

1. Agreement and Definitions

In addition to the terms defined by the Schedule, in this Agreement the following words shall at all times mean:-

Agreement has the meaning at clause 2.1.

Base Works means structures and things on and in the Site (including work completed on the Site by third parties) prior to the Contractor commencing the performance of the Work or Services at the Site.

Business Day means any day other than a Saturday, Sunday, or declared public holiday at the Site.

Claim includes any claim for an increase in the Contract Sum, for payment of money (including damages) or for an extension of time:

- (a) arising out of, or in any way in connection with, the Agreement (including any Direction of Lennon) or the Work or Services; and
- (b) whether under the Agreement or otherwise at law or in equity including statute, in tort (including negligence) or for restitution.

Client means the Client stated in the Head Contract, or if none, the entity which engaged Lennon in respect of the Project.

Completion means the stage when in Lennon's reasonable opinion:

- (a) the Works and Services are complete except for minor Defects which in Lennon's opinion do not prevent the Works from being reasonably capable of being used for their intended purpose, including to comply with the Head Contract;
- (b) the Goods have been Delivered free of Defects; and
- (c) the Contractor has done everything which the Agreement requires it to do prior to Completion.

Contract Sum means:

- (a) if a lump sum amount is stated in the Purchase Order, that amount; or
- (b) if the Purchase Order provides rates, means the rates multiplied by the actual number as Directed by Lennon,

as may be adjusted pursuant to this Agreement.

Contractor means the contractor stated in the Purchase Order.

Date For Completion means the Date For Completion or the Date for Delivery stated in the Purchase Order, or if no time is stated, the date advised by Lennon to the Contractor, as may be adjusted pursuant to this Agreement.

Defect means any defect shrinkage, non-conformance, fault or omission in the Works, Services or Goods including any aspect of the Works which is not in accordance with the requirements of the Agreement.

Defects Liability Period means the longer of the period stated in the Purchase Order or 12 months following the date Lennon achieves practical completion under the Head Contract.

Delivery means when the Goods are delivered without Defects to the location stated in the Purchase Order or as otherwise notified by Lennon to the Contractor.

Direction includes any agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement by Lennon to the Contractor in respect of the performance of the Services, Work, Goods, or the Agreement.

Goods means the goods stated in the Purchase Order.

Head Contract means the agreement or agreements between the Client and Lennon in relation to the Project.

Insolvency Event means any step taken for the winding up, bankruptcy, dissolution, administration or receivership of the Contractor or any step the Contractor takes to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them (except for the purposes of a solvent reconstruction or amalgamation).

Lennon means Lennon Engineering and Construction Pty Ltd (ACN 612 130 597).

Project means the development on the Site the subject of the Head Contract.

Purchase Order means the document titled 'Purchase Order' issued by Lennon to the Contractor.

Services means the services stated in the Purchase Order.

Site means the location where the Works or Services are to be performed or where the Goods are to be Delivered.

Statutory Requirements includes:

- (a) any law applicable to the Works or the carrying out of the Work under the Agreement including Acts, Ordinances, regulations, by-laws, orders, awards and proclamations;
- (b) certificates, licences, consents, permits, approvals and requirements of any authority, body or organisation having jurisdiction in connection with the Works or the carrying out of Works or Services;
- (c) relevant standards, including Australian Standards and the National Construction Code.

Terms means these terms and conditions.

Variation means any change to the Works including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WH&S Legislation means all Statutory Requirements, policies and codes relating to health and safety, including *Work Health and Safety Act 2011 (NSW)*, *Work Health and Safety Regulation 2011 (NSW)*, *Work Health and Safety Act 2011 (Qld)*, *Work Health and Safety Regulation 2011 (Qld)*, *Work Health and Safety Act 2012 (Tas)*, *Work Health and Safety Regulations 2012 (Tas)*, *Occupational Health and Safety Act 2004 (Vic)* and the *Occupational Health and Safety Regulation 2007 (Vic)*.

