

PERIOD TRADE AGREEMENT

Reference Schedule

This period trade agreement is between:				
(Head Contractor)				
AND				
(Contractor)				
CONTRACTOR DETAILS				
Trading Name:		ACN: ABN:		
Entity Type	<input type="radio"/> Company <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Sole Trader (If a trust, please provide trustee details along with a copy of your Trust Deed)			
Street Address:		Registered for GST?	<input type="radio"/> YES <input type="radio"/> NO	
Suburb:		Email Address:		
State:		Business Phone:		
Post Code:		Mobile:		
Licence Number: <small>(QBCC license/Gen. Contractors)</small>	Expiry Date:    /    /	General Construction Induction Card No.:		
Bank Account Name		BSB	Account No.	
CONTRACTOR INSURANCES				
Copies of the Contractor's insurances must be provided before commencing work Payments will be withheld if evidence of any insurances is missing or a policy has expired.				
Type	Insurer	Policy No.	Expiry Date	Coverage
Public Liability Insurance			/ /	\$
Workers Compensation Insurance			/ /	\$
Personal Sickness and Accident Insurance			/ /	\$
REFERENCE TERMS				
Term	12 months commencing from the Agreement Date		Interest Rate	7% per annum
Payment Claim Dates	The Contractor's payment claims must be submitted each fortnight		Payment Terms <small>(if blank, 21 Days)</small>	21 Days
Defects liability period	means a period of <u>12 months</u> from the practical completion of the work under the Head Contract.			
Due Date for Payment Schedule	The date that is 5 business days after a Payment Claim issued			
AGREEMENT AND ACCEPTANCE				
1. The individuals signing below represent that they have full authority to sign this Agreement on behalf of their respective party and that they have read and understood the Terms and Conditions.  2. This Agreement does not guarantee any work during the Term of the Agreement and no representation has been made as to the availability of work or the number of Purchaser Orders that may be issued under this Agreement.				
Contractor Signature		Head Contractor Signature		
Name		Name		
Position		Position		
Signature		Signature		
Date	/ /	Date	/ /	

## Period Trade Agreement- Terms and Conditions

### 1. Definitions:

Unless the contrary intention appears, in these Terms and Conditions:

- 1.1. **Agreement** means the agreement between the Parties comprising of these Terms and Conditions and the Schedule.
- 1.2. **Agreement Date** means the date the last party signs this Agreement.
- 1.3. **Authorised Representative** means the individual who signs this Agreement or such further individuals authorised to negotiate and sign documents on behalf of a Party as notified in writing by the respective Party.
- 1.4. **BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
- 1.5. **Business Day** means a day that is not:
  - (a) A Saturday or Sunday; or
  - (b) A public holiday in the place in which any relevant act is to be or may be done.
- 1.6. **Commencement Date** means the date upon which Works, or any part of the Works, must commence, pursuant to any Work Contract.
- 1.7. **Completion** means the completion of the Works in accordance with any Work Contract, save for minor defects or omissions which do not prevent the works from being used for their intended purpose.
- 1.8. **Completion Date** means the date upon which Works, or any part of the Works, must be brought to Completion as specified in a Work Contract but if any extension of time is granted pursuant to this Agreement, then that other date.
- 1.9. **Defects Liability Period** means the period noted as the defects liability period in the Schedule.
- 1.10. **Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the Work Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works.
- 1.11. **Force Majeure** means the occurrence of an event or circumstances beyond the reasonable control of the Party affected by it including (without limitation):
  - (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
  - (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
  - (c) an act of a Government Authority;
  - (d) an act of God;
  - (e) a pandemic event or lock downs; or
  - (f) a storm, tempest, fire, flood, earthquake or other natural calamity.
- 1.12. **Government Authority** means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.
- 1.13. **Head Contract** means an agreement between [Head Contractor] and a principal which includes the Works.
- 1.14. **Insolvency Event** means in the case of a corporation, making a resolution for its winding up, being under administration, official management or in provisional liquidation or liquidation, being subject to an application to be wound up and in the case of an individual, the individual becomes bankrupt or seeks to become bankrupt or seeks to take advantage of the laws relating to bankruptcy.
- 1.15. **Interest Rate** means the rate specified as the interest rate in the Schedule.
- 1.16. **Latent Condition** means any physical conditions on or near the Site (including the physical condition or performance of any existing works, electrical installations or structures on Site which differ materially from the physical conditions reasonably expected by a competent contractor at the date of the Work Contract;
- 1.17. **Payment Claim** means a claim for payment made by the Contractor to the Head Contractor.
- 1.18. **Payment Schedule** a document issued by the Head Contractor to the Contractor as provided for in clause 13.
- 1.19. **Payment Schedule Due Date** means the date described as the "Due Date for Payment Schedule" in the Schedule.
- 1.20. **Payment Terms** means the time period in which payment is required as specified as the payment terms in the Schedule
- 1.21. **Price** means the price the Head Contractor agrees to pay for the Works under a Work Contract (which unless expressly stated otherwise, is GST inclusive).
- 1.22. **Purchase Order** means a written notice given by the Head Contractor for the Contractor to perform certain Works for a certain Price, and any other terms and conditions the Head Contractor may specify.
- 1.23. **Quote** means a written quote given by the Contractor offering to perform Works for a specified amount.
- 1.24. **Site** means that place identified Work Contract, where the Works are to be carried out by the Contractor.
- 1.25. **Schedule** means the reference schedule on the first page of this document.
- 1.26. **Special Conditions** means any special or additional terms and conditions mutually agreed between the parties as being applicable to the Works under a Work Contract.
- 1.27. **Term** means the period of time specified as the term in the Schedule.

