

CONTRACT – DESIGN & CONSTRUCT

Table of Contents

1	OVERVIEW	2
1.1	The Works	2
1.2	General items	2
1.3	Prior to the commencement of works	3
1.4	Subcontractor’s workers/employees	3
1.5	Project supervision, co-ordination and performance	3
1.6	Programming	4
1.7	Services and Facilities	4
1.8	Access to the Site	4
1.9	Protection of works, people, property and materials	4
1.10	Cleaning	5
1.11	Subcontractor’s personnel	5
2	DESIGN OBLIGATIONS	6
2.1	Design Documents	6
2.2	Intellectual property and moral rights	7
3	DOCUMENTS	7
4	INSURANCE	8
4.2	Insurance	8
4.3	Indemnity	8
5	TIME AND PROGRESS	9
6	DELAY AND EXTENSION OF TIME	9
7	VARIATIONS	9
8	COMPLETION OF THE WORKS	10
8.1	Completion	10
8.2	Damage and defects	10
8.3	Warranties and quality	11
8.4	Assignment and Novation	11
9	PAYMENT FOR THE WORKS	12
9.1	Payment	12
9.2	Certificates	12
9.3	Retention	12
9.4	Security of Payment	13
9.5	GST and Taxes	13
10	WORKPLACE HEALTH & SAFETY	13
11	DISPUTE RESOLUTION	14
12	DEFAULT, TERMINATION AND BAR ON CLAIMS	14
12.1	Default and termination	14
12.2	Bar on claims	14
13	PANDEMIC EVENT	15
14	DEFINITIONS AND INTERPRETATION	15

CONTRACT – DESIGN & CONSTRUCT

1 OVERVIEW

1.1 The Works

1.1.1 The works must be carried out by the subcontractor:

- a) in a proper, workmanlike and professional manner (and the subcontractor 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 head contractor;
- 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 head contractor in accordance with the specifications and the provisions of this document.

1.1.2 The subcontractor must:

- a) notify the head contractor of any and all matters relating to its execution of the work under this document which could have a material impact on the subcontractor's ability to execute the works;
- b) carry out any written instruction the head contractor gives to the subcontractor 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 head contractor;
- d) attend any meeting required by the head contractor and participate in site induction training provided by the head contractor;
- e) notify the head contractor of any industrial disputes connected with the works;
- f) cooperate with any other subcontractors on site or working on the project;
- g) comply with the sustainability management plan as notified by the head contractor from time to time; and
- h) where the works include design services:
 - i) carry out and complete the subcontractor's design obligations to accord with the head contractor'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)

1.2 General items

1.2.1 This is a lump sum/schedule of rates contract including all works, labour, plant, material or equipment requirements not specifically mentioned in the specification and/or scope of works, but are necessary for the proper and complete performance and installation of the works and intended operation as required and specified herein, shall be deemed to be included in the tenderers tender offer.

1.2.2 The subcontractor has allowed to provide all plant (including hired plant) to complete trade works.

1.2.3 The subcontractor acknowledges that they have been invited to enter into this contract on the basis of their represented skills and capacity and without limited the generality of any other provision herein contained or implied, the subcontractor acknowledges and agrees that it is essential for the head contractor and the client that the works be completed in a final form in accordance with the plans and specifications to the high standards required by the head

CONTRACT – DESIGN & CONSTRUCT

contractor and the client and within the contract time or adjusted contract time agreed for their completion.