Works means all tasks or things which the Contractor is, or may be, required to do (including the supply of Goods and materials) to comply with its obligations under the Agreement.

2. The Agreement

2.1 Unless Lennon and the Contractor have signed and executed another agreement in respect of the Project, the Agreement between the parties is comprised of (in decreasing order of precedence) any special conditions to these Terms, the Purchase Order, these Terms, and the documents referenced in the Purchase Order.

2.2 The Agreement will take effect from the earlier of the Contractor signing and returning these Terms or commencing to provide the Works, Goods or Services the subject of the Purchase Order.

2.3 This Agreement may only be amended by written agreement signed by both parties.

3. Scope

3.1 The Contractor warrants that the Works, Goods and Services will:

- (a) comply with the requirements of this Agreement and Lennon's Direction in all respects;
- (b) be fit for their intended purpose;
- (c) be free of Defects, omissions or non-conformances;
- (d) comply with all Statutory Requirements;
- (e) be delivered and performed safely and without damage or injury;
- (f) be delivered and performed in accordance with all relevant laws, regulations, authorisations and standards;
- (g) be performed with the degree of care, skill and diligence expected of a contractor which specialises in the Works, Goods and Services; and
- (h) hold and maintain all licences, permits and authorisations required to perform or deliver the Works, Goods and Services.

3.2 Unless otherwise directed by Lennon, the Contractor must obtain all licences, permits, authorisations to perform or deliver the Works, Goods and Services.

3.3 The Works, Goods and Services must:

- (a) comply with all directions issued by Lennon, including in respect of timing; and
- (b) be performed or delivered at the time stated in the Purchase Order or if no such time is stated, in the time directed by Lennon.

3.4 Title in all Goods shall transfer to Lennon upon the earlier of them being delivered to the Site or upon Lennon paying for the Goods.

3.5 If the Contractor discovers an ambiguity, discrepancy, error or omission in the scope of the Goods, Works or Services, it must issue a notice to Lennon setting that out. Lennon will then direct the Contractor how it is to proceed and the Contractor must comply with that direction at its cost.

3.6 With Lennon's approval, the Contractor may further subcontract components of the Works or Services, but not all of the Works or Services. The Contractor will be responsible for the actions of its contractors, employees, agents and officers as if they were an act of the Contractor.

3.7 The Contractor must comply with Lennon's policies, including in respect of safety, environment, quality, fitness of work, harassment and bullying and equal opportunity.

4. Quality and Defects

4.1 The Contractor must comply with Lennon's quality assurance policy and any Direction issued by Lennon issued in respect of quality.

4.2 The Contractor must:

- (a) maintain and protect the Works and Goods until Completion; and
- (b) correct all Defects notified by Lennon prior to expiry of the Defects Liability Period within the time specified in Lennon's notice or if no time is specified, within a reasonable time.

4.3 If the Contractor fails to correct any Defect within the time directed, Lennon may carry out such Work and the costs thereof will be a debt due and immediately payable by the Contractor to Lennon.

4.4 Nothing in this clause 4 nor the Defects Liability Period reduces the Contractor's obligations and warranties pursuant to this Agreement nor affects Lennon's common law rights to damages or any other remedy.

4.5 The Contractor must ensure that Lennon and the Client, together with any third party nominated by Lennon, and the Contractor have (jointly and severally) the benefit of all guarantees and warranties available for the supply and installation of Goods and the materials, and equipment, machinery and manufactured items incorporated into the Works, in a form approved by the Contractor. This provision does not limit any obligation or liability of the Contractor under this Agreement or at law.

5. Risk and Indemnities

5.1 Risk in the Goods (excluding Goods which form part of the Works) remains with the Contractor until Delivery, at which time risk shall pass to Lennon.

5.2 Risk in the Works (including Goods incorporated into the Works), the Services and the portions of the Site to which the Contractor has been given access rests with the Contractor until Completion, and the Contractor must make good any loss or damage to the Works, Services and the Site during that period.

