



CONTRACT No. 1695006

**SCHEDULE OF RATES PANEL CONTRACT FOR
ROAD PAVEMENT RESTORATION WORKS**

**PART 2 OF 4
CONDITIONS OF CONTRACT**

**Request for Tender – Part 2 Conditions of Contract
1695006 – Road Pavement Restoration Works**



1. Formal Instrument of Agreement

CONTRACT: 1695006 – Road Pavement Restoration Works

THIS AGREEMENT is made on the [] day of [] 2024

BETWEEN:

Council **CABONNE SHIRE COUNCIL**
99-101 Bank Street Molong NSW 2866
ABN 41 992 919 200

AND:

Contractor **(CONTRACTOR)**
(Address)
ABN (Number)

Agreement

Council has engaged the Contractor to provide the Works in accordance with the terms and conditions set out in the documents listed below (**Contract Documents**) which comprise the agreement between the parties, namely:

- This Formal Instrument of Agreement document set out in this Part 2 – Conditions of Contract;
- Contract Specific Clauses detailed in this Part 2 – Conditions of Contract;
- AS 4000 General Conditions of Contract;
- Post tender correspondence (if any) detailed in this Part 2 – Conditions of Contract;
- Tenderers response (refer Part 4 – Response Schedules) including any relevant Attachments such as the WHSMS Questionnaire, Pricing Schedule and Schedule of Rates;
- Special Conditions of the Project Specifications set out in this Part 2 – Conditions of Contract; and
- Project Specifications (refer Part 3 – Specification)

Entire Agreement and No Reliance

This Agreement comprises the entire understanding between the parties as to the subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting the subject matter of the Agreement, are superseded by this Agreement.

Request for Tender – Part 2 Conditions of Contract 1695006 – Road Pavement Restoration Works



Counterparts

The Agreement may be executed in counterparts, all of which taken together constitute one document.

Severance

Any provision of the Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

If it is not possible to read down a provision as required by this clause, the part or all of the clause of the Agreement that is unlawful or unenforceable will be severed from the Agreement and the remaining provisions continue in force.

Survival and Enforcement of Indemnities

Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the Agreement.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.

No Merger

The warranties, undertakings, agreements and continuing obligations in the Agreement do not merge on completion of the transactions contemplated by the Contract.

Exclusion of Statutory Provisions

Where permitted by law, any legislation that adversely affects a right or obligation of Council under the Agreement is excluded from the Agreement.

**Request for Tender – Part 2 Conditions of Contract
1695006 – Road Pavement Restoration Works**



2. Conditions of Contract

Australian Standard AS 4000-1997 General Conditions of Contract including annexures and Contract Specific Clauses form the general conditions of contract.

A copy of the contract (save for the Annexure and the Contract Specific Clauses) is not issued with this tender document.

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Part A

Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

<i>Item</i>		
1	Principal (clause 1)	Cabonne Shire Council ABN41 992 919 200.....
2	<i>Principal's</i> address	
3	Contractor (clause 1)	ACN
4	<i>Contractor's</i> address	
5	Superintendent (clause 1)	Deputy General Manager Cabonne Infrastructure ACN
6	<i>Superintendent's</i> address	Cabonne Shire Council 99-101 Bank Street Molong, NSW 2866
† 7	a) <i>Date for practical completion</i> (clause 1)	
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	30 June 2025
8	Governing law (page 5, clause 1(h))	New South Wales If nothing stated, that of the jurisdiction where the <i>site</i> is located