1.3 Prior to the commencement of works

- 1.3.1 Prior to commencement of works the subcontractor must provide the head contractor with the following documents:
- a) A safe work method statement (“SWMS”) prepared in accordance with the prevailing SafeWork guidelines that addresses safety and environmental issues and includes a risk analysis report
 - b) All applicable SafeWork competency certificates for each employee of the subcontractor including, but not limited to, copies of their general construction induction training.
 - c) Certificates of currency for all insurances the subcontractor is required to effect under this contract, including but not limited to public liability and workers compensation insurance.
 - d) Registration, servicing and maintenance documentation including log books for all plant and equipment required by SafeWork or any other relevant Authority or legislation, including but not limited to all WHS regulations.
 - e) Workers obtain a BCSC number (if required)
 - f) Safety data sheets (“SDS”) for all products and chemicals to be used in the performance of the works

1.4 Subcontractor’s workers/employees

- 1.4.1 Prior to commencing any work on the site, the subcontractor’s workers/employees must:
- a) be issued with a copy of the SWMS
 - b) read and sign off the SWMS as read and understood
 - c) undertake site induction
- 1.4.2 The subcontractor acknowledges and agrees that the contract sum includes for compliance with all relevant industry awards and any applicable enterprise bargaining agreements.

1.5 Project supervision, co-ordination and performance

- 1.5.1 The subcontractor must provide a full time project supervisor/foreman (when the subcontractor is present on site) who will be responsible for the co-ordination of works with other trades, taking and receiving instructions from the head contractor and who is authorised to bind the subcontractor.
- 1.5.2 The subcontractor must co-ordinate with all other subcontractors and consultants on the project in the execution of the works.
- 1.5.3 The subcontractor is responsible for all setting out required for the Works.
- 1.5.4 Unless otherwise stipulated in this contract, the subcontractor must provide at its own expense everything necessary for the proper execution and completion of works and for the proper performance by the subcontractor of its obligations under this contract (including all BCA requirements).
- 1.5.5 The subcontractor must ensure that all materials are delivered to site free of defects. The head contractor is entitled to reject any faulty materials delivered to site and the subcontractor must replace these items with suitable materials at its own cost.

CONTRACT – DESIGN & CONSTRUCT

- 1.5.6 The subcontractor must make itself completely aware of all surfaces. Upon commencement of works by the subcontractor in a particular area, the subcontractor is deemed to have accepted all sub-surfaces in that area and any rectification costs, delays or other costs incurred in respect of the condition of the surfaces or sub-surfaces must be borne by the subcontractor.

1.6 Programming

- 1.6.1 The subcontractor must complete works in accordance with the construction program as reviewed or amended from time to time.
- 1.6.2 The subcontractor acknowledges and agrees that the contract sum includes, and the subcontractor has allowed for, any and all out of sequence works including ensuring that adequate resources and materials will be available to ensure the construction program is maintained. Any costs or delays associated with materials and or labour not being available are at the risk of the subcontractor.
- 1.6.3 The head contractor does not guarantee the continuity of works.

1.7 Services and Facilities

- 1.7.1 In addition to all other clauses, the subcontractor is responsible for the following:
- a) the provision of all personal protection equipment, all plant equipment and tools (including hired plant, equipment or tools) and any scaffolding, or stair/ladder access necessary for works to be safely undertaken;
 - b) training not otherwise provided for in the SWMS
 - c) the delivery to and secure storage on site and insurance of all materials, plant, tools and equipment at the locations allocated by the head contractor
- 1.7.2 Services for facilities for which the head contractor is responsible or such other services or facilities which the head contractor may provide, will be provided on a non exclusive shared basis and the subcontractor must comply with the head contractor's planning schedules in respect of their use.

1.8 Access to the Site

- 1.8.1 The subcontractor will only access the site in accordance with the instructions provided by the head contractor.
- 1.8.2 The loading and unloading of materials is permitted only within the confines of the site and must be notified to and approved by the head contractor's site foreman 48 hours in advance.

1.9 Protection of works, people, property and materials

- 1.9.1 The subcontractor is responsible for the protection of works and for any adjoining trades. If the subcontractor damages any work or materials of other trades on site, the head contractor may rectify such damage or replace the damaged materials without notice to the subcontractor and the cost will be a debt due to the head contractor by the subcontractor which the head contractor may set off against any amount otherwise owing to the subcontractor.
- 1.9.2 The subcontractor is responsible and must allow for the protection of all materials brought on site by the subcontractor prior to, during and after installation until the subcontractor's practical completion, including the removal and disposal of protection materials on completion.

