

DEED OF AGREEMENT

The Works

1. The works must be carried out by the contractor:
 - a) in a proper, workmanlike and professional manner (and the contractor will, where relevant, be suitably qualified and experienced and have the appropriate professional qualifications and membership of appropriate professional associations);
 - b) exercising due skill, care and diligence in carrying out and completion of the works;
 - c) using suitable new materials (with the exception of scaffolding and formwork);
 - d) in a manner mindful of minimising noise, rubbish and in compliance with any other site conditions specified by the principal;
 - e) in accordance with all relevant codes, standards and specifications that the works are required to comply with under any law;
 - f) to the complete satisfaction of the principal in accordance with the specifications and the provisions of this document.
2. The contractor must:
 - a) notify the principal of any and all matters relating to its execution of the work under this document which could have a material impact on the contractor's ability to execute the works;
 - b) carry out any written instruction the principal gives to the contractor relating to any aspect of the works;
 - c) ensure all plant & equipment used in the execution of their contract, whether it be their own or hired, is serviced and maintained and produce the service records where requested by the principal;
 - d) attend any meeting required by the principal and participate in site induction training provided by the principal;
 - e) notify the principal of any industrial disputes connected with the works;
 - f) cooperate with any other contractors on site or working on the project;
 - g) comply with the sustainability management plan as notified by the principal from time to time; and
 - h) where the works include design services:
 - i) carry out and complete the contractor's design obligations to accord with the principal's project requirements;
 - ii) carry out and complete the works in accordance with the design documents so that the works, when completed, shall be fit for their stated purpose and comply with all the requirements of this document, and
 - iii) certify that its designs meet the requirements of the head contract (excluding scaffolding and formwork)

Design obligations

3. The contractor shall prepare the necessary design documents.
4. The contractor shall submit to the principal the design documents, which shall be:
 - a) consistent with the requirements of this document (including, without limitation, the principal's project requirements);
 - b) submitted in accordance with the requirements of the contract; and
 - c) in the form or forms required by the principal.
5. If required by the principal, the contractor shall make available the appropriate design and the contractor's personnel to meet with the principal to explain any design documents.
6. The principal may direct the contractor to supply any additional documents which the principal considers necessary to reflect and convey the design of the works to form part of the design documents.
7. The principal may comment on the design documents in writing to the contractor within the time stated in the contract of submission of the design documents in accordance with clause 4 or if a meeting referred to in clause 5 has occurred, that meeting.
8. If comment is provided within the time required by clause 7, the contractor shall update the design documents to address such comments and resubmit such updated design documents to the principal together with a report which identifies how many comments from the principal have been addressed in the design documents.
9. If within 10 business days of resubmission of any updated design documents in accordance with clause 8, or such time agreed between the parties, the principal forms the opinion that the design documents are not in accordance with this document, the principal may reject the design documents by notice in writing to the contractor, in which case the contractor shall promptly amend and resubmit the design documents in accordance with clause 4 and the process in clauses 4 to 9 will be reapplied to the amended design documents.
10. The contractor shall not commence construction of any part of the works unless and until the design documents for that part of the works have been submitted to the principal in accordance with this document and the principal has not rejected the design documents within the time permitted under clauses 7 and 9 (as applicable).
11. Where there is any error, ambiguity, discrepancy or deficiency in the design documents (including where the design documents fail to satisfy the principal's project requirements), then the contractor shall:
 - a) Rectify the design documents and the works at no cost to the principal
 - b) Have no entitlement to a variation as a result of such error, ambiguity, discrepancy or deficiency; and
 - c) Indemnify the principal for any loss incurred by the principal as a consequence of the error, ambiguity, discrepancy or deficiency.
12. The principal is not obliged to check the design documents or any proposed design documents for any error, ambiguity, discrepancy or deficiency or compliance with the requirements of this document. Neither the consent of the principal under clause 4, nor anything said by the principal or any agent or employee of the principal in relation to the design documents or any proposed design documents shall relieve the contractor from responsibility for the contractor's errors or omissions or departure from the contractor's design obligations or other requirements of this document.
13. If any preliminary design is included in the contract, then the contractor acknowledges that it is aware that some design work has already been performed by the contractor's personnel on behalf of the principal in preparing the design documents and that it shall:
 - a) accept full responsibility for the preliminary design carried out by or on behalf of the principal; and
 - b) bear absolutely the risk of any failure to meet any requirements set out in this document and the risk of any defect in the works under this document which may arise (whether directly or indirectly) as a result of any design work carried out by or on behalf of the principal and incorporated into the principal's project requirements prior to the date of this document and which is adopted and used by the contractor.

