

# **Terms and Conditions of Trade**

## **1 Scope of Works Contract and Payment**

A reference to Order Details in these Terms and Conditions means the Order Details as specified under the Subcontractor Details page and on page 4 of the Work Order Conditions and which may be amended and/or supplemented by the Order Details as specified in any Work Order subsequently issued by Maincom Services to which these terms and conditions are incorporated by reference.

Except as otherwise expressly agreed upon in writing between a duly authorised officer of Maincom Services and the Subcontractor, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any quotation, order form or other document issued by the Subcontractor.

The Subcontractor shall complete the Works in a professional, expeditious, safe and workmanlike manner.

The Subcontractors shall follow the Code of Conduct and adhere to the Maincom Values, Vision and Mission statements at all times. The Subcontractor shall be responsible for the whole of the Works, including the work of any sub-contractors and for any matter arising therefrom.

Maincom Services shall, in accordance with any Work Order, pay to the Subcontractor the Subcontract Sum stated in the Work Order as such sum may be adjusted in accordance with the Work Order.

## **2 Maincom Services Instructions and Variations**

Maincom Services may from time to time issue instructions to the Subcontractor regarding the Works and the Subcontractor shall comply with them. Maincom Services may instruct the Subcontractor to vary the Works including by omission. The Subcontractor shall have No Claim arising out of or in connection with that instruction or any variation to the Works unless either:

- (1) Maincom Services and the Subcontractor agree in writing as to the amount of any such payment and to the extent of any extension of time. For the purposes of agreeing the amount of any such payment, the relevant rates set out in Appendix 4 will apply, and if no rates are set out in Appendix 4 then any pre-agreed rates shall be applied; or
- (2) to the extent of any extension of time Maincom Services and the Subcontractor agree in writing; or
- (3) Notwithstanding any failure to agree as contemplated by sub-clause (1), Maincom Services gives the Subcontractor a written instruction expressed (on the face of the instruction) to be given under this sub-clause and instructing the Subcontractor to proceed.

The Subcontractor acknowledges and agrees that:

- (a) there is no limit or fetter on Maincom Services' power to omit any part of the Works;
- (b) Maincom Services' may engage others to carry out omitted work or carry out omitted work itself; and
- (c) the Subcontractor will have No Claim against Maincom Services as a result of any omitted work.

## **3 Regulations, Notices, Fees and Consents**

The Subcontractor shall comply with the requirements of all authorities having jurisdiction over the Works and shall give and receive all notices and pay all fees and deposits.

If, in connection with the performance of the works, it is necessary for the Subcontractor to obtain access to any property, the Subcontractor shall do so at its own cost and shall obtain all necessary consents and approvals from landowners and occupiers to carry out all repairs as per National Construction Code (which is comprised of the Building Code Of Australia and the Plumbing Code of Australia) whether instructed by Maincom or not. The Subcontractor bears absolutely the risk of site conditions including any latent conditions and is deemed to have inspected the Incident Address and made all relevant inquiries and satisfied itself it can carry out the Works having regard to those site conditions without any increase in the Subcontract Sum.

The Subcontractor is deemed to have allowed in the Subcontract Sum and the Subcontractor's program for all things reasonably incidental to performing the Works under this Subcontract notwithstanding such work is not expressly stated in any Work Order. The Subcontractor shall have No Claim against Maincom Services in respect of the matters in this Clause 3.

The Subcontractor shall apply and provide complete evidence of all copies to Maincom Services of all Compliance/Consent Certificates for works completed if and when such applies.

## **4 Warranties and Acknowledgements**

In addition to the other warranties given by the Subcontractor, including Manufacturer's warranty on all materials under the Work Order, the Subcontractor hereby warrants to Maincom Services as follows:

- (1) The Works carried out by the Subcontractor under the Work Order or otherwise will be done with due care and skill and in accordance with any documents and plans and specifications forming part of the Work Order;