CONTRACT – DESIGN & CONSTRUCT

- 1.9.3 The subcontractor must not use asbestos or materials that contain asbestos in or around the site.
- 1.9.4 The subcontractor must take all proper precautions to keep all poisons and other hazardous or injurious substances secured against access by unauthorised persons, children or animals.
- 1.9.5 All poisonous, hazardous or other injurious substances brought on site must be properly labelled and kept in sealed containers at all times unless their opening is necessary for the execution of works.
- 1.9.6 The subcontractor must take all necessary and available precautions to prevent personal injury or death by poisons or other injurious substances including without limitation, correct handling methods, the use of protective clothing and breathing masks.

1.10 Cleaning

- 1.10.1 The subcontractor is responsible for the disposal of all waste and unused material relating to their works, at such locations designated by the head contractor.
- 1.10.2 The subcontractor must wash down all vehicles and clean all roads adjacent to and affected by works before exiting the site in accordance with all authority requirements.
- 1.10.3 Any excess material brought onto site by the subcontractor is to be removed from site and must not be deposited in the head contractor's waste bins unless otherwise instructed.
- 1.10.4 The head contractor is entitled to prevent the subcontractor from proceeding with new or productive work until an area where work has been completed or carried out by the subcontractor has been cleaned of all waste material.
- 1.10.5 If the subcontractor fails to comply with cleaning conditions of this contract, the head contractor may undertake the cleaning itself or engage others to do so with 12 hours prior notice to the subcontractor and the subcontractor will be liable to adjustments of their contract for costs incurred.

1.11 Subcontractor's personnel

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

CONTRACT – DESIGN & CONSTRUCT

2 **DESIGN OBLIGATIONS**

2.1 Design Documents

- 2.1.1 The subcontractor shall prepare the necessary design documents.
- 2.1.2 The subcontractor shall submit to the head contractor the design documents, which shall be:
- a) consistent with the requirements of this document (including, without limitation, the head contractor's project requirements);
 - b) submitted in accordance with the requirements of the contract; and
 - c) in the form or forms required by the head contractor.
- 2.1.3 If required by the head contractor, the subcontractor shall make available the appropriate design and the subcontractor's personnel to meet with the head contractor to explain any design documents.
- 2.1.4 The head contractor may direct the subcontractor to supply any additional documents which the head contractor considers necessary to reflect and convey the design of the works to form part of the design documents.
- 2.1.5 The head contractor may comment on the design documents in writing to the subcontractor 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.
- 2.1.6 If comment is provided within the time required by clause 7, the subcontractor shall update the design documents to address such comments and resubmit such updated design documents to the head contractor together with a report which identifies how many comments from the head contractor have been addressed in the design documents.
- 2.1.7 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 head contractor forms the opinion that the design documents are not in accordance with this document, the head contractor may reject the design documents by notice in writing to the subcontractor, in which case the subcontractor 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.
- 2.1.8 The subcontractor 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 head contractor in accordance with this document and the head contractor has not rejected the design documents within the time permitted under clauses 7 and 9 (as applicable).
- 2.1.9 Where there is any error, ambiguity, discrepancy or deficiency in the design documents (including where the design documents fail to satisfy the head contractor's project requirements), then the subcontractor shall:
- a) Rectify the design documents and the works at no cost to the head contractor
 - b) Have no entitlement to a variation as a result of such error, ambiguity, discrepancy or deficiency; and
 - c) Indemnify the head contractor for any loss incurred by the head contractor as a consequence of the error, ambiguity, discrepancy or deficiency.
- 2.1.10 The head contractor 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 head contractor under clause 4, nor anything said by the head contractor or any agent or employee of the head contractor in relation to the design documents or any proposed design documents shall relieve the subcontractor

CONTRACT – DESIGN & CONSTRUCT

from responsibility for the subcontractor's errors or omissions or departure from the subcontractor's design obligations or other requirements of this document.

