

Work Order Terms and Conditions

1. Definitions

In this Contract, except where the context otherwise requires **Australian Standards** means all relevant Australian standards forming part of, or incidental to, the Works.

Business Days means a day that is not:

- (a) a Saturday or Sunday;
- (b) any day occurring between 22 December and 10 January (inclusive); or
- (c) a public holiday, special holiday or bank holiday at the Site.

Cash Rate Target means the cash rate target as specified by the Reserve Bank of Australia.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit.

Commencement of Works means the date that the Subcontractor commences the Works as provided in the Works Order.

Contract means this agreement between the Contractor and the Subcontractor.

Contract Price means the amount specified in the Works Order, as adjusted under the Contract.

Subcontractor means the parties identified in the Work Order as being engaged by the Contractor to perform the Works.

Date for Practical Completion means the date in which the Works are expected to be completed as specified in the Work Order.

Defects means any defect, deficiency, omission or non-conformance and includes:

- (a) any defect or deficiency in Materials or workmanship that is part of the Works and which fails to meet any relevant tolerance or standard stipulated in the Specifications or the Legislative Requirements;
- (b) any defect or fault in the Works that is outside any acceptable tolerance stipulated in the specifications or the Legislative Requirements;
- (c) any aspect of the Works or any part thereof, that is not in accordance with the requirements of the Contract (including a breach of any warranty or non-compliance with any performance level or performance requirement stated in the Contract); and
- (d) any physical damage to the Works, or any part thereof, resulting from any such defect.

Defects Liability period means twelve (12) months from Practical Completion.

Dispute means any dispute, disagreement or Claim relating to this Contract.

Dispute Notice has the meaning clause 1.1(b)(i).

Dispute Resolution Procedure has the meaning in clause 1.1(b).

Extension of Time has the meaning in clause 13.1.

Force Majeure Event means an event or circumstance which is not substantially attributable to the other Party; including, but not limited to:

- (a) inclement weather;
- (b) epidemic, pandemic or quarantine restriction;
- (c) significant disruption to the Works or Site by third parties, unusually severe weather, fires, explosions or other catastrophes; and
- (d) natural disasters.

GST has the meaning given in the GST Law.

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Right means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property.

Insolvency Event means, for a Party, when:

- (a) the Party is insolvent as defined in the Corporations Act 2001;
- (b) the Party is an "externally-administered body corporate," as defined in the Corporations Act 2001;
- (c) a controller, as defined in the Corporations Act 2001, has been appointed with respect to property of the Party;
- (d) the Party has committed an act of bankruptcy, or is bankrupt, both as defined in the Bankruptcy Act 1966;
- (e) the Party has entered into, or is subject to, any arrangement, assignment or composition for the benefit of creditors; and

- (f) the Party, or the Party's assets, are in any way protected from the person's creditors under any statute.

Legislative Requirements means legislation and subordinate legislation applicable to the Works, and any instruments made under such legislation or subordinate legislation.

Loss means any losses, liabilities, damages, costs, charges or expense (including lawyers' fees and expenses on a full indemnity basis), fines and penalties, however arising.

Materials means the Materials to be supplied by the Contractor to the Subcontractor as prescribed in the Work Order.

Notice of Variation means a notice in writing that includes the requirements under clause 1.1(b)(iii) or such notice in the form of an updated or amended Work Order.

Party means the party to this Contract and **Parties** has a corresponding meaning.

Personnel means the relevant Parties' employees, representatives, agents, contractors, advisors or Subcontractors. **Policies** means the Contractors and the Subcontractors policies provided on their website, or any documents given to the parties from time to time.

Practical Completion means the stage in the execution of the Works when the Works are complete except for minor Defects.

Contractor means Louvreclad.

Contractor's Representative means the person nominated by the Contractor in the Work Order or any other person nominated by the Contractor from time to time, who acts the agent of the Contractor in discharging each of its functions under the Contract. **Principal** means the Principal or any superior contractor that has been engaged to perform the works part of which includes the Works.

Schedule of Rates means the rates provided by the Contractor in its Work Order as amended by the Contractor from time to time

Services means the services to be performed by the Subcontractor as provided in the Work Order.