5.3 The Contractor will indemnify Lennon, and its employees, officers, agents and other contractors against any claim, loss or damage (including legal costs) in respect of:

- (a) any loss of or damage to property (including property of Lennon) arising out of or in connection with the Goods, Works or Services;
- (b) any illness, injury to, or death of, any person (including the Contractor and its employees, officers, agents and contractors) arising out of or in connection with the Goods, Works or Services;
- (c) any infringement or alleged infringement of, the intellectual property rights or moral rights of any person arising out of or in connection with the Goods, Works or Services;
- (d) any non-compliance by the Contractor, or infringement of any Statutory Requirements applicable to the Goods, Works or Services or in connection with the loss, termination or suspension of any licence, approval, permit or consent due to any act or omission by the Contractor or its employees, agents or consultants; and
- (e) the Contractor's breaches of this Agreement, including for delay.

5.4 The indemnity at clause 5.3 shall be reduced proportionally to the extent Lennon's negligent act or omission caused the claim, loss or damage.

5.5 The Contractor agrees that Lennon's maximum liability to the Contractor in respect of this Agreement, the Works, Services and Goods, and the subject matter of this Agreement is the Contract Sum.

6. Site and Access

6.1 Lennon will provide the Contractor with access to the Site from time to time, adequate to enable Delivery, the Works and the Services.

6.2 The Contractor acknowledges that it will not have possession of the Site and that other contractors may be performing work on the Site. The Contractor is responsible for coordinating with other contractors to ensure the Work, Services and Goods are not interrupted or damaged.

6.3 Prior to commencing any Work or Services on the Site the Contractor is to examine the Site and the Base Work (if any) and determine whether it is suitable for the Works and the Services. If the Site or Base Work is not suitable, the Contractor must immediately notify Lennon in writing before performing the Works or Services and must not proceed to perform the Works or Services until instructed by the Contractor.

6.4 Upon commencing the Works or Services at the Site the Contractor is:

- (a) deemed to have examined and accepted the Site and Base Work as being satisfactory for the Works and the Services; and

- (b) not entitled to any claim (including time or cost) arising out of or in connection with the Site or Base Works, including if additional work or expense is required to overcome problems in the Site or the Base Works.

6.5 The Contractor shall keep the Works clean and tidy and shall regularly remove rubbish from the Site.

7. Insurance

7.1 The Contractor must as a condition precedent to accessing the Site or making any claim for payment maintain and effect the following policies of insurance:

- (a) public liability insurance for the minimum amount of \$20 million from the date it commences the Works or Services or commences Delivery of the Goods until the expiration of the Defects Liability Period with insurers approved by and on terms satisfactory to Lennon (including Lennon being named as an insured under any policy);
- (b) an insurance policy for all the things referred to in clauses 5.1 and 5.2 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care. The insurance cover shall be for an amount of at least the Contract Sum;
- (c) for Goods in transit up to and including Delivery;
- (d) comprehensive motor vehicle, plant and equipment insurance covering the replacement value of those items and liability of at least \$20 million; and
- (e) workers compensation insurance, which provides coverage in accordance with the relevant laws in which employees and other workers of the Contractor or employees, agents and consultants perform work in connection with the Agreement. Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for Lennon's statutory and common law liability to the Contractor's employees.

7.2 The Contractor must:

- (a) ensure that each of its contractors has substantially similar insurance cover to that required by this clause; and
- (b) provide Lennon with satisfactory evidence of its insurances before accessing the Site and whenever requested by Lennon.

8. Contract Sum

8.1 Except to the extent expressly provided otherwise by this Agreement, the Contract Sum is a fixed lump sum and shall only be adjusted pursuant to the terms of this Agreement. The Contractor warrants that the Contract Sum includes all tasks and items required to complete the Goods, Services and Works.