- 2.1.11 If any preliminary design is included in the contract, then the subcontractor acknowledges that it is aware that some design work has already been performed by the subcontractor's personnel on behalf of the head contractor 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 head contractor; 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 head contractor and incorporated into the head contractor's project requirements prior to the date of this document and which is adopted and used by the subcontractor.

2.2 Intellectual property and moral rights

- 2.2.1 Copyright and all other intellectual property in all design documents prepared or provided by the subcontractor for the purpose of the Works hereby vests in the head contractor and the head contractor grants to the subcontractor an irrevocable licence to use the design documents for the works under this document. The subcontractor shall do everything necessary to perfect such vesting. The subcontractor shall ensure that the design documents are used, copied and supplied only for the purposes of the work under this document.
- 2.2.2 To the extent that any third party is the owner of intellectual property in any part of the works, the subcontractor will provide an irrevocable, fully assignable, royalty-free licence for the head contractor for use of that intellectual property in relation to the works.
- 2.2.3 The subcontractor 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 head contractor, including by procuring the execution of any moral rights consent required by the head contractor.
- 2.2.4 The subcontractor warrants that any other design, materials, documents and methods of working, each provided by or on behalf of the subcontractor, will not infringe any intellectual property right.
- 2.2.5 The subcontractor must inform the head contractor immediately upon becoming aware of any infringement or threatened infringement of any intellectual property right owned or used by the head contractor.

3 DOCUMENTS

- 3.2 The subcontractor 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.
- 3.3 The accuracy of any documentation relating to quantities or dimensions provided by the head contractor to the subcontractor is not guaranteed and is indicative only.
- 3.4 If the subcontractor finds any inconsistency in or between the documents comprising this document, the subcontractor must notify the head contractor in writing as soon as possible and the head contractor will direct the subcontractor as to the resolution of the inconsistency.

CONTRACT – DESIGN & CONSTRUCT

- 3.5 The subcontractor must give the head contractor any warranties, guarantees, operating manuals, maintenance manuals or 'as-built' drawings requested by the head contractor in a format acceptable to, and by the times directed by the head contractor.
- 3.6 The head contractor's approval of any documents supplied by the subcontractor will not relieve the subcontractor of the responsibility for those documents.
- 3.7 The subcontractor must not, without prior written approval of the Head contractor, disclose or give to any person any confidential information.
- 3.8 The subcontractor must not disclose any information concerning the project for distribution through any communications media without the head contractor's prior written consent.
- 3.9 Order of precedence
 - a) This contract
 - b) Specifications
 - c) Drawings
 - d) Scope of works

4 INSURANCE

4.2 Insurance

- 4.2.1 Before commencing own works in progress prior to PC, the subcontractor must arrange the following types of insurance and give the head contractor 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 subcontractor's employees or anyone else treated as an employee of the subcontractor 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 subcontractor in respect of the works;
 - c) plant & equipment insurance for subcontractors 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 head contractor must be noted as a "Named Insured" on the insurance policy; and
 - f) loss or damage to the Works resulting from any cause.
- 4.2.2 Both the insurers and terms of insurance must be approved by the head contractor. The subcontractor must maintain all insurances for the period of the works.
- 4.2.3 The subcontractor is responsible for payment of excess for their own insurance claims.
- 4.2.4 Should the head contractor have to put in a claim on our own policy as a result of damage caused by the subcontractors negligence, the subcontractor is liable to reimburse this excess amount to the head contractor.
- 4.2.5 The subcontractor must inform the head contractor in writing of any occurrence that may give rise to a claim under an insurance policy required in clause 4 and must provide further evidence of insurance upon request by the head contractor.

4.3 Indemnity

CONTRACT – DESIGN & CONSTRUCT

- 4.3.1 The subcontractor continually indemnifies the head contractor against each of the following liabilities arising as a result of the contractor's negligence or a breach by the subcontractor 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 head contractor, including (without limitation) liability as a result of:
 - i) industrial disputes occurring which were caused or contributed to by the subcontractor;
 - ii) a failure by the subcontractor 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.