Site means the location that the Works are to be performed as provided in the Work Order.

Specifications means the specifications for the works provided to Subcontractor by the Contractor in the Work Order.

Tax Invoice has the meaning in clause 6.1.

Works means the Services the Subcontractor is required to perform under this Contract as outlined in the Work Order.

WHS Law means the applicable Work Health and Safety Legislation and Regulations for the jurisdiction of the Site.

Variation Procedure has the meaning in clause 11.

Work Order means the works order provided with this Contract.

2. Relationship of the parties

The Subcontractor and the Contractor are independent and nothing in this Contract creates a joint venture, partnership, or the relationship of principal and agent, or employer and employee between the parties.

3. Performance of Works

(a) The Subcontractor warrants that it will carry out the Works in accordance with:

- (i) this Contract;
- (ii) all relevant Australian Standards;
- (iii) all relevant Legislative Requirements and Policies; and
- (iv) any reasonable direction given by the Contractor or its Personnel.

(b) The Contractor will supply Materials that are free from defects. The Subcontractor warrants it will carry out the Works:

- (i) with suitably qualified and experienced Personnel;
- (ii) to be fit for the purpose made known to the Subcontractor by the Contractor, or if none was made known to the Subcontractor, fit for the purposes for which Materials of that kind are ordinarily used;
- (iii) in a good and workmanlike manner;
- (iv) using the Materials supplied by the Contractor for the purposes made known to the Subcontractor; and
- (v) in circumstances where the Subcontractor is to supply the relevant materials, it is to use the materials that are fit for the intended purpose.

(c) This Contract will supersede all previous communications and negotiations between the Contractor and the Subcontractor in relation to the