8.2 Neither the Contract Sum nor any rates set out or referred to in the Agreement are subject to rise and fall.

9. Payment

9.1 The Contractor is to claim payment by submitting a Payment Claim to Lennon at the following times:

- (a) for Work or Services which are performed for more than one month on the 21st day of each month from the commencement of this Purchase Order until Completion, which shall claim Work and Services to that date ; and
- (b) within 7 days of Completion.

9.2 An early Payment Claim is invalid. All Payment Claims must be provided within 7 days of Completion or else may be assessed as \$nil by Lennon.

9.3 Each Payment Claim must:

- (a) be in the form of a valid Tax Invoice;
- (b) reference the relevant Purchase Order (including the reference number on Lennon's Purchase Order);
- (c) in respect of Variations, reference the Purchase Order relating to the Variation; and
- (d) include evidence that the Work, Services or Goods have been performed or delivered, including timesheets, certificates and other documents that Lennon directs must be provided.

9.4 Within 25 Business Days of receiving a Payment Claim under subclause (a), Lennon will assess the Payment Claim and pay the Contractor the amount Lennon determines is payable. If that assessment shows that an amount is payable by the Contractor to Lennon, the Contractor must pay that amount within 5 Business Days of being advised by Lennon.

9.5 The Contractor is not entitled to claim any payment for:

- (a) Work, Goods or Services that are defective;
- (b) in respect of Works, for unfixed Goods and materials unless otherwise agreed in writing.

9.6 Lennon is entitled to setoff from any amount payable any Claim Lennon has against the Contractor, whether arising under this Agreement or otherwise. Payment is on account and not an admission that the Goods, Work or Services comply with this Agreement.

9.7 Unless stated otherwise, all amounts stated in this Agreement exclude GST. Where under the Agreement a party is obliged to pay the other party an amount which excludes GST, the party will pay the total of the amount and any GST incurred by the other party in respect of the taxable supply in respect of which GST is payable. The Contractor warrants that it is registered for GST and will remain registered for GST.

10. Variations

10.1 The Contractor must not vary the Work, Services or Goods unless it receives a written direction from Lennon (in the form of a further Purchase Order) detailing that variation. Such further Purchase Order, issued in respect of the same Project, will be taken to form part of this Contract. The Contractor must comply with such Variation, as directed by the Purchase Order.

10.2 A variation may omit Work, Services or Goods which may be carried out by Lennon or third parties.

10.3 If Lennon issues a Purchase Order directing a Variation, the Contract Sum will be adjusted by the amount stated in the Purchase Order directing the Variation. Before issuing a Purchase Order directing a Variation, Lennon may direct the Contractor to provide a price for a proposed Variation.

10.4 If the Contractor considers a Direction issued by Lennon constitutes a Variation or entitles the Contractor to any Claim in respect of this Agreement, promptly and before carrying out the Direction the Contractor must give Lennon written notice of this opinion identifying the Direction and the nature of the Claim. The Contractor shall have no entitlement in respect of such issue unless it strictly complies with this clause.

11. Time

11.1 The Contractor must achieve Completion by the Date for Completion (as that date may be adjusted pursuant to these Terms).

11.2 The Contractor must continually and diligently progress the Works and the Services and must not suspend the Works, Services or delivery of the Goods without Lennon's written Direction.

11.3 If the Contractor considers the Works, Services or Goods may be delayed, it shall notify Lennon of that delay within 2 days of the commencement of the delay.

11.4 If the Contractor issues a notice pursuant to clause 11.3 the Date for Completion will be extended by the reasonable amount of time determined by Lennon, provided the delay was caused by:

- (a) a breach of this Agreement, act or omission of Lennon or the Client;
- (b) a Variation; or
- (c) other events which are agreed in writing.

11.5 Lennon may in its absolute discretion extend the Date for Completion for its benefit by notice to the Contractor.

12. Safety and Policies

12.1 The Contractor shall, at its own cost, at all times exercise all necessary precautions for the safety of all persons on the Site and the public, appropriate to the nature of the Work, Services and Goods, the relevant Agreement requirements and to meet its obligations under the WH&S Legislation, and any other Statutory Requirements, and, where not inconsistent with such Statutory Requirements, any Direction that the Contractor may consider necessary or desirable.