Warranties and quality

14. Without limitation to any other warranties expressed in this document and any other terms implied by statute, common law, equity or otherwise, the contractor represents and warrants that:
 - a) the work under this document will be performed in a professional manner with all the skill and care to be expected of professional, appropriately qualified and experienced contractors with experience in performing works and services of similar size, type, nature, purpose and complexity to the works with the ethics and standards of the contractor's profession and in accordance with any standards or requirements notified by the principal;
 - b) without limiting its obligations in clause 63 to 69, it is familiar with and has the capabilities to comply with all legislative requirements including those related to work, health and safety;
 - c) it owns or is licensed to use any intellectual property used in the carrying out of the works under this document and indemnifies the principal against any liability or loss from the use of such intellectual property;
 - d) it will execute and complete the work under this document in accordance with the terms of this document so that, when completed, the works under this document:

- i) are fit and sufficient for the purpose intended;
- ii) are free from defect or default of any kind;
- iii) are free from any charge or other encumbrance; and
- iv) comply with all legislative requirements and other applicable Australian standards and industry regulations.

15. The contractor acknowledges that, in entering into this document, the principal has relied on the representations and warranties described in this clause 14.
16. The contractor must assign or novate all warranties provided or available to it from subcontractors and suppliers for the works to the client if so instructed by the principal. Such warranties must be fit for purpose and extend for at least the defects liability period or such longer period specified by the principal or the client.
17. All warranties must be provided by the contractor to the principal prior to payment of their final claim.
18. The contractor must make available to the principal and the client its quality system, for the purposes of monitoring and quality auditing.

Time and variations

19. The contractor must do the following:
 - a) commence the works on the commencement date, and
 - b) perform the work under this document diligently and expeditiously so as to complete the works by the completion date, which is subject to adjustment in accordance with clause 20.
20. The principal may in its absolute discretion, by notice in writing at any time to the contractor, suspend the works or extend the completion date.
21. The contractor agrees not to claim any additional time, cost, expense, loss or damage from the principal in respect of complying with any extended completion date.
22. If the works are delayed by any cause, the contractor must, within three business days of the cause of delay arising, notify the principal in writing of the:
 - a) cause of the delay; and
 - b) the anticipated delay to completion of the works.

The principal has the sole discretion to grant an extension of time to the completion date.

23. The principal may direct the contractor to increase, decrease or omit any part of the work under the contract. The variation directed or approved by the principal shall be valued using the following in priority order:
 - a) The principal and contractor agree upon a price, typically itemised, in the original contract cost break down;
 - b) If a) does not apply, if the contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
 - c) If a) or b) does not apply, the rates or prices in a schedule of rates shall be used to the extent that it is reasonable to use them;
 - d) If a) or b) or c) does not apply, reasonable industry rates or prices from Rawlinsons construction cost guide or similar shall be used
24. Notwithstanding any other provision of this document, if a variation is made necessary due to any act, omission or default of the contractor or the contractor's personnel including, as a consequence of an error in the design, the contractor:
 - a) Will have no entitlement to a claim; and
 - b) The contractor's warranties, obligations or liabilities under or in connection with this document will not be affected.
25. The principal may direct the contractor to accelerate the work under the contract for any reason including as an alternative to granting an extension of time to the completion date.

The principal may withdraw an acceleration direction at any time before the contractor commences to accelerate the work under the contract.