5 **TIME AND PROGRESS**

- 5.1 The subcontractor 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 5.
- 5.2 The head contractor may in its absolute discretion, by notice in writing at any time to the subcontractor, suspend the works or extend the completion date.
- 5.3 The subcontractor agrees not to claim any additional time, cost, expense, loss or damage from the head contractor in respect of complying with any extended completion date.

6 **DELAY AND EXTENSION OF TIME**

- 6.1 If the works are delayed by any cause, the subcontractor must, within three business days of the cause of delay arising, notify the head contractor in writing of the:
- a) cause of the delay; and
 - b) the anticipated delay to completion of the works.

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

7 **VARIATIONS**

- 7.1 The head contractor may direct the subcontractor to increase, decrease or omit any part of the work under the contract. The variation directed or approved by the head contractor shall be valued using the following in priority order:
- a) The head contractor and subcontractor 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
- 7.2 Notwithstanding any other provision of this document, if a variation is made necessary due to any act, omission or default of the subcontractor or the subcontractor's personnel including, as a consequence of an error in the design, the subcontractor:
- a) Will have no entitlement to a claim; and
 - b) The subcontractor's warranties, obligations or liabilities under or in connection with this document will not be affected.

CONTRACT – DESIGN & CONSTRUCT

- 7.3 The head contractor may direct the subcontractor 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 head contractor may withdraw an acceleration direction at any time before the subcontractor commences to accelerate the work under the contract.

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

- a) Details of additional labour and construction plant which the subcontractor 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 subcontractor outside the working hours or the working days defined in this contract to enable the subcontractor to comply with the direction;
- c) Details of additional supervision which the subcontractor will be required to provide to comply with the direction;
- d) The subcontractor's estimate of the extra costs and expenses which it may reasonably incur in complying with the direction.

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

- 7.4 The subcontractor 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 head contractor. The price for any variation may be added to or deducted from the works value.

8 COMPLETION OF THE WORKS

8.1 Completion

- 8.1.1 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 head contractor);
- 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 head contractor have been provided; and
- d) any other requirements for completion set out in the schedule have been completed.

- 8.1.2 The subcontractor must clean up all debris and leave the site neat and tidy to the approval of the head contractor upon completion of the works.

8.2 Damage and defects

- 8.2.1 Subcontractors are to take care and protect other trades works within the vicinity they are working

- 8.2.2 If any defects or damage are caused by materials supplied by the subcontractor or work undertaken by the subcontractor, the subcontractor must rectify them at the subcontractor's expense within the time instructed by the head contractor. The subcontractor must promptly make good any defect in the works notified to it by the head contractor within the defects liability period.

CONTRACT – DESIGN & CONSTRUCT

8.2.3 Failure to do so will result in the head contractor making good such defects or damage and the cost of doing so becomes a debt due from the subcontractor to the head contractor.

8.3 Warranties and quality

8.3.1 Without limitation to any other warranties expressed in this document and any other terms implied by statute, common law, equity or otherwise, the subcontractor 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 subcontractors 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 subcontractor's profession and in accordance with any standards or requirements notified by the head contractor;
- b) without limiting its obligations, 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 head contractor 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.

8.3.2 The subcontractor 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 head contractor. Such warranties must be fit for purpose and extend for at least the defects liability period or such longer period specified by the head contractor or the client.

8.3.3 All warranties must be provided by the subcontractor to the head contractor prior to payment of their final claim.

8.3.4 The subcontractor must make available to the head contractor and the client its quality system, for the purposes of monitoring and quality auditing.

8.4 Assignment and Novation

8.4.1 The subcontractor must not assign or subcontract any part of this document or the works without the head contractor's written consent which may be conditional. The head contractor's consent to any assignment by the subcontractor will not relieve the subcontractor from any of its obligations under this document or impose any liability upon the head contractor to an assignee.

8.4.2 If the head contractor notifies the subcontractor that the head contract has been terminated, the subcontractor must promptly agree to the novation of this deed from the head contractor to the client on those terms prescribed by the client.