- (2) All materials supplied by the Subcontractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in the Work Order, those materials will be new;
- (3) The Works to be executed in accordance with any Work Order will be done in accordance with and comply with any applicable law;
- (4) The Works to be executed in accordance with any Work Order will be done with due diligence and within the time stipulated in the Work Order, or if no time stipulated, within a reasonable time;
- (5) To the extent that the Works consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Works will result, to the extent of the work conducted, in a dwelling that is reasonably fit for the occupation as a dwelling;
- (6) The Works and all materials used in doing the Works will be fit for the specified purpose or result; and
- (7) All work done under any Work Order will comply with:
- (a) The National Construction Code (which is comprised of the he Building Code of Australia and the Building Code of Australia), specific trade codes and/or equal or above to all Australian Standards;
  - (b) All other relevant codes, standards and specifications that the Works are required to comply with under any law; and
  - (c) The conditions of any relevant development consent or complying development certificate.
- (8) If the Works comprise the supply of goods, in addition to the other warranties given by the Subcontractor under this Subcontract, the Subcontractor hereby warrants to Maincom Services as follows:
- (a) ensure that all invoices, packing slips and other correspondence relating to the goods show the name of Maincom Services or as otherwise notified by Maincom Services to the Subcontractor;
  - (b) deliver the goods to Maincom Services at the address requested in by Maincom Services; and
  - (c) ensure that the goods:
    - (i) are properly packed for delivery;
    - (ii) are fit for their intended purpose;
    - (iii) comprise of new materials of merchantable quality which are fit for their purpose and consistent with the nature and character of the goods;
    - (iv) comply with all statutory requirements and relevant Australian Standards;
    - (v) meet the requirements of the Work Order;
    - (vi) are free and clear of all charges, liens and encumbrances; and
    - (vii) do not infringe any patent, trademark or copyright.
- (9) to the extent that the applicable law of the State in which the Works are carried out is the law of NSW, the warranties in the *Home Building Act 1989* (NSW) and the warranties implied in the *Home Building Act 1989* (NSW) are expressly included in the Work Order and the Subcontractor will comply with each of those warranties.
- (10) to the extent that the applicable law of the State in which the Works are carried out is not the law of NSW, the warranties in any legislation that apply to the Works are expressly included in the Work Order and the Subcontractor will comply with each of those warranties.

## **5 Design Responsibility**

The provisions in this Clause 5 will apply if in the Order Details the Subcontractor is stated as being responsible for the Design of the Works for that Work Order or alternatively, if the Subcontractor is obliged as part of its obligations under the Work Order to carry out any design.

- (1) For the purposes of this Clause and the Work Order:
- (a) "Design" means such design, conceptual design, design development and design documentation (including shop drawings) as the Subcontractor must provide under the Work Order.
  - (b) "Design Documents" means the computer, computer programs, drawings (including modifications to any drawings or any additional drawings), models, patterns, samples, specifications and other information and the like required by the Work Order, and created for the design of the Works.
- (2) The Subcontractor shall be fully responsible for the Design required to carry out the Works in accordance with the Work Order.
- (3) The Subcontractor shall carry out the Design so that the Works are in accordance with the Work Order, and so that the Works are fit in every respect for the purpose for which the Work Order was issued.
- (4) Should these Work Order Conditions or the Work Order be terminated for any reason, Maincom Services may take possession of any Design Documents developed for the purposes of carrying out the Works.

## **6 Superintendence and Other Subcontractors**

- (1) The Subcontractor shall superintend the whole of the Works and shall nominate to Maincom Services in writing a person authorised to receive instructions from Maincom Services as required in relation to his or her purpose at the Incident Address.
- (2) The Subcontractor acknowledges that it does not have sole and exclusive possession of the Incident Address and must co-ordinate its works with the work being carried out by the other contractors, sub-contractors, workers engaged by Maincom Services and the Client. The Subcontractor must comply with all directions issued by Maincom Services with respect to the co-ordination of the Works including with the works carried out by others and must do so at no additional cost to Maincom Services.
- (3) The Subcontractor must not without the written approval of Maincom Services subcontract any of the Works. Approval to subcontract will not relieve the Subcontractor from any liability or obligation under any Work Order. The Subcontractor will be liable to Maincom Services for the acts and omissions of its subcontractors and employees and agents of its subcontractors as if they were acts or omissions of the Subcontractor.

## **7 Start Date and Completion Date**

- (1) "Completion" means completion of the Works such that they are useable by the Client and free from identifiable defects, where the Subcontractor has provided the Completion Certificate required under sub clause (4) and where all surplus materials and rubbish have been removed and the Incident Address has been cleaned and tidied.
- (2) The Subcontractor shall commence the Works on the Start Date set out in the Details. Prior to commencing the Works, the Subcontractor must complete a Site Risk Assessment and where high risk work is preformed and identified, the subcontractor must also provide and make available on site a SMS document obtained by their own authority signed by all that attend the property during the risk period and provide a copy to Maincom Services.
- (3) The Subcontractor shall achieve Completion by the Date for Completion set out in the Work Order or as such date may be adjusted by Maincom Services at its discretion and (subject to Clause 2) in recognition of the delays caused by any variations or caused by any act, omission or default on the part of Maincom Services, or any servant or agent of Maincom Services.
- (4) The Subcontractor shall procure the signature of the Completion Certificate attached at Appendix 3 by the Client when the Subcontractor considers that it has achieved Completion. It is a precondition to Completion that the Subcontractor has procured a signed Completion Certificate from the Client. If the Client is not available to sign the Completion Certificate, the Subcontractor must contact Maincom Services and arrange for Maincom Services to inspect the Works and sign the Completion Certificate on behalf of the Client. If the Client or Maincom Services identify any defects in the Works which require rectification prior to the signing the Completion Certificate, the Subcontractor must rectify those defects immediately and to the satisfaction of the Client or Maincom Services (as the case may be), acting reasonably, and as a precondition to the signing of the Completion Certificate.
- (5) The Subcontractor must engage sufficient resources and make the necessary adjustments to the program to ensure any milestone or completion date required by the Work Order for completion of the Works is achieved.
- (6) The Subcontractor must liaise, cooperate and coordinate with other contractors including Maincom Services. The Subcontractor must not and must take all actions necessary not to prevent, impede, fetter, hinder, delay or disrupt the works being executed by such other contractors. The Subcontractor is not entitled to any adjustment to the Subcontract Sum or to claim any other payment otherwise at law by reason of any delay, disruption or interference by the other contractors and consultants and/or by reason of any variation and/or extension of any programme and with regard to such matters shall have No Claim. The Subcontractor indemnifies Maincom Services against any claim by another contractor for costs, monies, loss or damage or otherwise, arising out of or in connection with a breach by the Subcontractor of its obligations under this clause.