- Works and constitutes the entire terms of the agreement between the parties in relation to the Works.
- (d) If any of the Works are performed by the Subcontractor prior to the formation of this Contract, those works will be subject to the terms of this Contract. 9.
- 4. Representatives**
- (b) The Contractor may appoint a Contractor's Representative to exercise delegated Contractor's functions. The name and functions of each Contractor's Representative shall be notified to the Subcontractor in writing.
- (c) If the Subcontractor appoints a representative, the Subcontractor shall forthwith give the Contractor written notice of the representative's name and proposed function.
- (d) If either Party's respective Representative changes during the contract period, the Party is to advise the other Party in writing of the new Representative.
- 5. Access to Site**
- (e) The Contractor will give the Subcontractor, from the Commencement of Works, sufficient access to areas of the Site necessary for the performance of the Works. 10.
- (f) Access to the Site will confer on the Subcontractor a right to only such use and control of the Site as is necessary to enable the Subcontractor to carry out the Works. 10.1
- 6. Payment**
- 6.1 Payment of tax invoices**
- (a) Subject to this Contract, the Subcontractor will be paid by the Contractor within 15 Business Days of the Contractor receiving a Tax Invoice from the Subcontractor provided that the Tax Invoice contains the following information:
- (i) a valid Work Order number;
- (ii) address of the Site;
- (iii) The Contractor's ABN number; and
- (iv) the value of the Works supplied and/or performed by the Subcontractor.
- 6.2 Right to set off**
- The Contractor may deduct:
- (a) any debt or other moneys due from the Subcontractor to the Contractor; and
- (b) any claim to money which the Contractor may have against the Subcontractor whether for damages (liquidated or unliquidated) or otherwise, whether under the Contract or otherwise at law, and if the moneys due to the Contractor are insufficient to discharge the debt or claim, the Contractor may (without limiting the unconditional nature of the security), have recourse to:
- (c) any security provided by the Subcontractor; or
- (d) set off against any other Contract with the Subcontractor; or
- (e) recover as a debt.
- This subclause 6.2 will survive any termination of the Contract.
- 7. Reliance on Information**
- (a) The Contractor warrants that all information and documents provided by the Contractor and the Contractor's Personnel as being accurate and complete in all aspects, with no material information being withheld. 10.2
- (b) The Contractor acknowledges and accepts that the Subcontractor relies on all information and documents provided by the Contractor and the Contractor's Personnel as the basis for the making of any recommendation regarding the Works.
- (c) The Contractor must not rely on any representations or statements made by the Subcontractor or its Personnel in relation to the Works unless and until such statements and/or representations have been provided to the Contractor in writing. 11.
- 8. Insurance**
- (a) The Subcontractor must effect and maintain insurance sufficient to cover its liabilities in connection with this Contract, including, at a minimum the following insurance policies:
- (i) all necessary statutory workers' compensation insurance and other insurances required by law;
- (ii) public and product liability insurance to an amount not less than \$20 million;
- (iii) contract works insurance to an amount not less than \$ 2 million to cover the Subcontractor's liability for and in relation to the Works; and
- (b) At the written request of the Contractor, the Subcontractor must give the Contractor the certificates of currency issued by the insurer in respect of each insurance policy.
- Work Health and Safety**
- (a) The Contractor must provide and maintain a working environment for the Subcontractor and its Personnel that is safe and without risk to health in accordance with WHS Laws.
- (b) The Subcontractor must ensure:
- (i) that it is familiar with, and has the capabilities and resources to comply with WHS Laws;
- (ii) its Personnel for the purposes of this Contract, comply with WHS Laws; and
- (iii) Its Personnel are familiar with the Contractor's and Principal's WHS policies, SWMS and any other relevant Work Health and Safety procedures
- (c) The Parties acknowledge and agree to cooperate with each other to ensure that each Party complies with WHS Laws.
- Defects**
- Defective materials and work**
- (a) The Contractor may at any time prior to Practical Completion having been achieved, request that the Subcontractor make good any Works that have Defects, by providing written notice to the Subcontractor.
- (b) The Subcontractor acknowledges that it must use its best endeavours to complete all Works and attempt to rectify all Defects prior to Practical Completion.
- (c) If the Subcontractor fails to rectify the Defects identified in 10.1(a), or otherwise fails to provide a written response to the Contractor as to why it cannot rectify the Defects identified in any Notice issued by the Contractor pursuant to clause 10.1(a) within 14 days, the Contractor may:
- (v) engage another subcontractor to rectify the Defects; and
- (vi) claim from the Subcontractor the costs of an incidental to the engagement of an alternative subcontractor incurred as moneys due from the Subcontractor to the Contractor.
- (d) If a dispute arises with respect to subclause 10.1(c), the Parties must meet within 20 days of the contractors Notice under clause 10.1(a) and if they are unable to resolve the dispute at the meeting, the Contractor will be at liberty to engage another subcontractor to rectify the Defects the subject of the Contractor's notice in clause 10.1(a).
- (e) The Subcontractor will be liable for the cost of removing from the Site any Materials not in accordance with the Contract or repairing and/or replacing any defective Works.
- (f) This subclause 10.1 will survive any termination of the Contract.
- Warranty for defects**
- (a) The Subcontractor warrants that it will within a reasonable time make good any Defects in the Works in the Defects Liability Period at the Subcontractor's expense.
- (b) If there are any such Defects then the Contractor will give the Subcontractor written notice to make good such Defects as soon as possible and will give the Subcontractor access for that purpose, and with all other terms of this Contract to apply to the provision of those make good works.
- (c) This subclause 10.2 will survive any termination of the Contract.
- Variations**
- (a) The Contract Price is fixed and will not be subject to any adjustment except for an approved variation under this clause.
- (b) The Contract Price may be varied by changes to the Works but only when the Variations Procedure is utilised as follows:
- (i) the party requiring the variation issues a written notice to the other party describing the proposed variation;
- (ii) the Contractor/Principal provides an estimate of the price and length of time to perform the variation within 14 days of receiving the written notice in clause 11(b)(i); and