Upon receipt of an acceleration direction, the contractor must forthwith provide to the principal the following information:

- a) Details of additional labour and construction plant which the contractor considers will be required to comply with the direction either in its own right or through subcontractors;
- b) An estimate of the hours of work which will be required to be performed by the contractor outside the working hours or the working days defined in this contract to enable the contractor to comply with the direction;
- c) Details of additional supervision which the contractor will be required to provide to comply with the direction;
- d) The contractor's estimate of the extra costs and expenses which it may reasonably incur in complying with the direction.

The contractor will be entitled to all extra costs necessarily and reasonably incurred by the contractor in complying with an acceleration direction except where the direction was issued as a consequence of an act, default or omission of the contractor.

26. The contractor is only entitled to claim additional costs and/or time for a variation where such cost and/or time consequences are authorised in writing by the principal. The price for any variation may be added to or deducted from the works value.

Payment

27. The principal will pay the contractor the works value in instalments as the contractor completes parts of the works. The contractor must submit claims for payment at the dates for payment claims or on achievement of the milestones stated in schedule 1. The project will be closed 60 business days after project practical completion and no further progress claims will be processed.
28. **Payment will only be made by the principal 20 business days after the payment claim if the contractor has forwarded a payment claim accompanied by a signed statutory declaration, and**
 - a) the principal holds a copy of the contractor's certificate of currency for public liability, professional indemnity (if applicable) and workers compensation (if applicable)
 - b) the contractor is not in substantial breach of this document;
 - c) the part of the works for which the claim is made complies with this document; and
 - d) the contractor has complied with its obligations under clause 39.
29. At any time the principal may by giving the contractor prior written notice, set off any of the following amounts against any amount the principal owes the contractor:
 - a) an amount the contractor is required to pay under this document or otherwise, including under any other agreement between the parties; and
 - b) costs the principal incurs by doing something the contractor is required to do, but has not done, in accordance with this document or otherwise, including under any other agreement between the parties.

Certificates

30. The principal will, within 10 business days after receiving a payment claim, issue to the contractor:
 - a) a progress certificate evidencing the principal's opinion of the moneys due from the principal to the contractor, or from the contractor to the principal, pursuant to the payment claim and reasons for any difference; and

- b) a certificate evidencing the principal's assessment of retention monies and monies due from the contractor to the principal pursuant to the contract.

Retention

- 31. The principal is entitled to retain retention monies from the contractor's payment claims in accordance with this contract. Any amount retained will be by way of performance security and must be available to the principal whenever the principal may claim to be entitled to the payment of moneys by the contractor under or in connection with this document or the work under this document or whenever the principal may claim to be entitled to reimbursement of any moneys paid to others under or in connection with this document or whenever the principal may claim to be entitled to other moneys payable by the contractor to the principal whether by way of set off or otherwise.
- 32. Subject to any right of recourse the principal has to the security under this document, upon receipt by the principal from the client that completion has been achieved the principal's entitlement to retention monies will be reduced by the percentage in schedule 1 and the reduction shall be released and returned to the contractor within 15 business days of the issue of that certificate.
- 33. Subject to any right of recourse the principal has to the security under this document, upon receipt of signed confirmation from the client at the end of the defects liability period the balance of the retention monies shall be released and returned to the contractor within 15 business days.

Security of Payment

- 34. 'Security of Payment Act' means the Building and Construction Industry Security of Payment Act 1999 (NSW) as amended.
- 35. The contractor must promptly give the principal a copy of any notice the contractor receives from another person under section 15, 16 or 27 of the Security of Payment Act. The contractor must also notify the principal if it intends to exercise a statutory lien under section 11(3) of the Security of Payment Act.