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- 1.28. **Terms and Conditions** means the terms and conditions contained in this document.
- 1.29. **Variation** means a change to the scope of Works, whether it be an addition or a deletion to the scope of Works or a change in the sequence in the manner in which the Works are to be executed.
- 1.30. **Variation Notice** means the notice issued pursuant to clause 7.
- 1.31. **Work Contract** means the binding agreement between the Parties which contains the terms upon which the Contractor agrees to perform certain Works, as created pursuant to clause 3.5.
- 1.32. **Works** means any work that you must perform, pursuant to a Work Contract.

### 2. Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- 2.1. singular includes plural and vice versa;
- 2.2. any gender includes every gender;
- 2.3. a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- 2.4. references to writing include printing, typing, emailing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- 2.5. references to signature and signing include due execution of a document by a corporation or other relevant entity;
- 2.6. references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- 2.7. references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- 2.8. headings are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- 2.9. where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- 2.10. each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- 2.11. a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 2.12. a reference to a Party is a reference to either the Contractor or the Head Contractor and includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
- 2.13. A reference to Parties is a reference to both the Contractor and the Head Contractor.

### 3. Formation of Contract

- 3.1. During the Term, the Head Contractor may, from time to time, request the Contractor to provide a Quote in respect of Works (**Work Request**).
- 3.2. In consideration of the Head Contractor agreeing to pay \$1.00 on demand and upon receiving a Work Request, the Contractor must promptly, provide the Head Contractor with a Quote.
- 3.3. The Head Contractor may, from time to time, request the Contractor to perform works by issuing the Contractor a Purchase Order.
- 3.4. Quotes and Purchase Orders must specify the proposed scope of the Works, the Commencement Date, the Completion Date, the Price for the Works calculated on a square meterage basis and any Special Conditions which are proposed.
- 3.5. If:
- (a) the Contractor accepts a Purchaser Order;
  - (b) the Head Contractor agrees in writing to a Quote; or
  - (c) the parties otherwise agree in writing to the matters that are to be specified in a Purchase Order or Quote;
- such Purchase Order, Quote or other agreement together with this Agreement form a Work Contract binding on the parties requiring the Contractor to perform the Works in accordance the terms of the respective document terms and this Agreement.
- 3.6. For the avoidance of doubt:
- (a) the terms of this Agreement are incorporated into, and form part of, each Work Contract;
  - (b) references to the word "Agreement"
  - (c) the Contractor is deemed to have accepted the Purchase Order if the Contractor does not reject a Purchase Order within 2 business days of receipt.
  - (d) a Purchase Order is an offer from the Head Contractor; and
  - (e) a Quote is an offer from the Contractor.