- (iii) both parties sign a Notice of Variation that includes:
- (iv) description of the varied Works to be performed; and
- (v) the change to the Contract Price (if any).
- 12. Commencement and Completion of Works**
- (a) The Subcontractor must ensure that the Works are completed by the Date for Completion.
- (b) The Contractor may direct in what order and what time the Subcontractor is to carry out the Works.
- (c) The Subcontractor must give the Contractor at least three (3) Business Days written notice prior to the date that the Subcontractor anticipates that Practical Completion will be achieved.
- (d) The Contractor must inspect the Works no later than three (3) Business Days after the date nominated by the Subcontractor as the anticipated date for Practical Completion.
- (e) Within three (3) Business Days of the Contractor's inspection of the Works in accordance of this clause, the Contractor must either issue a Certificate of Practical Completion to the Subcontractor stating the date that Practical Completion was reached or provide written reasons for not doing so.
- (f) If the Contractor is of the opinion that Practical Completion has been achieved, the Contractor may issue a Certificate of Practical Completion even though no request has been made.
- 13. Extension of Time**
- 13.1 Entitlement to Extension of Time**
- The Contractor will grant a fair and reasonable Extension of Time in circumstances which are beyond the reasonable control of the Subcontractor that will delay the completion of Works, including but not limited to:
- (a) the Contractor's failure to provide access to the Site in accordance with clause 5;
- (b) a Force Majeure Event; and
- (c) a negligent act, breach or default of this Contract by the Contractor.
- 13.2 Request for Extension**
- If the Subcontractor anticipates that it may be entitled to an Extension of Time, it must, as soon as reasonably practicable, notify the Contractor in writing and provide justification for its request. The Contractor, must notify the Subcontractor in writing whether it accepts the Subcontractor's request for an Extension of Time or if not, reasons for not doing so.
- 14. Default and Termination**
- 14.1 Termination for breach**
- Either Party may terminate this Contract immediately on written notice in the event that:
- (a) the other Party is in breach of the Contract and;
- (i) the other Party has failed to remedy the breach within ten (10) Business Days of being given a notice specifying the nature of the breach and requiring the Party to rectify the breach; or
- (ii) the breach is not capable of remedy,
- (b) on any other grounds specified in this Contract giving rise to a right of termination.
- 14.2 Termination on default**
- Either Party may terminate the Contract immediately by giving written notice to the other Party if an Insolvency Event occurs in relation to that Party.
- 14.3 Subcontractor's obligation on termination**
- The Subcontractor must, on receipt of any notice terminating this Contract, cease Works and make reasonable efforts to mitigate any expense or losses that it or any Subcontractor may incur or has incurred in relation to its obligations under this Contract.
- 14.4 Amount payable on termination**
- If the Contract is terminated by the Contractor, the Subcontractor will be entitled to payment of the following amounts as determined by the Contractor:
- (a) for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Subcontractor had submitted a payment claim on the date of termination;
- (b) the costs of materials reasonably ordered or supplied by the Subcontractor for the Works provided that;
- (i) the value of the materials is not included in clause 1.1(a); and
- (ii) title in the materials will vest in the Contractor 18. upon payment; and
- (c) the reasonable cost of removing from the Site all labour, construction plant and equipment and other things used in connection with the Works.
- 15. Notices**
- (a) Any notice to be given under this Contract must be in writing.
- (b) A notice must be sent to the recipient's address (as specified in the Work Order) by being:
- (i) hand delivered;
- (ii) sent by email; or
- (iii) sent by registered post.
- (c) A notice given in accordance with this clause is treated as having been given and received as follows:
- (i) any notice posted will be deemed to have been received one clear Business Day after it was posted; and
- (ii) a notice transmitted by email on the day of transmission if completed before 5pm on a Business Day, otherwise on the next Business Day.
- 16. Indemnity**
- (a) The Subcontractor will indemnify and keep indemnified the Contractor and its Personnel against any Loss arising out of or in connection with any:
- (i) breach by the Subcontractor or its Personnel of the Contract;
- (ii) negligent act or omission of the Subcontractor or its Personnel;
- (iii) false or misleading conduct, fraudulent or reckless act or omission by the Subcontractor and/or its Personnel;
- (iv) act or omission of the Subcontractor or its Personnel causing property damage or personal injury, illness or death to any person;
- (v) Claim regarding the infringement or alleged infringement of Intellectual Property Rights of any person or breach of confidentiality; and
- (vi) breach of Law by the Subcontractor or its Personnel.
- (b) The Subcontractor's obligation to indemnify the Contractor under clause 16(a) is a continuing obligation which is separate and independent from its other obligations and will survive termination of this Contract.
- (c) The Subcontractor's liability under this clause will be reduced proportionally to the extent that the liability is caused or contributed by the actions or omissions of the Contractor and/or its Personnel.
- 17. GST**
- (a) Words used in this Contract that are defined in the GST Law have the meaning given in the GST Law.
- (b) Unless otherwise specified, all amounts payable under this Contract are exclusive of GST and must be calculated without regard to GST.
- (c) If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (d) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (e) If there is an adjustment to a taxable supply made under this agreement then the Supplier must provide an adjustment note to the Recipient.
- (f) The amount of a Party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.
- (g) In the event that any supply pursuant to this agreement is not treated as a taxable supply but is later determined to be a taxable supply, then the Recipient must pay the amount of GST in respect of the supply to the Supplier, within 14 days of receiving a valid tax invoice.
- (h) This provision will continue in effect despite any termination of this Contract.
- Dispute Resolution**
- (a) If any Dispute between the Parties arises, then the Parties must follow the Dispute Resolution Procedure outlined below.

