BE SIGNED BY TENDERER
- A-07 TENDER CONTENT AND VALIDITY
- A-08 ACCEPTANCE AND NON-ACCEPTANCE OF TENDERS
- A-09 ADDITIONAL INFORMATION
- A-10 CODE OF PRACTICE
- A-11 BUILDING REGISTRATION
- A-12 TENDERER TO INFORM ITSELF
- A-13 TENDER DISCREPANCIES
- A-14 PUBLICATION OF TENDERS
- A-15 SITE ALLOWANCES
- A-16 TBS ITEMS
- A-17 RETURN OF TENDER DOCUMENTS
- A-18 VICTORIAN INDUSTRY PARTICIPATION POLICY
- A-19 SPECIAL CONDITIONS OF TENDER — COMMUNITY WORKS CONTRACTING

### **A-01 TENDER LODGEMENT**

Enclose the Tender Form and all other documents forming the Tender in the Tender Envelope provided. Seal the Tender Envelope and in the area provided state the following information:

- Works No.
- Tender Closing Date.
- Name and Address and Telephone Number of the Tenderer.

Place hand delivered Tenders not later than Closing Time on the Tender Date in the Tender Box, situated in the public lobby at the Principal's address, as follows:

**To THE TENDER BOX,  
L31, 50 Martin Place, Sydney, NSW, 2001**  
The Closing Time will be 2.00 p.m. on the Closing Date.

### **A-02 TENDERS SENT BY MAIL**

A Tender may be sent by mail providing that it arrives at the Principal's address in sufficient time for the Principal's Mail Room staff to place it in the Tender Box before Closing Time.

**Mail address:-**

**THE TENDER BOX,  
L31, 50 Martin Place, Sydney, NSW, 2001**

### **A-03 TENDERS SENT BY FACSIMILE**

A Tender may be sent by facsimile providing that:

- It is sent to the Principal's Tender Receiving Facsimile No. stated.
- It is sent with sufficient time for the Tender Receiving Facsimile to print the date and time on every page BEFORE the 2.00 p.m. on the Tender Closing Date.
- The original Tender Documents are sealed and posted in the official Tender Envelope, legibly stamped with the date and time of posting by Australia Post, at a date and time Before 2.00 p.m. on the Tender Closing Date.

Tenderers are advised to transmit Tenders by facsimile WELL in advance of 2.00 p.m. on the Tender Closing Date to avoid the possibility of congestion preventing transmission.

Where a Tenderer is sending Tenders for more than one project, each Tender shall be on a separate facsimile so that the page numbering commences from 'page 1'.

The Principal will not accept any Tender by telephone.

#### **A-04 TENDERS NOT ACCEPTED DUE TO INCORRECT LODGEMENT**

The Principal will not accept responsibility for Tenders lodged incorrectly, including:

- The failure of any Tender to be received in the Tender Box by Closing Time.
- The failure of Australian Post to deliver the Tender to the Principal's Mail Room in sufficient time for Principal's Mail Room staff to place it in the Tender Box by Closing Time.
- The failure of any courier service to deliver the Tender to the Principal's Mail Room in sufficient time for Principal's Mail Room staff to place it in the Tender Box by Closing Time.
- A Tender sent by facsimile to the wrong facsimile No.
- A Tender sent by facsimile to the Principal's Tender Receiving Facsimile too late to print the date and time on every page BEFORE 2.00 p.m. on the Tender Closing Date.

#### **A-05 TENDER DOCUMENTS ISSUED BY THE PRINCIPAL**

The Tender Documents issued by the Principal include:

- The Specification, Parts 1, 2 and 3.
- The Drawings.
- Addenda issued by the Principal during the Tender period, if any.
- The Tender Envelope.
- Any other information and drawings forming part of the Tender.
- Standard Specification for Management of Asbestos Products, where applicable.

General Conditions of Contract published by Standards Australia are NOT included. The Tenderer shall obtain its own copy.