### 4. Discrepancies, ambiguities, errors and order of precedence

- 4.1. If a Party becomes aware of any discrepancy, error or ambiguity in or between the documents forming part of a Work Contract, that Party must, as soon as reasonably practicable, notify the other Party in writing, of the discrepancy, error or ambiguity.
- 4.2. Upon receipt of the notification referred to in clause 4.1 above, the Parties agree to consult with each other in a genuine attempt to resolve the discrepancy, ambiguity or error.
- 4.3. If the Parties are unable to find a resolution to a discrepancy, error or ambiguity or if the Parties have not attempted to resolve the discrepancy, error or ambiguity within three (3) days of receipt of the notification referred to in clause 4.1, then the

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discrepancy, error or ambiguity is to be resolved in accordance with clause 24.

- 4.4. If there is any inconsistency between any of the documents that form part of this Agreement, then the following order of precedence is to be applied to resolve any inconsistency:

- (a) any Special Conditions;
- (b) any appendices attached to the Purchaser Order;
- (c) the Purchaser Order;
- (d) the Schedule; and
- (e) these Terms and Conditions.

### **5. Works and Price**

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- 5.1. If specified in the Work Contract, the Head Contractor will pay a deposit to the Contractor within 1 Business Day of the formation of the Work Contract.
- 5.2. In exchange for executing the Works, the Head Contractor will pay the Contractor the Price in accordance with clause 13 of this Agreement.
- 5.3. The Contractor warrants that it will carry out and complete the Works described in the Work Contract:
- (a) in accordance with the Work Contract and any plans, specifications and other contract documents.
  - (b) with reasonable diligence;
  - (c) in an appropriate and skilful way;
  - (d) with reasonable care and skill; and
  - (e) in accordance with all relevant laws and legal requirements.
- 5.4. Unless otherwise agreed, the Contractor must supply everything necessary to carry out the Works.
- 5.5. If the Contractor is required to supply materials, those materials must be suitable for the purpose for which they are provided, new and free from defects.
- 5.6. The Contractor may only license or sub-contract all or any part of the Works with the Head Contractor's consent.
- 5.7. Whilst the Head Contractor may consent to the Contractor engaging other contractors to carry out any part of the Works it is not relieved from the Contractor's obligations under the respective Work Contract.
- 5.8. The Contractor will complete the Works as described by the Completion Date for the Price as those items are specified in the Work Contract.
- 5.9. Where goods and materials delivered to the site by the Contractor are subject to 'retention of title' then the Contractor's retention of title shall only apply up to the time the goods or materials are installed.
- 5.10. The Head Contractor may issue a direction to the Contractor who shall be obliged to comply with such direction. All directions shall be put in writing within three (3) Business Days of issuing the

direction. Should the Contractor fail to comply with such direction, the Contractor shall be deemed to be in substantial breach of the Contract.

- 5.11. The Contractor or its representative must;

- (a) attend meetings if called on to do so;
- (b) observe all reasonable directions given by the Head Contractor in respect of the Works; and
- (c) co-operate with all workers and other contractors in respect of the Works.

### **6. Commencement and completion**

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- 6.1. The Contractor must, unless it is entitled to an extension of time pursuant to the Work Contract, commence to carry out the Works on the Commencement Date and complete the Works on or before the Completion Date.
- 6.2. The Head Contractor may provide the Contractor with a revised Commencement Date where due to no fault of its own it is unable to give access to the Site to the Contractor.
- 6.3. As soon as practicable after a delay occurring, the Contractor must notify the Head Contractor in writing setting out the cause of the delay, the effect the delay has on the progress of the Works, the extent of the delay if known at the time of the notice and a proposed extension to the Completion Date.
- 6.4. Within 3 Business Days of receiving a notice under clause 6.3, the Head Contractor must by written notice to the Contractor grant the Contractor a reasonable extension of time for the Completion Date in respect of any delay not caused or contributed to by any default or failure by the Contractor
- 6.5. The Head Contractor may extend the Completion Date from time to time.
- 6.6. If the Head Contractor fails to issue the Contractor with a written notice as required by clause 6.4, the Head Contractor is deemed to have accepted the Contractor's proposed extension to the Completion Date.
- 6.7. If a dispute concerning an extension of the Completion Date arises between the parties, such dispute is to be resolved in accordance with clause 24.
- 6.8. If the Contractor fails to bring the Works to completion by the Completion Date set out in the Work Contract or as extended by this Contract, the Head Contractor is entitled to recover damages (both direct and indirect) from the Contractor.
- 6.9. Upon Completion, the Contractor must give the Head Contractor written notice stating that the Completion Date has been reached.
- 6.10. If the Head Contractor disputes that the Works have reached Completion, the Head Contractor must give the Contractor a written notice setting out the details of the further work to be carried out within 5 Business Days of receipt of the notice referred to in clause 6.9.