GST and Taxes

- 36. A party must pay GST on a taxable supply made to it under this document, in addition to any consideration (excluding GST) that is payable for that taxable supply. It must do so at the same time and in the same way as it is required to pay the consideration for the taxable supply.
- 37. A party making a taxable supply to another party under this document must issue a tax invoice to the other party, setting out the amount of GST payable by that other party.
- 38. 'Taxable Supply' and 'Tax invoice' have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

Insurance

- 39. Before commencing own works in progress prior to PC, the contractor must arrange the following types of insurance and give the principal satisfactory evidence in the form of certificates of currency, that the following insurance has been effected:
 - a) workers' compensation and employer's liability insurance for any of the contractor's employees or anyone else treated as an employee of the contractor under any legislation;
 - b) motor vehicle third party bodily injury and property damage liability insurance in respect of all vehicles to be used by the contractor in respect of the works;
 - c) plant & equipment insurance for contractor's own equipment;
 - d) \$10 million professional indemnity insurance for all design & construct contracts. The professional indemnity insurance policy must be maintained with a reputable insurer until 6 years after the first to occur of termination of this document or completion of the works;
 - e) \$20 million public liability insurance in respect of personal injury, death or property damage arising out of the works. The principal must be noted as a "Named Insured" on the insurance policy; and
 - f) loss or damage to the Works resulting from any cause.
- 40. Both the insurers and terms of insurance must be approved by the principal. The contractor must maintain all insurances for the period of the works.
- 41. The contractor is responsible for payment of excess for their own insurance claims.
- 42. Should the principal have to put in a claim on our own policy as a result of damage caused by the contractor's negligence, the contractor is liable to reimburse this excess amount to the principal.
- 43. The contractor must inform the principal in writing of any occurrence that may give rise to a claim under an insurance policy required in clause 39 and must provide further evidence of insurance upon request by the principal.

Indemnity

- 44. The contractor continually indemnifies the principal against each of the following liabilities arising as a result of the contractor's negligence or a breach by the contractor of this document:
 - a) liability in respect of personal injury, death or property damage arising out of the works; and
 - b) liability for any losses, costs, expenses or damages incurred by the principal, including (without limitation) liability as a result of:
 - i) industrial disputes occurring which were caused or contributed to by the contractor;
 - ii) a failure by the contractor to comply with the Security of Payment Act;
 - iii) any infringement of any intellectual property right; and
 - iv) pollution or damage to the environment comprising and surrounding the site.

Documents

- 45. The contractor is deemed to have examined this document, obtained all other information necessary to complete the works, determined the nature and extent of the works and assessed the amounts of temporary work, materials, labour and plant necessary to complete the works, prior to executing this document.
- 46. The accuracy of any documentation relating to quantities or dimensions provided by the principal to the contractor is not guaranteed and is indicative only.
- 47. If the contractor finds any inconsistency in or between the documents comprising this document, the contractor must notify the principal in writing as soon as possible and the principal will direct the contractor as to the resolution of the inconsistency.
- 48. The contractor must give the principal any warranties, guarantees, operating manuals, maintenance manuals or 'as-built' drawings requested by the principal in a format acceptable to, and by the times directed by the principal.
- 49. The principal's approval of any documents supplied by the contractor will not relieve the contractor of the responsibility for those documents.
- 50. The contractor must not, without prior written approval of the Principal, disclose or give to any person any confidential information.

51. The contractor must not disclose any information concerning the project for distribution through any communications media without the principal's prior written consent.

Intellectual property and moral rights

52. Copyright and all other intellectual property in all design documents prepared or provided by the contractor for the purpose of the Works hereby vests in the principal and the principal grants to the contractor an irrevocable licence to use the design documents for the works under this document. The contractor shall do everything necessary to perfect such vesting. The contractor shall ensure that the design documents are used, copied and supplied only for the purposes of the work under this document.
53. To the extent that any third party is the owner of intellectual property in any part of the works, the contractor will provide an irrevocable, fully assignable, royalty-free licence for the principal for use of that intellectual property in relation to the works.
54. The contractor agrees to procure the irrevocable consent of its employees, subcontractors and agents to waive any and all moral rights that those individuals may have, presently or in the future, arising from the intellectual property assigned to the principal under clause 36, including by procuring the execution of any moral rights consent required by the principal.
55. The contractor warrants that any other design, materials, documents and methods of working, each provided by or on behalf of the contractor, will not infringe any intellectual property right.
56. The contractor must inform the principal immediately upon becoming aware of any infringement or threatened infringement of any intellectual property right owned or used by the principal.