#### **A-06 DOCUMENTS TO BE SIGNED BY TENDERER**

Copies of the returnable Tender Forms are provided in the Tender Envelope issued with the Tender Documents.

Complete and sign each Tender Form and associated documents, and place all documents in the Tender Envelope, as follows:

- Form 1 Tender Forms (All tender Forms, a, b, etc.)
- Form 2 Schedule of Unit Costs (Multiple Sites)
- Form 3 Statutory Declaration - Tendering

When the Tenderer is a company, Form 1 shall indicate the company ACN number and be signed and sealed by a duly authorised officer of the company.

Form 3 shall be witnessed by a person authorised to witness a Statutory Declaration in accordance with the Evidence Act 1958, Victoria.

#### **A-07 TENDER CONTENT AND VALIDITY**

The Tender shall be for a fixed lump sum, not subject to rise and fall.

The Tender shall be for the whole of the Works unless otherwise stated in the Tender Documents.

The Tender shall remain valid for not less than 60 calendar days from the closing date of Tenders.

#### **A-08 ACCEPTANCE AND NON-ACCEPTANCE OF TENDERS.**

Tenders will be opened and recorded in private by the Principal's Tender Opening Committee.

The Tenderer shall not alter, add to, or strike out any clause or condition from the Tender Documents, unless otherwise indicated in the Tender Conditions, and shall not include conditions or information in the Tender additional or contrary to the Tender Conditions.

Where the Tenderer includes conditions or information in its Tender additional or contrary to the Tender Conditions, the Principal will determine whether such additional conditions or information are of a substantive nature.

A Tender which does not comply with the Tender Conditions, or contains substantive conditions contrary or additional to the Tender Documents, will be deemed to be non-conforming.

A non-conforming Tender may be rejected.

Where a Tender contains such contrary or additional conditions, the Principal may request the Tenderer to remove such conditions, and on receiving written notification of unconditional removal of such conditions, the Tender will be deemed conforming.

The Principal will not be bound to accept the lowest or any tender.

A Tender which is lodged after the Closing Time and Date will be received on the next Tender Closing Date as a Late Tender. A Late Tender will not be accepted.

Non-conforming Tenders, including late Tenders, will not be returned.

A Tender shall be deemed to be not accepted until issue of the Principal's Letter of Acceptance.

#### **A-09 ADDITIONAL INFORMATION**

The Principal may, before a Tender is accepted, require the Tenderer to submit additional information and details promptly on request and without charge, including:

- Details of previous experience in similar work.
- Available resources and ability to carry out the Works.
- Financial records including bank statements.
- Construction program indicating completion dates for various trades, operations or stages.
- Estimated monthly cash flow schedule coordinated with the construction program.
- Proposed sub-contractors, suppliers, constructional plant and methods of construction.
- A detailed cost break-down of the whole Tender or any trade or item in the Tender.
- The pricing of any alternative proposals to be included in the Contract at a later date.
- Written confirmation listing the documents used in preparing the Tender.

Should the Tenderer fail to submit the information in the time required by the Principal, the Tender may thereupon be treated as non-conforming.

#### **A-10 CODE OF PRACTICE**

Comply with the 'Code of Practice for the Building and Construction Industry'.

Lodgement of a Tender will be deemed to be evidence of the Tenderer's agreement to comply with the Code for the duration of the Contract, if awarded.

If the Tenderer fails to comply with the Code, the Principal may deem this or any subsequent Tender invalid.

#### **A-11 BUILDING REGISTRATION**

The Tenderer shall be registered as a building practitioner under the Building Act 1993 for appropriate class of building.

State relevant registration numbers on the Tender Form and indicate whether for individual or company registration.

#### **A-12 TENDERER TO INFORM ITSELF**

The Tenderer shall ensure it is fully informed as to the extent and nature of the Works, and all matters or circumstances likely to effect the cost of, or time for carrying out the Works, and shall:

- Carefully examine all Tender Documents, including the drawings and specification.
- Visit and inspect the site and surroundings.