12.2 The Contractor shall ensure that each of its employees attends a "site specific induction" and the Contractor's "Safe Work Method Statement" on Site as a condition precedent to allowing them access to Site and commencing Services or Work and that accurate records of these inductions and attendees is maintained at Site.

12.3 The Contractor must comply with any policy or requirement of the Client, Lennon and if a 'principal contractor' has been appointed which is not Lennon, the requirements of that entity. To the extent of any inconsistency between those requirements, the most onerous will apply.

12.4 Without limiting any obligation under this Agreement, the Contractor must:

- (a) ensure that it and its officers, employees, agents and contractors comply with all Statutory Requirements and standards relating to safety;
- (b) comply, at the Contractor's cost, with any Direction issued by the Client or Lennon in relation to safety;

(c) develop and implement a comprehensive site-specific occupational health and safety and rehabilitation management plan, and systems to ensure compliance with all Statutory Requirements relating to safety. Such plan must provide for:

- (i) incident reporting; and
- (ii) injury management and return to work systems;

(d) examine the Site upon arriving at the Site, before commencing the Services, to identify any hazards or safety issues and implement measures to remove risks to safety;

(e) conduct a pre-start risk assessment;

(f) ensure that if required by the Client or Lennon, its employees, agents and contractors have been inducted to the Site before commencing the Services, Works or Delivery; and

(g) immediately notify Lennon if there is any injury, incident or near miss.

12.5 The Contractor must, whenever carrying out the Works, Services or Delivery, ensure that:

- (a) no person (whether employed or not) is exposed to risks to their health and safety; and
- (b) the Works and Services are carried out using the Safety Management Plan.

12.6 The Contractor is responsible for its own training, tools and personal protective equipment (**PPE**) required to complete the Services and to comply with this Agreement.

12.7 The Contractor must immediately remove from the Site any worker, employee, officer, agent or contractor who in the opinion of Lennon is incompetent, unsafe or unsuitable.

13. Default and Dispute

13.1 If either party is in substantial breach of the Agreement, a party may give the other party a written notice requiring it to remedy the breach stating:

- (a) that it is a notice under this clause 13.1;
- (b) the breach relied upon; and
- (c) that the breach must be remedied within the time stated in the notice (which time must not be less than 10 Business Days after the notice is received).

13.2 If the party in breach does not remedy a substantial breach of the Agreement the subject of a notice under clause 13.1 within the time stated in the notice then the other party may, without prejudice to any other right it may have, immediately terminate the Agreement by written notice to the party in breach.

13.3 If the Contractor is subject to an Insolvency Event, Lennon may, subject to the *Corporation Act 2001*, immediately terminate this Agreement.

13.4 If a dispute or difference between the parties arises in connection with the Agreement (hereafter called a 'Dispute'), before proceedings are instituted by either party, representatives of the Contractor and Lennon with authority to resolve the Dispute will attend a without prejudice meeting to attempt to resolve the Dispute in good faith.

13.5 Lennon may immediately terminate this Agreement by written notice if the Head Contract is terminated or the Work comprised by the Head Contract is taken out of Lennon's hands.

14. General

14.1 The parties have entered this Agreement as contractors. The Contractor is not Lennon's employee, agent, partner or joint venturer.

14.2 The Contractor must not assign this Agreement or subcontract any portion of the Works without the prior written consent of Lennon

14.3 This Agreement may be executed in counterparts, each of which when taken together will constitute one instrument.

14.4 This Agreement is subject to, and is to be construed in accordance with, the laws of the jurisdiction in which the Site is located.

14.5 Where the Contractor comprises two or more persons, each person will be jointly and severally bound by the Contractor's obligations under the Agreement.

14.6 If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Contract.