- (b) The Dispute Resolution Procedure is as follows:
- (i) if a Party believes that a Dispute has arisen, it must serve written notice to the other Party which includes all facts on which the Party relies in relation to that Dispute (**Dispute Notice**);
 - (ii) within five (5) Business Days of service of the Dispute Notice, The Contractor and/or the Contractor's Representative and the Subcontractor must meet and use their reasonable endeavours must attempt to resolve the Dispute in good faith;
 - (iii) failing resolution by the Representatives, the Parties may jointly request the appointment of an expert to resolve the Dispute by way of expert determination in accordance with the Resolution Institutes Expert Determination Rules set out in the Institute of Arbitrators & Mediators Australia 2016.
 - (iv) The Parties must agree upon the appointment of a joint expert. Failing agreement within ten (10) Business Days of service of the Dispute Notice, either Party may request an Expert be nominated by the Chair of the Resolution Institute; and
 - (v) A Dispute Notice must be given in accordance with Clause 15 of the Contract.
- (c) The Expert's fees must be paid equally by the Parties.
- (d) The Parties will be bound by the decision of the Expert.
- (e) This clause 18 will survive any termination of the Contract.

the Works. The Subcontractor grants the Contractor a royalty-free non-exclusive irrevocable licence to use such Intellectual Property Rights for any purpose for which the Works are provided.

19. General

19.1 Assignment

The Contractor may assign its rights and transfer its obligations under this Contract, including without limitation, by novating this Contract. The Subcontractor must execute any document in order to give effect to this clause.

19.2 Subcontract

The Subcontractor may subcontract or assign the whole or any portion of its obligations under the Contract with the prior written consent of the Contractor, which will not be unreasonably withheld.

19.3 Confidential Information

The Parties agree that they must not disclose any information received in confidence from the other Party.

19.4 Capacity

The Parties warrant that it has all licences, permits, qualifications, registrations, consents and other statutory requirements necessary to enter into and comply with its obligations under this Contract, and that the provision of the Works will not be in breach of any obligation owed to any third party.

19.5 Inconsistencies

If there is any inconsistency between the documents which form part of this Contract, then the Subcontractor must notify the Contractor who will give a direction as to the interpretation to be followed.

19.6 Severance

Any provision of this Contract which is void, illegal or otherwise unenforceable will be severed to the extent permitted by law without affecting any other provision of this Contract, and, if reasonably practicable, will be replaced by another provision of economic equivalence, which is not void, illegal or unenforceable.

19.7 Legislative Requirements and Policies

The Parties must comply with all Legislative Requirements and all Policies of the Contractor and the Subcontractor in relation to the performance of the Works.

19.8 Waiver

The failure or omission of a Party at any time to enforce any right under this Contract will not operate as a waiver of that right.

19.9 Governing Law

This Contract is governed by the Laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts.

19.10 Variation of Contract

This Contract may only be varied or replaced by a document duly executed by the Parties.

19.11 Intellectual Property

- (a) The Contractor licenses to the Subcontractor such Intellectual Property Rights in the Contractor's Documents as are necessary to enable the Contractor to perform the Works.
- (b) The Contractor retains the Intellectual Property Rights created outside of the Contract and used in performing