**A-13 TENDER DISCREPANCIES**

If there is any doubt as to the meaning or accuracy of any part of the Tender Documents or if any discrepancies are found, notify the Project Co-ordinator and request clarification or correction before submitting a Tender.

If it considers necessary, the Principal will issue a numbered Addendum to all Tenderers amending the Tender Documents and advising any extension to the Tender Period.

**A-14 PUBLICATION OF TENDERS**

Following the issue of a Letter of Acceptance, the Principal will notify the Tender Sum and the name of the successful Tenderer to the unsuccessful Tenderers.

No information regarding unsuccessful Tenders will be released.

**A-15 SITE ALLOWANCES**

Unless expressly included in the Tender Documents, the Tender shall not include separate reimbursement for site allowances or other special payments.

The Principal will reject Tenders which include the separate reimbursement of site allowances.

The Principal reserves the right to appear or be represented at any Industrial Relations Commission and Board hearing.

**A-16 Supplied ITEMS**

Where indicated in the Tender Documents, the Principal will supply "Supplied items" for installation as part of the Works.

Include the cost of fixings, trim and coordination required for a complete installation but do not include the value of Supplied items.

**A-17 RETURN OF TENDER DOCUMENTS**

The Tender Documents issued by the Principal shall remain the property of the Principal.

Tender Documents shall be returned to the point of issue after the Tender Closing Date, or if the Tenderer decides to withdraw from the Tender, at the time of withdrawing.

**A-18 VICTORIAN INDUSTRY PARTICIPATION POLICY**

The Victorian Industry Participation Policy (VIPP) of the Department of Innovation Industry and Regional Development is intended to encourage growth in Victorian industry, employment and technology. This policy may require tenderers to submit a VIPP statement separately from the submitted tender. If a VIPP statement is required, it will either be requested in a separate sealed envelope at time of tender, or from short listed tenderers during the tender evaluation process.

The VIPP statement if required, will only be used in accordance with the following principles:

- Value for money will remain the primary criterion for the selection process.
- Where there are two or more tenders that offer similar value for money, the VIPP Statements may be used to differentiate between the value and benefit of the tenders.
- Where there is a clear preferred supplier based upon value for money, the statement of that tenderer will only be considered to determine whether it is a genuine attempt to address the VIPP. Where the Statement does not reflect a genuine attempt to address the VIPP, the Department may reject the tender and negotiate with the next preferred tenderer.
- The Department may negotiate with tenderers (including the preferred tenderer) whose statements have been assessed, for the purpose of improvement of the benefits offered under the VIPP.

Where a tender has been let and the VIPP Statement has been accepted by the Department, the scope of the VIPP benefits may be included in the contract and recorded centrally for evaluation and compliance. The Department of Innovation, Industry & Regional Development will also centrally record the results of performance of the VIPP obligations.

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END OF SECTION

## **SECTION B - SPECIAL CONDITIONS**

### **CONTENTS**

- B-01 CONTRACT DOCUMENTS
- B-02 CONTRACT SECURITY
- B-03 INSURANCES
- B-04 BUILDING REGISTRATION
- B-05 INSTRUCTIONS AND VARIATIONS
- B-06 SUBCONTRACT AND SUBCONTRACTORS
- B-07 PAYMENT OF WORKERS, SUB-CONTRACTORS AND SUPPLIERS
- B-07A PAYMENT OF NOMINATED SUBCONTRACTORS
- B-08 PROBITY AND DISCLOSURE PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS
- B-09 PUBLICITY AND AWARDS
- B-10 COMMUNITY WORKS ENTERPRISE CONTRACTING
- B-11 STATUTORY DECLARATION – PAYMENTS
- B-12 BANK UNDERTAKING

### **B-01 CONTRACT DOCUMENTS**

The Contract Documents shall include:

- Instrument of Agreement, if applicable.
- General Conditions of Contract.
- Tender Documents issued by the Principal.
- Tender Forms signed by the Tenderer.
- Correspondence between the Principal and Tenderer before issue of letter of acceptance, if any.
- Letter of acceptance signed by the Principal.