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- 6.11. If the Head Contractor does not issue a notice to the Contractor as required by clause 6.10, the Works are deemed to have reached the Completion Date on the date the Contractor provided notice to the Head Contractor as required by clause 6.9.
- 6.12. If the Contractor receives a notice from the Head Contractor pursuant to clause 6.10, the Contractor must:
- (a) if the Contractor disputes that further works are required to achieve Completion, give the Contractor a notice of dispute in accordance with clause 24 of this Agreement in which case the dispute shall be dealt with in accordance with clause 24; or
  - (b) if the Contractor is in agreement with the Head Contractor that further works are necessary to achieve Completion, the Contractor shall carry out such work that may be necessary to achieve Completion and then give the Head Contractor a further notice in accordance with clause 6.9.

### **7. Variations**

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- 7.1. Either Party may request a variation to the scope of Works in writing.
- 7.2. If the Contractor wishes to vary the Works, the Contractor shall, as soon as practical after becoming aware of the need for a variation, provide the Head Contractor with a Variation Notice.
- 7.3. If the Head Contractor wishes to vary the Works, the Head Contractor must notify the Contractor in writing of the proposed variation to the scope of Works.
- 7.4. Within 10 Business Days of receipt under clause 7.3, the Contractor must provide the Head Contractor with a Variation Notice.
- 7.5. The Variation Notice must:
- (a) adequately describe the Variation;
  - (b) if applicable, state any resultant change to the Price or alternatively set out a method to calculate the change to the Price; and
  - (c) if applicable, set out the Contractor's estimate of delay to the Completion Date.
- 7.6. If the Head Contractor agrees with the content of the Variation Notice, the Head Contractor must, within 5 days of the receipt of the Variation Notice, provide the Head Contractor with a written notice accepting the Variation Notice.
- 7.7. If the Head Contractor does not agree to the Variation Notice or does not provide the Head Contractor with a written notice accepting the Variation Notice, then:
- (a) the Contractor may suspend the Works; and/or
  - (b) the dispute shall be resolved in accordance with clause 24.
- 7.8. The Contractor must not commence the works subject to the Variation Notice until the Contractor receives the written notice accepting the Variation, from the Head Contractor, pursuant to clause 7.6.
- 7.9. The Parties agree that the Contractor will, regardless of whether or not the Head Contractor agrees to the Variation Notice, be nevertheless entitled to payment for any Variation which is necessary because of circumstances that could not have been reasonable foreseen by the Contractor when this Agreement was formed, by way of example and without limitation, a Latent Condition or a defect in the existing electrical connection or installation or a requirement of any Government Authority.

### **8. Site Access**

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- 8.1. The Head Contractor must provide the Contractor access to the Site on the Commencement Date so that the Contractor may execute the Works.
- 8.2. If the Head Contractor is unable to provide access to the Contractor on the Commencement Date, the Contractor is entitled to extend the Completion Date.
- 8.3. Unless otherwise agreed, the Contractor is not entitled to any payment or damages (whether director or consequential) as a result of the Head Contractor being unable to provide access to the site on the Commencement Date.