CONTRACT – DESIGN & CONSTRUCT

9 PAYMENT FOR THE WORKS

9.1 Payment

9.1.1 The head contractor will pay the subcontractor the works value in instalments as the subcontractor completes parts of the works. The subcontractor 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.

9.1.2 **Payment will only be made by the head contractor 20 business days after the payment claim if the subcontractor has forwarded a payment claim accompanied by a signed subcontractor statement, and**

- a) the head contractor holds a copy of the subcontractors certificate of currency for public liability, professional indemnity (if applicable) and workers compensation (if applicable)
- b) the subcontractor is not in substantial breach of this document; and
- c) the part of the works for which the claim is made complies with this document; and
- d) assigned inspection and test plans are completed

9.1.3 At any time the head contractor may by giving the subcontractor prior written notice, set off any of the following amounts against any amount the head contractor owes the subcontractor:

- a) an amount the subcontractor is required to pay under this document or otherwise, including under any other agreement between the parties; and
- b) costs the head contractor incurs by doing something the subcontractor is required to do, but has not done, in accordance with this document or otherwise, including under any other agreement between the parties.

9.2 Certificates

9.2.1 The head contractor will, within 10 business days after receiving a payment claim, issue to the subcontractor:

- a) a progress certificate evidencing the head contractor's opinion of the moneys due from the head contractor to the subcontractor, or from the subcontractor to the head contractor, pursuant to the payment claim and reasons for any difference; and
- b) a certificate evidencing the head contractor's assessment of retention monies and monies due from the subcontractor to the head contractor pursuant to the contract.

9.3 Retention

9.3.1 If the head contractor is entitled to retain retention monies from the subcontractor's payment claims in accordance with page 1 of this contract, any amount retained will be by way of performance security (unless the subcontractor has provided a bank guarantee or bond prior to the first claim) and must be available to the head contractor whenever the head contractor may claim to be entitled to the payment of moneys by the subcontractor under or in connection with this document or the work under this document or whenever the head contractor may claim to be entitled to reimbursement of any moneys paid to others under or in connection with this document or whenever the head contractor may claim to be entitled to other moneys payable by the subcontractor to the head contractor whether by way of set off or otherwise.

9.3.2 Subject to any right of recourse the head contractor has to the security under this document, upon receipt by the head contractor from the client that completion has been achieved the head contractor's entitlement to retention monies will be reduced by the percentage in schedule 1 and the reduction shall be released and returned to the subcontractor within 15 business days of the issue of that certificate.

CONTRACT – DESIGN & CONSTRUCT

9.3.3 Subject to any right of recourse the head contractor 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 subcontractor within 15 business days.

9.4 Security of Payment

9.4.1 'Security of Payment Act' means the Building and Construction Industry Security of Payment Act 1999 (NSW) as amended.

9.4.2 The subcontractor must promptly give the head contractor a copy of any notice the subcontractor receives from another person under section 15, 16 or 27 of the Security of Payment Act. The subcontractor must also notify the head contractor if it intends to exercise a statutory lien under section 11(3) of the Security of Payment Act.

9.5 GST and Taxes

9.5.1 All figures in this contract are exclusive of GST.

9.5.2 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.

9.5.3 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.

9.5.4 '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.

10 WORKPLACE HEALTH & SAFETY

10.1 The subcontractor 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 head contractor's policies, standards, guidelines, procedures and permits.

10.2 The subcontractor has a duty to comply with any safety improvement notice issued.

10.3 The subcontractor must provide all means of access and materials/equipment necessary to complete the scope of works in a safe manner.

10.4 The subcontractor shall keep accurate, current and legible evidence to prove compliance with these WHS requirements and at the request of the head contractor produce documentary and other evidence to prove such compliance.