## **8 Damages for Late Completion**

- (1) Should the date when Completion is achieved as advised by Maincom Services be after the Date for Completion, then, without prejudice to any other rights of Maincom Services the Subcontractor shall allow Maincom Services a sum calculated at the rate stated in the Order Details as Liquidated Damages and such amount may be deducted from payments, from retention and any balance may be recovered by Maincom Services as a debt due to it by the Subcontractor.
- (2) Where there is no sum stated on the Order Details, the Subcontractor is liable to pay or allow to be deducted the costs estimated by Maincom Services to be suffered by it as a result of the delay in completing the Works by the Date for Completion.
- (3) If this clause 8 (or any part thereof) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle Maincom Services from claiming delay liquidated damages, Maincom Services is entitled to claim against the Subcontractor damages at law for the Subcontractor's failure to achieve Completion by the Date for Completion.

## **9 Defects and Defects Liability Period**

In addition to rectifying any defects in the Works, the Subcontractor is required to rectify, replace and/or pay for any damage caused and/or contributed to by the Subcontractor to the Client's property.

Without limiting the preceding paragraph, the Subcontractor shall be responsible for and make good any defects in materials or workmanship as advised by Maincom Services for a period after the Date of Completion as stated in the Order Details. This period shall be deemed the Defects Liability Period.

#### **9.1 Obligations during the defect's liability period**

(a) During the Defects Liability Period as part of Clause 9, Maincom Services may direct the Subcontractor to rectify any defects in the Works of which either becomes aware. The Subcontractor must rectify any defect in the Works when directed to do so by Maincom Services, or where not directed, as soon as practicable.

(c) The Subcontractor must ensure that, in carrying out rectification work, it causes as little inconvenience as is reasonably possible to Maincom Services, Client and or home owner and other persons working on or using the Incident Address or the Works.

(d) If the Subcontractor fails to comply with its obligations under this clause within the time specified by Maincom Services, (or if no time is specified), a reasonable time, Maincom Services may have the rectification work carried out by others. The cost of the rectification work incurred by Maincom Services will be a debt due from the Subcontractor to Maincom Services. The Subcontractor will always have first preference to the rectification as long as the Subcontractor is still trading legally and part of the Maincom Services Trade Panel.

### **10 Claims and Payments**

The Subcontractor may only serve a claim for payment in one of the following two ways:

1. By email:

PDF invoices can be sent to us via email: [creditors@maincom.net](mailto:creditors@maincom.net)

2. By facsimile:

Invoices can be faxed to 1300 342 358 - Please do not include a coversheet, as the system does not require one

(1) The Subcontractor shall be entitled to make a claim for payment upon Completion of the works and subject to the submission by the Subcontractor of a copy of:

(a) A tax invoice if registered with GST

(b) The Subcontractor's ABN as set up with the Maincom Services

(c) A signed WHS (Work Health & Safety Statement) signed or a set of signed SWMS signed by all on the job

(d) An invoice number and an invoice date to be seen

(e) The correct full Work Order/Makesafe Order number the invoice aligns to

(f) The cost should align exactly to the Work Order cost

(g) All GST free invoices must state – 'Invoice'

(h) All high-risk work completed must have the relevant compliance document accompanying the invoice

(i) All applicable taxes including GST and a duly executed Subcontractor's Statement in the approved form of the relevant state in which the Works were carried out, if such applies in that state. For example, for works carried out in your region, the applicable form is set out in Appendix 2 to this Subcontract or a later version as approved by the relevant authorities; without which the claim for payment will not be registered for payment approval until these are all received.

(j) No corrections on any invoice allowed i.e.; Liquid paper, crossed out, etc.

(2) Maincom Services shall pay to the Subcontractor within the time stated in the Order Details the amount assessed by Maincom Services to be due, calculated from the date the Subcontractor's claim is made and having regard to any deductions that Maincom Services is entitled to make under this Subcontract including without limitation the estimated cost of rectifying defects.

(3) Payment shall be on account only and no payment shall be deemed to signify approval or acceptance of any works up to that time completed.

(4) Maincom Services may set off against any amount owing to the Subcontractor the amount of any loss or damage which Maincom Services claims to be due to it as a result of any act or omission of the Subcontractor.