### **9. Latent Conditions**

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- 9.1. The Parties agree that the Price does not include any allowance for Latent Conditions.
- 9.2. On becoming aware of a Latent Condition, the Contractor shall promptly give the Head Contractor a written notice setting out; the:
- (a) details of the Latent Condition;
  - (b) details of the scope of work required to overcome the Latent Condition;
  - (c) if applicable, estimate of the delay to the Completion Date required to overcome the Latent Condition; and
  - (d) if applicable, estimate of the increase in the Price required to overcome the Latent Condition.
- 9.3. Upon receipt of a notice pursuant to clause 9.2, the Head Contractor must, within 2 Business Days, give the Contractor a written direction setting out the full details of the work the Contractor is required to carry out to overcome the Latent Condition, together with any necessary specifications, drawings and other documents for the work.
- 9.4. Upon receipt of the direction referred to in clause 9.3, the Works shall be deemed to be varied to include the works the Contractor is required to carry out pursuant to the written direction. The cost to the Contractor to overcome the Latent Condition shall be added to the Price and the Contractor shall be entitled to an extension of the Completion Date.

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- 9.5. If the Head Contractor fails to agree to a variation in writing required to overcome a Latent Condition, then:
- (a) the Contractor may suspend the Works; and/or
  - (b) the dispute shall be resolved in accordance with clause 24.

### 10. Defects/Penalties

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- 10.1. The Head Contractor may direct the Contractor at any time prior to Completion to rectify defects.
- 10.2. The Contractor will, at its own cost, maintain the Works until Completion and thereafter make good all defects that may appear in Works prior to the expiration of the Defects Liability Period as specified in this Agreement.
- 10.3. If the Contractor fails to comply with a direction, the Head Contractor may have the work rectified or the materials removed and replaced by others and the cost is a debt due and payable by the Contractor to the Head Contractor.
- 10.4. Any fines or penalties brought upon the Head Contractor and found to be due to action/lack of action undertaken by the Contractor or its workers will be the Contractors responsibility.

### 11. Design Works

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- 11.1. To the extent that the Works require design works to be completed, the Contractor must ensure that all Design Documents:
- (a) provide for services that are compatible and integrated with the external infrastructure and any other infrastructure or services on the Site;
  - (b) are produced by persons with appropriate professional qualifications and membership of appropriate professional associations;
  - (c) are produced in accordance with all applicable legislative requirements, codes and standards;
  - (d) identify any design hazards that may cause health and safety risks and provide recommendations on how those risks may be eliminated or minimised;
  - (e) are fit for purpose and satisfy the specifications required in the Work Contract.
  - (f) are provided to the Head Contractor in hard copy and soft copy format within the time required in the Work Contract or in the relevant construction program;
  - (g) are amended on request to comply with the Work Contract or comments by the Head Contractor;
- 11.2. The Contractor must not amend the Design Documents unless the proposed amendments have been approved by the Head Contractor.
- 11.3. To the extent that the Works include construction works, the Contractor must not commence any construction works until the Head Contractor has confirmed in writing the Design Documents have been approved and that constructions works may commence.
- 11.4. Subject to payment of the Contractor for any design works undertaken by the Contractor, all intellectual property rights in any Design Documents created by the Contractor pursuant to the Works are assigned to the Head Contractor when created. To the extent such intellectual property cannot be assigned, the Contractor grants the Contractor an irrevocable transferrable licence to use such intellectual property for the purpose of completing the Works and altering such Works (including for the purpose of effecting repairs or adding extensions). This Licence survives the termination of this Agreement.
- 11.5. If a Work Contract provides that the Contractor is engaged to provide Design works only, the Head Contractor is not obligated to engage the Contractor in respect of the construction of such works.
- 11.6. The Contractor warrants that any Design Documents or methods of working provided by the Contractor as part of the Works, do not infringe any intellectual property right. The Contractor indemnifies the Head Contractor against any such infringement.

### 12. Damage and Site Cleaning

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- 12.1. The Contractor must:
- (a) carry out rectification of any damage done by the Contractor, its agents, workers, employees or subcontractors to the Work or property of the Head Contractor or of any other contractor;
  - (b) keep the Contractor's part of the Site clean and tidy; and
  - (c) so far as is reasonably possible, leave the Works in a state fit for immediate use or occupation before vacating the Site.
  - (d) The removal of its tools, plant and equipment and if required, the removal of debris and refuse, arising out of the Works.
- 12.2. If the Contractor fails to comply with clause 12.1(a) the Head Contractor may have the rectification or cleaning carried out by others and the cost is a debt due and payable by the Contractor to the Head Contractor.