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

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|------|--|---|
| 9 | <ul style="list-style-type: none"> a) Currency (page 5, clause 1(g)) b) Place for payments (page 5, clause 1(g)) c) Place of business of bank (page 3, clause 1(d)) | <p style="text-align: center;">Australian Dollar</p> <p>If nothing stated, that of the jurisdiction where the <i>site</i> is located</p> <p>If nothing stated, the <i>Principal's</i> address</p> <p>If nothing stated, the place nearest to where the <i>site</i> is located</p> |
| 10 | <p><i>Bills of quantities</i> (subclause 2.2)</p> <ul style="list-style-type: none"> a) Alternative applying (subclause 2.2) b) If Alternative 2 applies, is the <i>bill of quantities</i> to be priced? (subclause 2.2) c) Lodgement time (subclause 2.3(b)) | <p style="text-align: center;">Alternative 1</p> <p>If nothing stated, Alternative 1 applies</p> <p style="text-align: center;">No/Yes (delete one)</p> <p>If neither deleted, the <i>bill of quantities</i> shall not be priced</p> <p style="text-align: center;">At time of tender submission</p> <p>If nothing stated, 28 days after <i>date of acceptance of tender</i></p> <p>Upper Limit..... 10%</p> <p>Lower Limit..... 10%</p> <p>.....Nil</p> |
| 11 | <p>Quantities in <i>schedule of rates</i>, limits of accuracy (subclause 2.5(b))</p> | <p>.....Nil</p> |
| 12 | <p><i>Provisional sum</i>, percentage for profit and attendance (clause 3)</p> | <p>.....Nil</p> |
| † 13 | <p><i>Contractor's security</i></p> <ul style="list-style-type: none"> a) Form (clause 5) b) Amount or maximum percentage of <i>contract sum</i> (clause 5) c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2) d) Time for provision (except for retention moneys) (clause 5) e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3) | <p style="text-align: center;">Bank guarantee</p> <p style="text-align: center;">5%</p> <p>If nothing stated, 5% of the <i>contract sum</i></p> <p style="text-align: center;">10%</p> <p>If nothing stated, 10%, until the limit in <i>Item</i> 13(b)</p> <p style="text-align: center;">14 days following acceptance of tender</p> <p>If nothing stated, within 28 days after <i>date of acceptance of tender</i></p> <p style="text-align: center;">Not applicable</p> <p>..... \$...</p> |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

- | | f) <i>Contractor's security upon certificate of practical completion</i> is reduced by (subclause 5.4) |50% of amount held
If nothing stated, 50% of amount held | | | | | | | | | | | | | | | | | |
|--|--|--|---|----------|---------------|-------------------------------|---|-----------------------|---|---------------------------|---|---|--|---|--|---|--|--|--|
| † 14 | <i>Principal's security</i> | | | | | | | | | | | | | | | | | | |
| | a) Form (clause 5) | | Not applicable | | | | | | | | | | | | | | | | |
| | b) Amount or maximum percentage of <i>contract sum</i> (clause 5) | | If nothing stated, nil | | | | | | | | | | | | | | | | |
| | c) Time for provision (clause 5) | | If nothing stated, within 28 days after <i>date of acceptance of tender</i> | | | | | | | | | | | | | | | | |
| | d) <i>Principal's security upon certificate of practical completion</i> is reduced by (subclause 5.4) |% of amount held
If nothing stated, 50% of amount held | | | | | | | | | | | | | | | | | |
| 15 | <i>Principal-supplied documents</i> (subclause 8.2) | | <table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Document</th> <th style="text-align: right;">No. of copies</th> </tr> </thead> <tbody> <tr> <td>1 Conditions of Contract.....</td> <td style="text-align: right;">1</td> </tr> <tr> <td>2 Specification</td> <td style="text-align: right;">1</td> </tr> <tr> <td>3 Schedule of rates</td> <td style="text-align: right;">1</td> </tr> <tr> <td>4</td> <td></td> </tr> <tr> <td>5</td> <td></td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td colspan="2">If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)</td> </tr> </tbody> </table> | Document | No. of copies | 1 Conditions of Contract..... | 1 | 2 Specification | 1 | 3 Schedule of rates | 1 | 4 | | 5 | | 6 | | If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any) | |
| Document | No. of copies | | | | | | | | | | | | | | | | | | |
| 1 Conditions of Contract..... | 1 | | | | | | | | | | | | | | | | | | |
| 2 Specification | 1 | | | | | | | | | | | | | | | | | | |
| 3 Schedule of rates | 1 | | | | | | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | | | | |
| 6 | | | | | | | | | | | | | | | | | | | |
| If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any) | | | | | | | | | | | | | | | | | | | |
| 16 | Time for <i>Superintendent's direction</i> about documents (subclause 8.3) |days
If nothing stated, 14 days | | | | | | | | | | | | | | | | | |
| 17 | Subcontract <i>work</i> requiring approval (subclause 9.2) | | All works proposed to be subcontracted | | | | | | | | | | | | | | | | |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