### **B-02 CONTRACT SECURITY**

Contract security shall be the amount stated in the Annexure to the General Conditions of Contract, and shall be either a cash retention or bank guarantee as nominated in the Annexure to the General Conditions of Contract.

A bank guarantee shall be in the form of two equal, unconditional Bank Undertakings totalling the amount stated in the Annexure submitted on the attached Bank Undertaking form.

At the discretion of the Principal, half of the contract security may be released on issue of the Certificate of Practical Completion, and balance will be released on issue of Final Certificate.

### **B-03 INSURANCES**

Insure the Works in accordance with General Conditions to Contract and to the amounts stated in the Annexure. Submit copies of current insurance policies to the Principal before commencing any work on site. Insurance policies shall be in the joint names of the Contractor and the Director of Housing. The period of cover shall include the Defects Liability Period.

Where asbestos removal work is excluded from the Contractor's public liability policy, the asbestos revivalist's public liability policy for the same amount of cover in the joint names of the asbestos revivalist and the Director of Housing may be accepted for that portion of the work.

Time lost due to non-compliance or failure to obtain correct insurance will not be recoverable by the Contractor and any costs incurred by the Principal will be at the Contractor's expense.

### **B-04 BUILDING REGISTRATION**

The Contractor shall be registered as a building practitioner under the Building Act 1993.

Where the Works contain Class 1 housing under the Building Code of Australia, the Contractor shall be registered for housing work as a builder under the Domestic Building Contracts and Tribunal Act 1995.

Where the Works contains a non-housing element, the Contractor shall registered for the appropriate commercial work.

Submit copies of current registration certificates before commencing work on site.

#### **B-05 INSTRUCTIONS AND VARIATIONS**

No instruction or variation shall be carried out unless authorised in writing by the Principal. No claim for extra payment for a variation will be recognised for variations not authorised in writing by the Principal.

Where practicable, carry out instructions and variations concurrently with other works, unless otherwise directed.

In determining the value of variations, the Principal will consider the actual cost to the Contractor plus a loading for administration, overheads and profit not exceeding 10% of the cost. Submit evidence to the Principal of all material and labour costs associated with variations.

#### **B-06 SUBCONTRACT AND SUBCONTRACTORS**

Where the value of a subcontract exceeds \$2,000,000 and the General Conditions of Contract are AS 4000, the Subcontract Conditions shall be AS 2545, unamended except to match the conditions in the General Conditions of Contract.

Within two weeks of the Letter of Acceptance, submit to the Principal a list of proposed subcontractors. Proposed subcontractors shall be subject to approval by the Principal in writing.

#### **B-07 PAYMENT OF WORKERS, SUB-CONTRACTORS AND SUPPLIERS**

At the time of submitting the monthly Claim for Payment in accordance with the General Conditions of Contract, make and submit to the Principal a statutory declaration that all workers, sub-contractors and suppliers have been paid all moneys then due and payable to them in respect of the work under the Contract.

The statutory declaration shall be in the attached form B-10 Statutory Declaration - Payments.

If the Contractor fails to make and submit such statutory declaration, the Principal may with-hold an appropriate amount, which the Principal will determine, from the amount otherwise due to the Contractor.

Payment of any money with-held will be made by the Principal when the Contractor submits the required statutory declaration.

The Building and Construction Industry Security of Payment Act 2002 ('The Act') shall commence operation no later than 31 January 2003. The Act may apply to the contract the subject of this tender and to other contracts (including subcontracts) relating to this tender. The tenderer is advised that the Act will apply to construction contracts to which the Act applies entered into after the commencement of the Act'.

#### **B-07A PAYMENT OF NOMINATED SUBCONTRACTORS**

If the Contractor fails to submit a statutory declaration in the form required pursuant to clause B-10 within five days of the Principal's request, where any supplier to which the statutory declaration relates is a Nominated Subcontractor, the Principal may provide payment to the Nominated Subcontractor. In that case, the following paragraph applies.