### 13. Payment

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- 13.1. The Contractor must submit payment claims/invoices for work completed to the Head Contractor on the Payment Claim Dates (or, if that date is not a Business Day, the next Business Day).
- 13.2. All payment claims must specify:
- (a) the work carried out by the Contractor to which the payment claim/invoice relates;

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- (b) the amount for that work as set out in the Work Contract;
  - (c) any other amount that the Contractor claims for payment by the Head Contractor; and
  - (d) the total amount that the Contractor claims for payment by the Head Contractor.
- 13.3. Upon receipt of a Payment Claim, the Head Contractor must:
- (a) pay the Contractor the amount stated in the Payment Claim within the Payment Terms; or
  - (b) before the 5:00pm on the Payment Schedule Due Date, provide the Contractor with a Payment Schedule setting out the amount the Contractor proposes to pay the Contractor.
- 13.4. The Payment Schedule must set out, where the amount the Head Contractor proposes to pay the Contractor is less than the amount in the Payment Claim, the amount the Head Contractor proposes to pay the Contractor and the reasons for withholding payment.
- 13.5. If the Head Contractor has not issued a Payment Schedule, the Head Contractor must pay the Contractor the total amount in the Payment Claim within the Payment Terms.
- 13.6. If the Head Contractor issues a Payment Schedule, the Head Contractor must pay the Contractor the amount specified in the Payment Schedule within the Payment Terms.
- 13.7. Payment, other than payment of the Contractor's final payment claim, is payment on account only.
- 13.8. To the extent that chapter 2 of the BIF Act applies to the Head Contract and notwithstanding any contrary requirement in this Agreement, all payments to the Contractor from the Head Contractor must be paid to the Contractor in accordance with Chapter 2 of the BIF Act.
- 13.9. If the Head Contractor does not pay any amount due to Contractor on time, the Contractor shall be entitled to be paid interest on any overdue amounts at the Interest Rate.
- 13.10. Within 14 Days of the Completion Date, the Contractor must give the Head Contractor a final payment claim including all amounts due to the Contractor.

### 14. Set-Off

- 14.1. The Contractor must make all payments required to be made to the Head Contractor without any set-off, counterclaim, deduction or withholding for any reason whatsoever.
- 14.2. If the Head Contractor is liable to pay the Contractor any amount for any reason, the Head Contractor may, at its sole discretion, elect to set-off such amounts from amounts that the Contractor must pay the Head Contractor.
- 14.3. Notwithstanding any contrary provision in this Agreement and only to the extent that chapter 2 of the BIF Act applies to the Head Contract, all cash

retention amounts held under this Agreement must be held and released in accordance with Chapter 2 of the BIF Act.

### 15. Taxes and duty

- 15.1. Each Party must pay GST on any taxable supply made to them by the other party. Unless otherwise specified the payment of GST is in addition to any other consideration payable by the Contractor for a taxable supply.
- 15.2. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration,
- The Head Contractor becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Contractor, then the Contractor must pay the Head Contractor these additional amounts on demand.
- 15.3. The Contractor warrants that the Contractor is the holder of any ABN stated in the Schedule and that it is registered and will continue to be registered until the expiration of the Defects Liability Period.

### 16. Insurance

- 16.1. The Contractor must effect and maintain the following insurance cover during the Term:
- (a) WorkCover insurance;
  - (b) Public liability insurance covering third party personal injury or property damage or damage to the works to an amount not less than \$10,000,000 for any one occurrence, including principal indemnity provisions in favour of the Head Contractor; and
  - (c) Personal sickness and accident insurance for all on-site company directors, partners or sole traders, for an amount agreed with the Head Contractor.
- 16.2. Upon request by the Head Contractor, the Contractor must provide a copy of its current policies of insurance to the Head Contractor within (5) Business Days.

