

**TENDER/CONTRACT REVIEW
DOCUMENT NO: RPC-BD-F-006**

**COMMERCIAL/CONTRACTUAL TERMS
AND CONDITIONS CHECKLIST**

Tender No: _____

Prepared by: _____

Client: _____

Client Reference: _____

Tender Title: _____

Date: _____

#	Issue	Critical	Preferred	Bid Mgr's Initial	Comments/Agreed Variation
1	RPC Entity	<u>Off Shore Contracts:</u> RPC Entity has been reviewed by Legal/Tax and is appropriate.			
2	Payment	Total cost paid less Revenue received must not exceed 10% of the Contract Price at any given time unless cost of finance has been assessed and included in Contract Price. <u>Note:</u> This requirement assumes progress payments are received. All foreign currency exchange (FCE) risk will be hedged in accordance with RPC policy.	An Advance Payment will be paid (where appropriate) Contract Price is based on specified rates until contract sum certain and hedging viable. <u>Supply Contracts:</u> Transfer of Title in Goods only occurs upon payment. * FCE to be reviewed by the CFO.		
3	Security of payment	Satisfactory creditworthy checks have been carried out on a client where financial capacity is unknown. In particular checks have been carried out and security of payment obtained with entities of limited asset backing.			
4	Delivery Program	Consequence of client owning "Float" have been assessed and included in contract price.	Any float in the contract program belongs to RPC (target at least 1 week float)		
5	Consequential Damages	Contract does not expose RPC to any direct or indirect consequential damages	Client has accepted standard RPC wording: "Our offer specifically excludes any consequential, indirect, economic, 3rd party or delay damages, other than any liquidated damages noted above."		
6	Foreign Exchange	If Sales or Purchases for this project could be materially affected by variations in exchange rates, this matter must be referred to the Financial controller and signed off prior to signing contracts.	Arrangement to be made via Financial Controller re. Forward Cover for large sums at risk during tender phase and at execution stage.		
7	Bonding/Security	Level of Bonding is capped at 5% of Contract Price or lower	Bonding capped at no more than 5% of Contract Price. Approval is obtained for		

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			security greater than 5% of CV from CEO/MD. The Bond includes a fixed expiry date.		
8	Retention	Level of Retention does not exceed 5% of Contract Price. <i>NOTE: The combined level of bonding and retention ("Security Package" should not exceed 10% of the contract price)</i>	Retention is Nil. 100% of Retention will be released at Practical completion. Approval is obtained for retention greater than 5% of CV from CEO/MD. Retention is by Security/Bonding in lieu of cash retention.		
9	Liquidated Damages	Liquidated Damages are capped at no more than 10% of the Contract Price	Liquidated Damages reduced to a minimum figure.		
10	Defects Liability Period	Duration of Defects Liability Period is a maximum of 12 months from Practical Completion or the length of the period for defects liability under Head Contract. Alternatively, an appropriate allowance must be made for any extended period.	Maximum security withheld during Defects Liability Period is not greater than 5%.		
11	Definitions of Practical Completion	Definition of Practical Completion must not be at the discretion of the Principal or his agent and criteria must be reasonable.	Practical Completion Definition based on the following concept: For Construction Contracts (<i>AS4000 definition</i>) or equivalent, where: Practical Completion is that stage in the execution of the work under the contract when: (a) the works are complete but for minor omissions and minor defects - (i) which do not prevent the Works from being reasonably capable of being used for their intended purpose; (ii) which the superintendent (or equivalent) determines the Contractor has reasonable grounds for not promptly rectifying; and (iii) rectification of which will not prejudice the convenient use of the Works; and (b) those tests required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and		