### **11 Retention**

(1) In making payments, Maincom Services shall be entitled to deduct up to the percentage stated in the Order Details from the amount otherwise payable, provided that on the Date of Completion all moneys then retained, other than that sum nominated to be held during the Defects Liability Period as stated in the Order Details, shall be released to the Subcontractor.

(2) Any amount so deducted shall be by way of performance security and shall be available to Maincom Services whenever Maincom Services may claim to be entitled to the payment of moneys by the Subcontractor under or in connection with this Subcontract or the works or whenever Maincom Services may claim to be entitled to reimbursement of any moneys paid to

others under or in connection with any Work Order or whenever Maincom Services may claim to be entitled to other moneys payable by the Subcontractor to Maincom Services (whether by way of set-off or otherwise).

## **12 Final Payment**

On the expiration of the Defects Liability Period and completion of making good any defects and omissions and on certification by the Subcontractor that he has completed all the works in accordance with these Work Order Conditions, the Subcontractor shall be entitled to payment of any amount retained and to any other amount outstanding provided that, in connection with any amount outstanding, it has complied with clause 15 and it has submitted a complete statement of accounts, has handed over all certificates of authorities relating to the Works and all required guarantees and warranties.

## **13 Insurance**

(1) The Subcontractor shall in the joint names of itself, all sub-contractors and Maincom Services for their respective right, interests and liabilities affect all insurances directed by Maincom Services to be affected including without limitation those stipulated in the Order Details in the amounts and for the period nominated in the Order Details.

(2) Without limiting the application of subclause (1):

(a) The Subcontractor shall effect Public Liability Insurance, extended to include the name of Maincom Services and to include the interests of all sub-contractors for an amount not less than that stated in the Order Details in respect of accidents arising out of or in the course of or caused by the execution of the Works in the event of:

(i) death or bodily injury (including illness) to any person; and

(ii) damage to property (other than the works) not belonging to nor held in trust by nor in the custody or control of the insured.

(b) The Subcontractor shall insure for an unlimited amount against any liability, loss, claim, or proceedings whatsoever, whether arising by virtue of any statute relating or Workers Compensation of Employers' Liability or at common law by any person employed by him in or about the execution of the works and shall ensure that every sub-contractor (whether or not a nominated sub-contractor) is insured against any such liability in the case of employees of such sub-contractor, insurance effected by the Subcontractor pursuant to this sub-clause shall be extended to include the interests of Maincom Services.

(c) The Subcontractor shall affect third party motor vehicle insurance, in respect of damage to vehicles and property not belonging to nor held in trust by nor in the custody or control of the insured.

(d) Where the Works include a design obligation the Subcontractor shall affect professional indemnity insurance cover in respect of any such design obligation which shall be on terms acceptable to Maincom Services and shall be for a sum not less than the amount stated in the Order Details.

(3) The insurances referred to in this Clause 13 shall be effected before the Works are commenced and shall be maintained effective until Completion except with respect to any professional indemnity insurance which must be maintained for a period of 6 years after Completion.

(4) All the above-mentioned policies shall be affected in accordance with the Order Details or otherwise with an insurer nominated by the Subcontractor and approved by Maincom Services and the Subcontractor must provide Maincom Services with a Certificate of Currency and a copy of the policy wording.

## **14 Passing of Title**

For the purposes of this clause, the following definitions apply:

(a) "PPSA" means the Personal Property Securities Act 2009 (Cth);

(b) "PPS Law" means:

(i) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and

(ii) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

(c) "PPS Regulations" means the Personal Property Securities Regulations 2010 (Cth).

In respect of any materials or goods to be supplied as part of the Works, property in such materials and goods shall pass to the Client upon the happening of the earlier of either:

(1) Payment being made in respect of those materials or goods; or

(2) Those materials or goods being delivered to the Incident Address.

(3) Those materials or goods being affixed or incorporated into the Works, and to the extent permitted by law, the Subcontractor must remove any security interests attached to any such material or goods under the PPS Law upon the happening of any of those events. Upon the happening of the earlier of those events, the Subcontractor will have no right to remove any goods or materials from the Incident Address.

(4) The Subcontractor agrees that Maincom Services may, but is not obliged to, perfect, for the purposes of the PPSA, any security interest (as defined in the PPS Law) it holds in unfixed plant and materials.

## **15 Notice of Claims**

(1) All claims for damages, compensation, unjust enrichment, restitution, or adjustment to the Subcontract Sum, all matters of interpretation and clarification of these Work Order Condition and all claims whether in contract, tort (including negligence), unjust enrichment or otherwise (collectively referred to as a "claim") will be dealt with in accordance with this Clause.

(2) Each claim must be in writing and specify:

(a) The perceived legal basis for the claim including, where appropriate, a reference to the clause of these Work Order Conditions under which the claim is made;

(b) The facts relied upon in support of the claim in sufficient detail to permit verification; and

(c) Details of the quantification of the sums claimed then known to the Subcontractor and the manner in which such sums have been calculated.