### 17. Head Contract

- 17.1. If the Works in a Work Contract are no longer required, or must be suspended, due to such works not being required or suspended under Head Contract (including due to any termination of that contract or agreement), the Head Contractor may, by written notice to the Contractor terminate Work Contract or suspend the Works. In the event of such termination or suspension the Contractor is entitled to make a payment claim in accordance with clause 21.4.
- 17.2. If a Work Contract is delayed, suspended or terminated pursuant to clause 17.1, the Head Contractor will not be liable, and the Contractor releases and indemnifies the Head Contractor from,

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any cost, expense, loss or damage that the Contractor may suffer arising out of any such delay, suspension or termination, other than any amount the Head Contractor is required to pay the Contractor under clause 17.1.

- 17.3. The Parties agree that the Completion Date will be extended by the number of days which are suspended under this clause 17.

### **18. Intellectual Property Rights**

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- 18.1. Intellectual property rights in any plans or designs supplied by the Head Contractor to the Contractor are not assigned by the Head Contractor to the Contractor.
- 18.2. The Contractor must not reproduce or use any plans or designs, in whole or in part, other than for the purpose of completing the Works.

### **19. Work conditions and legal compliance**

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- 19.1. No part of the Works shall be executed outside the ordinary working hours of the Head Contractor without the Head Contractor's consent, subject to any reasonable conditions having regard to the circumstances at that time.
- 19.2. The Contractor must comply with the terms and conditions of any relevant award relating to the wages and conditions of its employees.
- 19.3. The Contractor will ensure it fulfills its legal obligations in relation to its contract workers.
- 19.4. The Contractor warrants that all relevant taxes, employee and worker benefits are paid in accordance with its legal obligations.
- 19.5. The Subcontractor must ensure that it complies with any work health and safety laws and regulations as may be applicable to the Works from time to time.
- 19.6. The Contractor will give all necessary notices and pay all necessary fees and will comply with all provisions and requirements statutory or otherwise relevant to the Works.

### **20. Indemnity**

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The Contractor must indemnify the Head Contractor against:

- 20.1. loss or damage to property, including existing property on or around the Site; and
- 20.2. claims against the Head Contractor in respect of personal injury or death or loss or damage to any property, arising out of, or as a consequence of, the Contractor carrying out of the Works.

### **21. Termination and suspension**

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- 21.1. Either Party is entitled to give the other Party a notice to remedy breach if the other Party commits a breach of this Agreement. A notice to remedy breach must set out:
- (a) the details of the breach; and
  - (b) a time, being not less than 3 Business Days after the date of the notice to remedy breach

is given, by which the breach must be remedied.

- 21.2. If the breach is not remedied within the time period specified in the notice to remedy breach, the Party that issued the notice to remedy breach may, as applicable by separate written notice:
- (a) suspend the carrying out of the Works; or
  - (b) terminate this Agreement.
- 21.3. Either Party may terminate this Agreement by written notice and with immediate effect if the other Party becomes subject to an Insolvency Event.
- 21.4. Upon termination of this Agreement pursuant to this clause 21, the Contractor may submit a Payment Claim which Payment Claim is to set out the value of the Works executed up to the date of termination and the costs of the materials, if any, ordered by the Contractor for the Works.
- 21.5. If Works are suspended:
- (a) The Contractor may terminate this Agreement by written notice and with immediate effect if the Works remain suspended for a period of at least 15 Business Days.
  - (b) The Contractor must recommence carrying out the Works within a reasonable time after the Head Contractor gives the Contractor notice in writing that the reason for the suspension no longer exists.
  - (c) The Contractor's right to suspend the works does not prevent the Contractor from exercising any right to terminate the Agreement.
  - (d) the Completion Date will be extended by the number of days of the works are suspended.

### **22. Notices**

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Any notice to be given under this Agreement must be given in writing to the recipient at the physical address or the email specified in the Schedule. The giving of a notice by a Party under this Agreement is deemed to have occurred:

- 22.1. if delivered by hand, at the time of delivery; or
- 22.2. if sent by post, then within one (1) Business Day of the time it was delivered to the recipient's address, as evidenced by a tracking receipt;
- 22.3. if sent by email, at the time shown on the sent email folder of the person sending the email (unless the sender receives an email notifying him that the email transmission was not successful).
- 22.4. If any written notice, or other document, is given at a time after 5.00pm on a Business Day, or during a Day that is not a Business Day, the notice, or other document, is deemed to have been given at 9.00am on the next Business Day.