The amount paid by the Principal to the Nominated Subcontractor pursuant to the previous clause shall be a debt due from the Contractor to the Principal. The Principal may deduct the amount paid to the Nominated Subcontractor from any amount which would otherwise be due to the Contractor or which may become payable to the Contractor. If the amount owing by the Principal to the Contractor is insufficient for this purpose, the Principal may have recourse to the retention amount and any security under the contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

"Nominated Subcontractor" means a subcontractor that the Contractor is directed by the Principal to engage where it has been agreed between the Contractor and the Principal that the Contractor will be reimbursed for the supply or work provided by the subcontractor by the Principal. A Nominated Subcontractor includes but is not limited to subcontractors from whom the Contractor is directed by the Principal to obtain materials, components, fittings or any other supplies, or to perform work for the Works.

## **B-08 PROBITY AND DISCLOSURE PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS**

### **A Disclosure of Tender information:**

Notwithstanding any copyright or other intellectual property right that may subsist in the Tender, the Tenderer, by submitting its Tender, licenses the party requesting the Tender to reproduce the whole or any portion of its Tender for the purposes of tender evaluation, and accepts that the party requesting the Tender may publish (on the Internet or otherwise):

- The name of the successful or recommended Tenderer (s).
- The value of the successful Tender (s).
- The Tenderer's name (s) together with the provisions of the Contract generally.

### **B Publishing Tender information:**

The Tenderer may identify information in its Tender which it considers confidential, including:

- Trade secrets.
- Providing unreasonable disadvantage to others.

The party requesting the Tender shall treat as confidential all information provided to it in the Tender which the Tenderer regards as confidential.

### **C Access to records of the Contractor.**

The Contractor shall permit an accountant or auditor on behalf of the Victoria Government from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Agreement. The Contractor, its servants, agents and subcontractors shall give all reasonable assistance to any person authorised to undertake such audit or inspection. Any information provided or to which an accountant or auditor has access under this requirement shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required to comply with the written request of the Auditor General for Victoria.

The confidentiality obligations of the parties shall not extend to:

- Information already in the public domain other than due to a breach of this Agreement;
- Any disclosure required by law.

## **B-09 PUBLICITY AND AWARDS**

The Principal may publish any aspect of the project or submit it for Awards at any time, using any documents available for that purpose.

Refer any enquires or contact with the media regarding the project to the Principal for a response.

Obtain Principal's approval in writing for any publication, written, visual or verbal, whether or not initiated by the Principal.

Where projects are publicised or submitted for Awards, give credits to all principal's consultants for their roles; and to the ComLand Developments Pty Ltd for its role as Principal and any other roles it undertook. Where parts of the project were undertaken in collaboration with the Principal, credit the ComLand Developments Pty Ltd as 'in association' for that part of the work additional to and separate from its role as Client.

### **B-11 Statutory Declaration - Payments To accompany all Progress Claims**

In relation to the attached Progress Claim No. .... Dated.....

Pursuant to the General Conditions of Contract;

I, (name) .....

Of (address) .....

in the State of Victoria, do solemnly and sincerely declare that:

1. I hold the position of ..... and am duly authorized by

.....  
To make this Statutory Declaration on its behalf.

2. This declaration refers to the following:

Works No. .... **20361**

Description of the Works ..... **Retail Complex**

Location of the Works: ..... **271-311 Garth Rd, Wynwood**

3. All workers who have been employed by the Contractor on work under the Contract have been paid all monies due and payable to them in respect of their employment on the work under the contract.

4. All sub-contractors have been paid all monies due and payable to them in respect of the work under the Contract.

5. All suppliers who have supplied materials for work under the Contract have been paid all monies due and payable to them.

I make this solemn declaration conscientiously believing the same to be true and I make it with the knowledge that a person making a false declaration is liable for punishment for wilful and corrupt perjury.

**Declared at**..... ) Signed.....

in the State of Victoria )

)

This ..... day of....., 20..... ) Before me \*.....

(\* A person authorised to witness a statutory declaration in accordance with the Evidence Act 1958, Victoria.)