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			<p>(c) documents and other information required under the Contract which in the opinion of the Superintendent, are essential for the use, operation and maintenance of the Works have been supplied.</p> <p>Alternatively, for manufacturing contracts the criteria used in AS3556 should apply.</p>		
12	Design	<p><u>Design and Construct Contract</u> has been reviewed by Legal/ Commercial.</p> <p>Fitness for purpose Guarantee/Warranty must be tied back to specific criteria set out in the Specification and/or Design Documents.</p> <p>A review by Commercial Manager has been carried out, including:</p> <ul style="list-style-type: none"> • Allocation of design risk • engagement of consultants • design management strategy/ plan • design programme • External Design Consultants must sign a Consultancy Agreement and be responsible for any changes in quantities determined by the consultant at time of tender and contract. 			
13	Regime for Extension of Time	<p>Extension of Time address the following:</p> <ol style="list-style-type: none"> 1. Client Caused Delays: Time and cost 2. Neutral Events (e.g. Force majeure, Industrial Disputes unrelated to site): Time 	<p><u>Other Events:</u></p> <p>Time and Cost (e.g. weather, industrial disputes, changes in law, actions of public or statutory authorities, latent conditions)</p>		
14	Variations	<p>No restrictions within the Contract to obtain a fair price for variations including Profit/ attendance/ offsite overheads.</p> <p>Variations if limited to Schedule of Rates, are realistic and reasonable rates and the scope for application of the rate is well defined</p>			
15	Guarantees/ Warranty/ Representation/ Indemnities	<p><u>Guarantees and Warranties:</u></p> <p>If not back to back" guarantee/ warranties maximum period 2 years.</p>			

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		<p><u>Indemnity:</u></p> <p>Indemnities only to be given for loss of or damage to property and/or in respect of personal injury or death.</p> <p>Any additional indemnities must be approved by MD/CEO</p> <p>Total liability must be limited to no more than the contract/PO value</p>	Limit of liability to a maximum of \$2m is preferred		
16	Parent Guarantees/ Support Instruments	Parent Guarantee is for performance of Contractual obligations only.	Not Applicable		
17	Insurance	<p>Insurance obligations have been checked against existing coverage and additional insurance arrangements made as appropriate.</p> <p><u>Design Contracts:</u></p> <p>Professional Indemnity Liability has been reviewed and if D & C Contract worth more than \$5.0 million, to be approved by BOD.</p>			
18	Tax	<p>The following taxes have been assessed and included in contract Price:</p> <ol style="list-style-type: none"> 1. Sales Tax; if applicable 2. GST/VAT/Withholding Tax (as appropriate) <p><u>Offshore Contracts:</u></p> <p>Entity and contract has been reviewed by Financial Controller.</p>			
19	Dispute Resolution Processes	Dispute Resolution processes specified in Contract	<p>Stepped process to Dispute Resolution:</p> <ol style="list-style-type: none"> 1. Bona fide negotiations (prior to mediation) 2. Provisions for a mediation include a "certain" process and must take place before parties can proceed to arbitration. 3. Provision for arbitration <p>Offshore arbitration in accordance with "UNICITRAL" Arbitration rules (or as advised by Legal) in English speaking country.</p>		
20	Intellectual Property	RPC's Intellectual Property existing prior to Contracts to be retained. The terms of purchase of intellectual property referred to legal.	Intellectual property generated during the course of the performance of the Contract or in connection with the Contract remains the property of RPC.		

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			Note: Assessment of the asset/value should be considered in each circumstance.		
21	Latent Conditions	Either: Latent Conditions allow for extension of time and costs; or All proper investigations of site conditions have been undertaken by RPC, risks assessed and included in Contract Price.			
22	Subcontracting	No restrictions in the Contract in respect of subcontractors - unless assessed and priced.	No restriction in selection of subcontractors.		
23	Governing Law	Governing Law clause (covering both Contract and Dispute Resolution) must attach to State Laws where work being carried out. <u>Offshore Contracts:</u> To be reviewed and discussed with CFO and MD/CEO.			
24	Releases, Indemnities and Waivers on receipt of Final Payment	These must be reviewed by Legal/Commercial where substantial contractual rights are affected.			
25	Site Conditions	A proper investigation of the site has been carried out, risks assessed and allowances made in contract price.			
26	Contract Review	Contracts over \$10m or with unique/unusual wording/ conditions have been reviewed and a recommendation provided to MD/CEO.			
27	Industrial Relations	Industrial Relations issues have been considered and referred to the I.R. Manager if unusual, uncertain or unknown in any way.			

Sign-off:

Prepared by: _____

Date _____

Approved: _____

Date _____