(3) The Subcontractor will not have a right to submit any claim, initiate any action or proceedings against Maincom Services and will have No Claim in respect of any matter, fact or thing of any nature arising out of or in connection with or under any Work Order or the Works unless the Subcontractor within 10 days of the Date of Completion lodges that claim in writing with Maincom Services in accordance with the requirements of this Clause 15.

(4) For the purposes of the Work Order, "No Claim" means no claim for any moneys or for any adjustment to the Subcontract Sum or for any extension of time for Completion or for costs, expense, or loss or damage on any basis whatsoever including, without limitation, no claim:

(a) Pursuant to contract;

(b) Intorts (including negligence); (c) on a quantum merit;

(d) Pursuant to quasi contract; (e) for unjust enrichment; or

(f) Without limitation, pursuant to any other principle of law or equity.

## **16 Work Health and Safety**

(1) The Subcontractor acknowledges that Maincom Services has been appointed Principal Contractor for the Incident Address in accordance with the work health and safety legislation and the work health and safety regulation that apply in the State where the Works are carried out, as amended or replaced from time to time or any other legislation applicable to work health and safety and regulations made thereunder, together the "WHS Laws".

(2) The Subcontractor will not do or omit to do anything under these Work Order Conditions that will cause Maincom Services to be in breach of their respective obligations under the WHS Laws.

(3) The Subcontractor must comply with:

(a) All relevant law, regulation or authority requirements concerning work, health and safety including the WHS Laws.;

(b) Directions of Maincom Services with respect to the Incident Address including any occupational health and safety and work Health and Safety requirements and any site induction requirements of Maincom Services;

(c) development and implementation of WHS processes and programs, including a Subcontractor management system to identify and manage WHS requirements; and

(d) any requirement of Maincom Services concerning work, health and safety.

(4) Without limiting the generality of sub-clauses (1), (2) and (3) the Subcontractor:

(a) The Subcontractor must exercise all necessary precautions for the health and safety of all persons, including its employees, employees of Maincom Services and members of the public who may be affected by the actions of the Subcontractor;

(b) the Subcontractor must inform itself of all work, health and safety and work, health and safety policies, procedures or measures implemented or adopted by Maincom Services and the occupiers of any premises at or within which the Subcontractor performs the Works; and

(c) acknowledges that Maincom Services will be entitled, but under no obligation, to issue directions in relation to work health and safety issues and the Subcontractor must, at its own cost, comply with those directions to produce the highest level of health and safety.

(d) ensure that it and its Subcontractors and either's employees, agents and contractors comply with the WHS Laws;

- (e) warrants that it is familiar with and has the capability, appropriate resources and processes to comply with the WHS Laws;
  - (f) must ensure that any person engaged to provide any part of the Works who is required by any law, regulation or authority requirement to have a permit, license, certification or approval in order to perform that part of the Works, has obtained the permit, license, certification or approval prior to the commencement of that part of the Works.
- (5) The Subcontractor must, so far as reasonably practicable, consult, cooperate and coordinate the Works with Maincom Services, and the other contractors or any person who has control of access to or from the Incident Address or the Works, so as to:
- (a) achieve effective coordination of activities to ensure optimal health and safety risk management; and
  - (b) enable Maincom Services, and any person who has control of access to or from the site or the Works to comply with their respective obligations under all relevant WHS Laws.
- (6) The Subcontractor indemnifies Maincom Services against any action, claim, demand, cost or expense to which it may be exposed or which arises from a breach of its obligations under this Clause 16 or from the enforcement of any legislative requirements concerning work health and safety including, without limitation, the WHS Laws as a result of any breach by the Subcontractor of its obligations under these Work Order Conditions.

#### **16A Compliance with instructions given by Maincom Services**

Without limiting the rights of Maincom Services under any other provision in the Work Order Conditions and in addition to any other right of Maincom Services, if the Subcontractor does not strictly comply with an instruction given by Maincom Services under any provision of, or in connection with, these Work Order Conditions and any Work Order then:

- (1) Maincom Services may issue a notice to the Subcontractor requiring compliance within 2 business days or such other reasonable time as determined by Maincom Services;
- (2) if the Subcontractor does not comply with that notice including without any delay, Maincom Services may engage and pay others to execute any work whatsoever which may be necessary to give effect to such instructions of Maincom Services;
- (3) all costs properly incurred or estimated to be incurred by Maincom Services in so doing plus a 15% administration charge may be recovered by Maincom Services as a debt due to Maincom Services by the Subcontractor or may be deducted by Maincom Services from any monies which may then be or thereafter become payable to the Subcontractor by Maincom Services (including any security then held by Maincom Services) or from any security furnished by the Subcontractor pursuant to the Work Order. It is agreed by the parties that:
  - (a) the rates set out in Appendix 4 or the pre-agreed rates (as the case may be) are agreed to be a genuine pre-estimate of the minimum cost to Maincom Services for each non-compliance by the Subcontractor with an instruction given by Maincom Services; and
  - (b) Maincom Services may recover from the Subcontractor as a debt due to Maincom Services the greater of the rates set out in Appendix 4 or the pre-agreed rates (as the case may be) or the cost properly incurred or estimated to be incurred plus a 15% administration charge for each non-compliance by the Subcontractor with an instruction given by Maincom Services; and
  - (4) the Subcontractor will remain responsible to Maincom Services for such work executed by others as if the same had been executed by the Subcontractor pursuant to this Work Order. Should such work be not in accordance with the Work Order, the Subcontractor may proceed against the person who actually executed that work in the name of Maincom Services to recover any consequential loss and expense providing that the Subcontractor will have first indemnified Maincom Services against all costs and expenses of and incidental to such proceedings.

#### **17 Termination**

- (1) Should the Subcontractor be in default of any provision of the Work Order, then Maincom Services may give notice in writing to the Subcontractor describing the default and stating that if it is not remedied within 1 day of sending the notice, either Maincom Services may employ and pay others to remedy the default (at the Subcontractor's cost) or may determine the employment of the Subcontractor. If the Subcontractor does not make good the matter in which it is in default within that period of time, then Maincom Services either may employ and pay others to remedy the default (at the Subcontractor's cost) or may give notice to the Subcontractor that the employment of the Subcontractor is thereby determined.
- (2) If the Subcontractor becomes bankrupt, enters into a scheme of arrangement with creditors, goes into liquidation or a receiver is appointed, Maincom Services may terminate these Work Order Conditions immediately without prejudice to any right which might have accrued or may accrue.

#### **18 Terminations and Reduction for Convenience**

(1) Maincom Services may for its sole convenience and for no reason whatsoever, in its absolute discretion, terminate any Work Order immediately by written notice to the Subcontractor. The Subcontractor must immediately do everything possible to mitigate consequential losses and continue work on the provision of the Works not affected by the notice.

(2) Where there has been a termination under sub-clause

(1), Maincom Services will be liable only for:

(a) Payments for the value of the Works performed up to the date of termination; and

(b) The cost of materials and goods properly ordered for the Works for which the Subcontractor shall have paid or for which the Subcontractor is legally bound to pay but only if the material becomes the property of the Client upon payment; and

(c) The reasonable cost of demobilisation of the Subcontractor.

(3) The Subcontractor otherwise will have No Claim against Maincom Services. Maincom Services will not be liable to pay any compensation relating to the termination including for loss of prospective profits.

## **18A Security of Payment Legislation**

(1) The parties agree that for the purpose of the security of payment legislation as applicable in your State, as amended or replaced from time to time ("the SOP Act"), the parties acknowledge that there are no more than 2 reference dates after Completion, being:

(a) the first date for a payment claim arising immediately after Completion (as determined by Clause 10 of these Work Order Conditions); and

(b) when retention is held by Maincom Services (and only where retention is held by Maincom Services) the date provided in clause 12 of this Work Order for the Subcontractor to give its final payment claim for the balance of any retention or other monies held.

## **19 Licensing**

The Subcontractor warrants that it is the holder of a current and valid license from the Department of Fair Trading which permits the carrying out of residential building works which are the subject of any Work Order. The Subcontractor undertakes to ensure that this license remains valid throughout the period of any Work Order and acknowledges the validity of such license is a fundamental condition of the Work Order.

## **20 Notices**

Any notices required to be given to either party shall be deemed sufficiently given if sent by pre-paid mail or facsimile to the person for whom it is intended at the address appearing in any Work Order.

## **20A Trade Contractor's Employees and Secondary Subcontractors**

(1) The Subcontractor must immediately remove from the Incident Address, any employee or agent of the Subcontractor (or employee of a subcontractor) who in Maincom Services' opinion is guilty of misconduct, or is incompetent or negligent.

(2) The Subcontractor must not enter into any secondary subcontract or assign any right or benefit under the Subcontract, without prior written approval of Maincom Services (which may be withheld in Maincom Services' absolute discretion).

(3) With a request for approval, the Subcontractor must supply a copy of the proposed subcontract without prices and details of the proposed subcontractor (including experience and references).

(4) Approval may be a condition upon the subcontract containing amendments necessary to enable the Subcontractor to fulfil the Subcontractor's obligation to Maincom Services.

(5) The Subcontractor is liable to Maincom Services for the acts and omissions of subcontractors and employees and agents of the subcontractors as if they were acts or omissions of the Subcontractor and anything in a subcontractor's control is taken to be in the Subcontractor's control.