### **23. Jurisdiction**

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- 23.1. The Contractor acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.



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- 23.2. The Contractor acknowledges and agrees that this Agreement and each Works is formed at the Contractor's registered office in the state of Queensland.
- 23.3. The Contractor submits to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

### **24. Dispute Resolution**

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- 24.1. If a difference or dispute between the Parties arises, then a Party shall give the other Party a written notice of the dispute which notice must adequately identify and provide details of the dispute.
- 24.2. Notwithstanding the dispute and if the Works have not been suspended, the parties shall continue to perform the Works.
- 24.3. Within five (5) Business Days of a notice of dispute being issued pursuant to clause 24.1, the Parties shall confer to resolve the dispute. At the conference, the parties shall be represented by the Authorised Representative or a senior officer of each Party, having authority to agree to the resolution of disputes.
- 24.4. If the Parties do not hold a conference within five (5) Business Days of a notice of dispute being issued or if the Parties hold a conference and are unable to resolve the dispute, then either Party may commence legal proceedings for the resolution of the dispute.

### **25. Force Majeure**

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- 25.1. If a Party is prevented, hindered or delayed from performing its obligations under this Agreement (other than an obligation to pay money) by an event of Force Majeure, then as long as the event of Force Majeure continues, that Party shall be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation shall be extended accordingly.
- 25.2. A Party affected by an event of Force Majeure shall immediately notify the other Party of its occurrence and its effect or likely effect, and shall use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end.

### **26. General Clauses**

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- 26.1. Except for those warranties and guarantees provided by the Contractor to the Head Contractor in respect of the Works which may be assigned by the Head Contractor to the principal under the Head Contract, neither party to this Agreement may assign this Agreement or any right, benefit or interest under this Agreement without the other party's written consent.
- 26.2. Each party has been given the opportunity to seek independent legal advice with respect to the

content and effect of this Agreement and has sought such advice as it deems necessary.

- 26.3. No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.
- 26.4. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 26.5. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.
- 26.6. The Contractor agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Head Contractor at any time by written notice to the Contractor.
- 26.7. Any proposed variation to these Terms and Conditions by the Contractor must be requested in writing. The Head Contractor may refuse any such request without providing reasons either orally or in writing.
- 26.8. Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this Agreement.
- 26.9. This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- 26.10. This Agreement may be signed or executed (by wet ink execution or electronic signature) in any number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.
- 26.11. Each Party acknowledges that this Agreement may be entered into and becomes binding on a Party upon that Party signing the Agreement (or a photocopy, scan, email or facsimile copy of the same) and transmitting a copy thereof to the other Party or to the other Party's agent.
- 26.12. The Parties consent to information being given by an electronic communication for the purposes of Section 11(2)(b) of the *Electronic Transactions (Queensland) Act 2001*.
- 26.13. All risk of the Works shall pass to the Head Contractor when the Works commence at the Site. Legal and equitable title in the Works shall not pass to the Head Contractor until payment in full for all of the Works is received.
- 26.14. Each Party to this Agreement shall do all things and sign, execute and deliver all deeds and other

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documents as may be legally necessary or reasonably required of it by notice from another Party to carry out and give effect to the terms and intentions of this Agreement or a Work Contract and to perfect, protect and preserve the rights of the other Parties to this Agreement.

26.15. Any rights, liabilities or obligations of a Party to this Agreement to which effect is not given upon termination and which is capable of continuing after termination shall not merge or be extinguished upon or by virtue of termination and shall remain in full force and effect.

26.16. Each person signing this Agreement:

(a) as attorney, by so doing, warrants to the other Party that, as at the date of signing, the

signatory has not received notice or information of the revocation of the power of attorney appointing that person; and

(b) as an Authorised Representative, agent or trustee of a Party, warrants to the other Parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that Party.

26.17. Each Party warrants that they are entering into this Agreement voluntarily and without any coercion or undue influence from any other Party.