Completion

57. Completion of the works means when each of the following has occurred:
- a) the works are completed, except for minor omissions and defects (which are expressly approved by the principal);
 - b) any tests, commissioning and statutory approvals required by this document have been carried out and passed;
 - c) all documents, warranties and other information required by the principal have been provided; and
 - d) any other requirements for completion set out in the schedule have been completed.
58. The contractor must clean up all debris and leave the site neat and tidy to the approval of the principal upon completion of the works.

Damage and defects

59. Contractors are to take care and protect other trades works within the vicinity they are working
60. If any defects or damage are caused by materials supplied by the contractor or work undertaken by the contractor, the contractor must rectify them at the contractor's expense within the time instructed by the principal. The contractor must promptly make good any defect in the works notified to it by the principal within the defects liability period.
61. Failure to do so will result in the principal making good such defects or damage and the cost of doing so becomes a debt due from the contractor to the principal.

Contractor's personnel

62. The principal will notify the contractor of the working hours and working days on the Site.
63. The principal may, at any time during the works, remove or exclude from the site or direct the contractor to remove or exclude from the site, any person the principal considers may adversely affect the works. The contractor must promptly comply with any direction given under this clause.
64. The contractor must comply with its legal obligations relating to compensation for injury, illness or death of its personnel.

Workplace Health & Safety (WHS)

65. The contractor shall identify, document and comply with all WHS laws and regulations, approvals, licenses and permits which are applicable to the work site and shall conduct its activities in a manner consistent with the principal's policies, standards, guidelines, procedures and permits.
66. The contractor has a duty to comply with any safety improvement notice issued.
67. The contractor must provide all means of access and materials/equipment necessary to complete the scope of works in a safe manner.
68. The contractor shall keep accurate, current and legible evidence to prove compliance with these WHS requirements and at the request of the principal produce documentary and other evidence to prove such compliance.
69. The contractor warrants that it is and its personnel are familiar with all WHS legislative requirements applicable to all work undertaken and shall comply with these requirements fully. The governing key legislation includes:
- i) Work Health and Safety Act 2011
 - ii) Work Health and Safety Regulations 2017
 - iii) Approved Industry Codes of Practice which support WHS legislation
 - iv) Relevant Australian Standards which are developed by regulating bodies such as Standards Australia and Safe Work Australia
 - v) Protection of the Environment Operations Act 1997
 - vi) Workplace Injury Management and Workers Compensation Act 1998
 - vii) Workers Compensation Act 1987
70. All contractors engaged to perform work on the principals projects are required, as part of their contract, to comply with the principals WHS program and to observe directions on WHS from the principal.
71. Failure to comply or observe a direction is considered a breach of contract and is sufficient grounds for termination of the contract.

Damages

72. If the contractor fails to complete the works by the completion date, the contractor will be indebted to the principal for:
- a) extra costs incurred by the principal for extended overheads and other damages, excluding damages referred to in clause 72(ii); and
 - b) if the failure by the contractor causes the principal to be in breach of the head contract, damages whether liquidated or otherwise which the principal thereby becomes liable to pay the client.
73. The contractor's indebtedness under clause 72(i) will be liquidated and the contractor must pay the principal liquidated damages at the rate stated in schedule 1 for every day after the date of completion to and including the date of completion or the date that this document is terminated under clause 78, whichever first occurs.
74. The contractor's indebtedness under clause 72(ii) is not included in the liquidated damages applicable to clause 72(i)

Dispute resolution

75. If a dispute arises under this document, either party may at any time give written notice to the other requesting that a settlement meeting take place. Senior representatives of each party (who have authority to settle the dispute) must meet within five business days of the notice and endeavour to resolve the dispute in good faith.
76. A party is free to pursue its rights at law if one of the following has occurred:
- the settlement meeting does not take place; or
 - after five business days of the settlement meeting, the dispute remains unresolved.
77. Despite the existence of a dispute, the contractor must continue to carry out the Works in accordance with this document.