## **21 Goods and Services Tax**

The parties agree that:

(1) If any Payment is consideration for a Taxable Supply for which the supplier is liable to GST, the recipient must pay the GST Amount to the supplier, concurrently with the relevant payment unless otherwise agreed in writing;

(2) Any reference to a cost or expense in any Work Order excludes any amount of GST forming part of the cost or expense when the relevant party incurring the cost or expense can claim an Input Tax Credit; and

(3) The supplier will provide to the recipient a Tax Invoice for each supply. In this Clause 21:

(a) GST Amount means any Payment multiplied by the applicable rate at which the GST is levied;

(b) GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and



(c) Input Tax Credit, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act.

## **22 Disputes**

(1) Differences or disputes between the parties arising under or in any way related to any Work Order or the subject matter thereof ('dispute') will be resolved in accordance with this Clause 22. A party claiming a dispute has arisen must give written notice thereof to the other specifying the nature of the dispute.

(2) Within 7 days of receipt of that notice the parties to the dispute shall seek to resolve the dispute by referring the matter to a meeting of the managing director or chief executive officer, or such other authorised persons, of each of the parties. If the dispute is not resolved within 10 days after such referral, a party may commence litigation with respect to the dispute.

## **23 Reservations of Common Law Rights**

The parties acknowledge and agree that the provisions of these Work Order Conditions shall be in addition to any common rights of Maincom Services. No provision of this Contract shall limit the operation or generality of any other provision of these Work Order Conditions which confers any rights on Maincom Services.

## **24 Governing Law**

(1) The law of your region governs any Work Order. The parties submit to the exclusive jurisdiction of the courts of your region or any competent Federal court exercising jurisdiction in your region. The dispute must be determined in accordance with the law and practice applicable in the court.

## **25 Definitions**

Unless the contrary intention applies, a word or phrase defined in the Work Order has the same meaning in these Work Order Conditions and specific details included in the Work Order apply to these Work Order Conditions to the extent applicable.

**"Compliance/Consent Certificates"** means the certificates prepared and issued, as required by the law of the State in which the Works were carried out, ensuring that the Works comply with quality and safety standards.

**"Completion Certificate"** means a certificate issued in the form as set out in Appendix 3.

**"Makesafe"** Make Safe is the process by which a claim site has any hazards mitigated or removed, the premises secured to stop entry of damaging elements and to protect the occupants or general public in the best and most cost-effective manner using the building industry best practices whilst adhering to all WHS standard regulations.

**"Makesafe Order"** means work order given to attend site and perform a Make Safe

**"Maincom Services Trade Panel"** means trades that have already met the criteria.

**"Maincom Values, Vision and Mission"** means the values, vision and mission of Maincom Services, as amended from time to time.

**"Order Details"** means the items identified as "Order Details" under the Subcontractor Details and on the second page of the Work Order Conditions.

**"Site Risk Assessment"** means an assessment of the Incident Address to be conducted by the Subcontractor prior to commencing the Works to identify any hazards and risk factors that have potential to cause harm.

**"SMS document"** means the safety management system document obtained by the Subcontractor during the Site Risk Assessment.

**"SWMS"** means safe work method statement outlining the high-risk construction work activities to be carried out at the Incident Address.

Work Order Date: XX/XX/XXXX

# APPENDIX 1

## Work Order

Work Order: XXXXXXXX

For: ("Subcontractor")

Client Details	Maincom Services Details
Client Reference:	Our Reference:
Clients Name:	Supervisor:
Incident Address:	Telephone:
	Fax:
Contact Numbers:	Email:

ORDER DETAILS						
Start Date: 20/08/2014		Date for Completion: 20/08/2014		Materials		Labour
<b>Scope of Works ('Works')</b> <small>The Subcontractor is to carry out the following works and everything else incidental to those works or which can be inferred from those works, including the supply of all equipment and materials, and the carrying out of all obligations which may be reasonable and necessary to bring about the contractual result, are called 'the Works'</small>  <b>Granny Flat</b> 1. Cut and patch 1m2 affected areas and remove and replace wet insulation 1m2. Make good for painter  2. Seal and paint ceiling and cornice to granny flat area 30m2		QTY	UNIT	TOTAL	QTY	UNIT
		1.00	M2	35.00	6.00	Hour
		30.00	M2	30.00	30.00	Hour
Please ensure your invoice is broken up in hours and amounts as per this work order				\$65.00	\$558.00	
Grand Total (GST Inc.)					\$685.30	
					("Subcontract Sum")	

### Special Conditions:

INSURED IS TO BE CONTACTED FOR SCHEDULING, WITHIN 2 WORKING DAYS OF RECEIVING THIS ORDER. Please advise when all works have been completed.

Works are to be completed by the end date stated on this order.

You must advise the supervisor if there is a delay in preventing completion of works by the stated end date. You are to remove all trade waste from site and leave the work area in a tidy state.

Please contact Paul Maddestra 0430 965 243 with any and all enquiries relating to this work order.