18	Novation (subclause 9.4)	Subcontractor Not applicable	Particular part of <i>WUC</i>
		<i>Selected subcontractor</i> Not applicable	Particular part of <i>WUC</i>
19	<i>Legislative requirements</i>		
	a) Those excepted (subclause 11.1)	Nil	
	b) Identified <i>WUC</i> (subclause 11.2(a)(ii))	All contract works	
20	Insurance of <i>the Works</i> (clause 16)		
	a) Alternative applying	Alternative 1 If nothing stated, Alternative 1 applies	
	If Alternative 1 applies		
	b) Provision for demolition and removal of debris\$ OR5% of the <i>contract sum</i>	
	c) Provision for consultants' fees\$ OR5% of the <i>contract sum</i>	
	d) Value of materials or things to be supplied by the <i>Principal</i>\$0	
	e) Additional amount or percentage\$ OR10% of the total of paragraphs(a) to (d) in clause 16	

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|------|---|--|
| 21 | Public liability insurance
(clause 17) | |
| | a) Alternative applying | Alternative 1
If nothing stated, Alternative 1 applies |
| | If Alternative 1 applies | |
| | b) Amount per occurrence shall
be not less than | \$20,000,000 |
| | | If nothing stated, then not less than the <i>contract sum</i> |
| 22 | Time for giving possession
(subclause 24.1) | within 14..... days of <i>date of acceptance of tender</i>
If nothing stated, 14 days |
| 23 | <i>Qualifying causes of delay</i>
Causes of delay for which
<i>EOTs</i> will not be granted
(page 3, paragraph (b)(iii) of
clause 1 and subclause 34.3) | Contractor caused delays |
| † 24 | Liquidated damages, rate
(subclause 34.7) |per day \$1,000 per day |
| † 25 | Bonus for early <i>practical</i>
<i>completion</i>
(subclause 34.8) | |
| | a) Rate | Not applicable
.....per day \$ per day |
| | b) Limit | Not applicable
..... \$..... |
| | | OR
..... % of <i>contract sum</i>
If nothing stated, there is no waiver |
| † 26 | Delay damages,
other <i>compensable causes</i>
(page 1, clause 1 and
subclause 34.9) | Not applicable |

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

27	<i>Defects liability period</i> (clause 35)	12 months from Date of Practical Completion If nothing stated, 12 months	
28	Progress Claims (subclause 37.1)		
	a) Times for progress claims	<i>5 business days</i> done to the 15 th	day of each month for <i>WUC</i> day of that month
	OR		
	b) Stages of <i>WUC</i> for progress claims		
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	Not applicable	
30	Interest rate on overdue payments (subclause 37.5)18% per annum If nothing stated, 18% per annum	
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)28 days If nothing stated, 14 days	
32	Arbitration (subclause 42.3)		
	a) Person to nominate an arbitrator	Resolution Institute	
		If no-one stated, the President of the Institute of Arbitrators & Mediators Australia	

b) Rules for arbitration

Resolution Institute Arbitration Rules 2023

If nothing stated:

a) rules 5-18 of the Rules of The Institute of Arbitrators, Australia for the Conduct of Commercial Arbitrations;

OR

b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 32(c)*

c) Appointing Authority under
UNCITRAL Arbitration Rules

Resolution Institute
If no-one stated, the President of the Institute of
Arbitrators & Mediators Australia

A3 |

Part B

Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

Deletions, amendments and additions

1 The following clauses have been deleted from the General Conditions in AS 4000 – 1997

Nil

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2 The following clauses have been amended and differ from the corresponding clauses in AS 4000 – 1997

Nil

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3 The following clauses have been added to those of AS 4000 – 1997

Nil

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Part C

This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring

Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

Approved form of unconditional undertaking

(clause 1 – *security*)

At the request of ('the *Contractor*') and in consideration of ('the *Principal*') accepting this undertaking in respect of the *Contract* for.....

..... ('the *financial institution*') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of (\$.....)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *financial institution* or until payment to the *Principal* by the *financial institution* of the whole of the sum or such part as the *Principal* may require.

Should the *financial institution* be notified in writing, purporting to be signed by..... for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *financial institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *financial institution* may at any time without being required so to do pay to the *Principal* the sum of..... (\$.....) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *financial institution* hereunder shall immediately cease.

Dated at.....this.....day of.....20

Part C

This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring

Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997