Default and termination

78. If, in the principal's opinion any of the following occurs, the principal is entitled to terminate this document or take over all or part of the works by giving written notice to the contractor:
- the head contract is terminated for any reason;
 - the contractor delays the works without reasonable cause prior to completion of the works being achieved;
 - the contractor fails to replace defective work or unsatisfactory materials;
 - the contractor breaches a term of this document and does not remedy that breach within three business days of notice being given by the principal setting out the nature of the breach;
 - the contractor is issued with WHS improvement notices; or
 - the contractor has not proceeded with the works competently or with reasonable diligence.
79. If the principal terminates this document or takes over all or any part of the works, the principal may employ other people to carry out all or part of the works at the contractor's expense, and, at no cost to the principal, any materials, plant or equipment owned by the contractor may be used by the principal in completing the works.

Bar on claims

80. The contractor will not have any right to make a claim for money against the principal arising out of the works or this document unless the contractor gives to the principal both the following:
- written notice not later than five business days after the first occurrence of the circumstances on which the claim is based that it intends to make a claim, and
 - further written notice within five business days of the first notice providing detailed particulars of the basis for and the quantification of the claim.

Assignment and Novation

81. The contractor must not assign or subcontract any part of this document or the works without the principal's written consent which may be conditional. The principal's consent to any assignment by the contractor will not relieve the contractor from any of its obligations under this document or impose any liability upon the principal to an assignee.
82. If the principal notifies the contractor that the head contract has been terminated, the contractor must promptly agree to the novation of this deed from the principal to the client on those terms prescribed by the client.

Covid-19

83. Definitions:
- Covid-19 means the disease known as Coronavirus (Covid-19), which was characterised to be a pandemic by the World Health Organisation on 11 March 2020
 - Pandemic Event means a disruption that has an adverse effect on the supply of labour, equipment, materials or services required for the performance of the works, caused as a direct result of the Covid-19
84. Pandemic Event – the contractor acknowledges:
- that Covid-19 declared pandemic and it has, and will continue to have, an impact on the construction industry, including (without limitation) the supply of labour, equipment, materials or services required for the performance of construction work; and
 - that there currently are in effect and there will be, from time to time, additional public health orders and declarations made by an Authority in relation to Covid-19 which will affect the works, including without limitation:
 - delays to and the suspension of the carrying out of works
 - restrictions on the maximum number of persons on a construction site
 - site check-in requirements, including the provision of identification
 - vaccination requirements for persons to work on a construction site
 - requirements for testing for Covid-19 and evidence of the testing (and negative reading)
 - requirements to wear personal protective equipment including fitted face coverings or masks; and
 - social distancing requirements(Collectively, the Public Health Order)
85. The contractor must comply and must ensure that all of its employees and subcontractors comply with any:
- direction of the principal in relation to the pandemic event
 - direction of the principal in relation to a public health order; and
 - public health orders
86. The contractor must take all steps to implement and comply with the public health order, including without limitation ensuring that the contractor, its employees, agents and subcontractors:
- Undertake testing for Covid-19 and carry evidence of the test
 - Have a Covid-19 vaccine; and
 - Wear fitted face coverings
87. The principal may exclude from the site any employee, agent or subcontractor of the contractor who does not comply with a public health order or a direction of the principal under this clause.
88. Other than any entitlement under clause 89, the contractor will not be entitled to make (nor will the principal be liable upon) any claim for money or adjustment to the subcontract sum or any other entitlement, arising out of or in connection with:
- a pandemic event
 - a public health order, whether in effect before or after the date of the contract; or
 - any direction of the principal, under this clause
89. If a pandemic event occurs, other than a pandemic event which:
- the contractor could have avoided or overcome by taking reasonable steps
 - was caused by the contractor, including a breach of this clause

and which actually causes a delay to the performance of the works, the contractor may be entitled to an extension of time to the completion date, provided that extension of time claim is submitted strictly in accordance with the requirements of this contract.

Definitions

90. In this document, these terms have the following meaning:

- a) **Design Documents** means drawings, specifications and other information, samples, models, patterns and the like required under this document and created (including, where the context so requires, those to be created by the contractor) for the construction of the works;
- b) **Project Requirements** means the requirements of the principal for the works set out in the scope of works.