# APPENDIX

## 1 'cont.'

### Work Order

The Subcontractor agrees, acknowledges and represents that:

1. By agreeing to undertake the works the subject of this Work Order, the Subcontractor agrees and acknowledges that this Work Order together with the Work Order Conditions previously accepted by the Subcontractor form the terms and conditions on which the Subcontractor is engaged by Maincom Services to carry out the works the subject of this Work Order; and
2. Is bound by the Work Order Conditions which are incorporated into this Work Order as though repeated in this Work Order and the particulars to constitute the Order Details as referred to in Work Order Terms and Conditions.
3. The below Work Order dates are binding and any variance to these dates must be communicated to the relevant Supervisor as per this Work Order.

#### ORDER DETAILS

<b>Clause 5</b>	Subcontractor has Design responsibility: <del>Yes</del> / No
<b>Clause 8</b>	Rate of Liquidated Damages: \$ /calendar day
<b>Clause 9</b>	Defects Liability Period: In accordance with the relevant Building Act (up to 6 years)
<b>Clause 10</b>	When claim(s) to be made - Upon Completion of the Works and to the satisfaction of Maincom. Time of Payment: 30 days Bi-Monthly from the 15th or last day of the month in which the claim for payment is made.
<b>Clause 11</b>	Retention to be held: <del>Yes</del> / No If yes, Percentage of Retention: 10% of each payment claim up to a maximum of 5% of the Subcontract Sum Retention to be released at Completion: 50% of the amount held

Insurance details	Type	Policy No.	Expiry date
<b>Clause 13</b>	Public Liability		
<b>Clause 13</b>	Workers Compensation		
<b>Clause 13</b>	Motor Vehicle		
<b>Clause 13</b>	Professional Indemnity (if applicable)		
<b>Clause 19</b>	Licence Number (if applicable)		

## APPENDIX 2

# Subcontractor WHS Statement

For the purpose of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "Principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) where the "subcontractor" has performed contract works and has complied with the WHS obligations in performing the works. The signed Statement is to be submitted to along with final Tax Invoice for payment.

### SUBCONTRACTOR'S STATEMENT

Subcontractor:

ABN:

Contract number/identifier:

This Statement applies for work between: 20/08/2014 and 20/08/2014 Inclusive

Subject of payment claim dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

I, \_\_\_\_\_ a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's WHS Statement and declare the following to the best of my knowledge and belief:

(a) The above mentioned Subcontractor has performed a Site Risk Assessment prior to commencing the works and has identified and addressed and/or eliminated all the risks prior to commencement of any works.

(b) All workers have been made aware of all the risks and procedure of works to be performed via toolbox talks. (c)

All workers have followed the Maincom Services site safety rules at all times.

(d) Site Specific Safe Work Method Statements (SWMS) have been signed and dated by all workers and a copy of signed SWMS kept on site during works.

(e) Relevant Safety Data Sheets were readily available on site and Hazardous Chemicals/Substances register kept up to date. (f)

Tools and Equipment inspected and electrical equipment tagged.

(g) All workers had the required PPE (safety boots, gloves, glasses etc.) to perform the works.

(h) Any incident or near miss relating to this job was reported straight away to the Supervisor as highlighted on this relevant .

(i) All Consent and/or compliance certificates have been approved signed and will be provided with this document to Maincom

Signature: \_\_\_\_\_ Full Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX 3

### Completion Certificate

For:

<b>Client Details</b>  Clients Name: Incident Address:	<b>Maincom Details</b>  Work Order Number: Our Reference: Date printed: Supervisor:																
<b>Scope of Works - Acknowledgement of Completion (To be signed by the client unless agreed Otherwise with assigned supervisor)</b>																	
<b>Scope of Works</b>  <b>Granny Flat</b> 1. Cut and patch 1m2 affected areas and remove and replace wet insulation 1m2. Make good for painter 2. Seal and paint ceiling and cornice to granny flat area 30m2	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Materials</th> <th colspan="2" style="text-align: center;">Labour</th> </tr> <tr> <th style="text-align: center;">QTY</th> <th style="text-align: center;">UNIT</th> <th style="text-align: center;">QTY</th> <th style="text-align: center;">UNIT</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.00</td> <td style="text-align: center;">M2</td> <td style="text-align: center;">6.00</td> <td style="text-align: center;">H</td> </tr> <tr> <td style="text-align: center;">30.00</td> <td style="text-align: center;">M2</td> <td style="text-align: center;">30.00</td> <td></td> </tr> </tbody> </table>	Materials		Labour		QTY	UNIT	QTY	UNIT	1.00	M2	6.00	H	30.00	M2	30.00	
Materials		Labour															
QTY	UNIT	QTY	UNIT														
1.00	M2	6.00	H														
30.00	M2	30.00															
I, _____ certify that above works have been completed																	
Signed: _____																	
Date: _____																	

## APPENDIX 4

### Schedule of Rates

Schedule of Rates			
Item #	Item description	Rate (exc. GST)	UOM
1	Day Labour – Single Time	\$XX.00	/hour
2	Day Labour – Time and a half	\$XX.00	/hour
3	Day Labour – Double time	\$XX.00	/hour
4			
5			
6			

SAMPLE