10.5 The subcontractor 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:

- a) Work Health and Safety Act 2011
- b) Work Health and Safety Regulations 2017
- c) Approved Industry Codes of Practice which support WHS legislation
- d) Relevant Australian Standards which are developed by regulating bodies such as Standards Australia and Safe Work Australia
- e) Protection of the Environment Operations Act 1997
- f) Workplace Injury Management and Workers Compensation Act 1998

CONTRACT – DESIGN & CONSTRUCT

g) Workers Compensation Act 1987

10.6 All subcontractors engaged to perform work on the head contractors projects are required, as part of their contract, to comply with the head contractors WHS program and to observe directions on WHS from the head contractor.

10.7 Failure to comply or observe a direction is considered a breach of contract and is sufficient grounds for termination of the contract.

11 DISPUTE RESOLUTION

11.1 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.

11.2 A party is free to pursue its rights at law if one of the following has occurred:

- a) the settlement meeting does not take place; or
- b) after five business days of the settlement meeting, the dispute remains unresolved.

11.3 Despite the existence of a dispute, the subcontractor must continue to carry out the Works in accordance with this document.

12 DEFAULT, TERMINATION AND BAR ON CLAIMS

12.1 Default and termination

12.1.1 If, in the head contractor's opinion any of the following occurs, the head contractor is entitled to terminate this document or take over all or part of the works by giving written notice to the subcontractor;

- a) the head contract is terminated for any reason;
- b) the subcontractor delays the works without reasonable cause prior to completion of the works being achieved;
- c) the subcontractor fails to replace defective work or unsatisfactory materials;
- d) the subcontractor breaches a term of this document and does not remedy that breach within three business days of notice being given by the head contractor setting out the nature of the breach;
- e) the subcontractor is issued with WHS improvement notices; or
- f) the subcontractor has not proceeded with the works competently or with reasonable diligence.

12.1.1 If the head contractor terminates this document or takes over all or any part of the works, the head contractor may employ other people to carry out all or part of the works at the subcontractor's expense, and, at no cost to the head contractor, any materials, plant or equipment owned by the subcontractor may be used by the head contractor in completing the works.

12.2 Bar on claims

12.2.1 The subcontractor will not have any right to make a claim for money against the head contractor arising out of the works or this document unless the subcontractor gives to the head contractor both the following:

- a) 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

CONTRACT – DESIGN & CONSTRUCT

- b) further written notice within five business days of the first notice providing detailed particulars of the basis for and the quantification of the claim.

13 PANDEMIC EVENT

In the case of a pandemic event:

- 13.1 The subcontractor must comply and must ensure that all of its employees and subcontractors comply with any:
- direction of the head contractor in relation to the pandemic event
 - direction of the head contractor in relation to a public health order; and
 - public health orders
- 13.2 The head contractor may exclude from the site any employee, agent or subcontractor of the subcontractor who does not comply with a public health order or a direction of the head contractor under this clause.
- 13.3 The subcontractor will not be entitled to make (nor will the head contractor 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 head contractor, under this clause

14 DEFINITIONS AND INTERPRETATION

In this contract, these terms have the following meaning.

As Built Drawings	means all of the drawings, amended or re-drawn to show the “as-built” and complete works
Business Day	means any day other than <ol style="list-style-type: none">a Saturday or Sundaya day this appointed as a public holiday in New South Wales27, 28, 29 30 or 31 December
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 subcontractor) for the construction of the works
EOT	means an extension of time to the date of completion
Modern Slavery	has the meaning given in the Modern Slavery Law
Modern Slavery Law	means the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2018 (Cth) and associated regulations or any substantially equivalent legislation and regulations applicable to the head contractor
O&M Manuals	means all operation and maintenance manuals and other documents as specified in this contract for the good and effective operation and maintenance of the works
Pandemic	means a disease which has been characterised to be a pandemic by the World Health Organisation
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 Pandemic
Payment Claim	means a claim for payment made by the subcontractor
Payment Schedule	means a payment schedule issued by the head contractor
Security of Payment Act	means the Building and Construction Industry Security of Payment Act 1999 (NSW)

CONTRACT – DESIGN & CONSTRUCT

WH&S Legislation	means the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2017 (NSW)
-----------------------------	--