ComLand Developments Pty Ltd  
B-12 Bank Undertaking

**BANK UNDERTAKING**

NBA – St Kilda Rd  
South Melbourne

Name and address of bank or financial institution.

**In Consideration** of the ComLand Developments Pty Ltd (**hereinafter called "the Principal"**) **at the request of;** (\*Strike-out the non-applicable.);

(hereinafter called "the Contractor") and ;

Builders Academy Builders Pty Ltd

(hereinafter called "the Bank") agreeing to accept this undertaking as security for the due and proper performance by the Contractor of all its obligations under a contract entered into on the ;

19/5/2016..... Works Number 20361

or to be entered into between the Principal and the Contractor for the following works ;

Commercial Residential Development – Kings Hill

1. The Bank **hereby undertakes** unconditionally to pay on demand to the Principal any amount or amounts, which may from time to time be demanded in writing by the Principal pursuant to the said contract to an amount not exceeding ;

( \$ 2,171.900.00 )

in the aggregate (hereinafter called "the said sum").

2. Payment of the said sum or any part or parts thereof shall be made by the Bank to the Principal without reference by the Bank to the Contractor and notwithstanding any notice to the Bank by the Contractor not to pay to the Principal any moneys hereunder and irrespective of the performance or non-performance by the Contractor or the Principal of the terms of the said contract.
3. The Bank's liability hereunder shall not be impaired or discharged by any alterations which may be made in the terms of the contract or by any extension of time or other forbearance on the part of either the Principal or the Contractor to the other.
4. This undertaking shall continue in force either until notification in writing has been received by the Bank from the Principal that this undertaking is no longer required by the Principal or until payment to the Principal by the Bank of the whole of the said sum or the balance thereof remaining after any part payment or payments whichever shall first occur.
5. Notwithstanding anything hereinbefore contained the Bank reserves the right to terminate this undertaking at any time upon payment to the Principal of the said sum or the balance thereof remaining after any part payment or payments.

**Dated the** 19th day of May 2016

**Executed by the Bank**

Jeff Larson – Commercial Manager.

**Note:** Bank Undertakings must be submitted on this ComLand Developments Pty Ltd undertaking, No other version will be accepted.

## **REVISION HISTORY**

- 24.11.00 new tender form and conditions.
- 23.04.01 (PK) B-7A Payment of Nominated Subcontractors / New clause
- 23.04.01 (PK) B-08 Probity and Disclosure Provisions for Public Construction Contracts / New clause
- 23.04.01 (PK) Instrument of Agreement
- 15.05.01 (PK) Clauses A-01, A-02, A-03 and A-04 related to lodging Tenders by facsimile.
- 15.05.01 (PK) B-09 Statutory Declaration – Payments revised
- 12.06.01 (PS) The following new clause is added to the General Conditions: Clause 21 Occupational Health and Safety.
- 15.06.01 (PS) Title 'Volume' changed to 'PART'.
- 08.08.01 (PS) General Conditions of Contract Clause 21.1 (d) (i) and (ii).
- 05.09.01 (PS) Instrument of Agreement deleted.
- 13.06.02 (PS) Insert General Conditions of Contract Document 06-08BB Amendments to Clauses 17 & 21.1, d) ii) and f)  
Version 1.4 date 06 May 2002 Clause 17
- 23.12.02 Clause 14 PAYMENTS amended; previous Clause 22 Security of Payment superseded by amendments to Clause 14  
PAYMENTS.
- 23.12.01 (PS) B-07 PAYMENT OF WORKERS, SUB-CONTRACTORS AND SUPPLIERS. Security of payment legislation clause.
- 30.02.03 (PS) Tender Forms 1b and 1c added. OHS & IR Checklists
- 29.07.05 (WS) Tender Form revised and formatting changes.
- 28.07.06 (RB) Form 1C heading amended.
- 29.08.06 (RB) Clause B9 added, Form 1C heading amended.
- 25.10.06 (RB) Clause B10 and Community Enterprise Contracting forms added.