

ALL STATES

PERIOD TRADE CONTRACT CONDITIONS

AN AGREEMENT DATED: 1st July 2017

BETWEEN: *principal contractor* CAPE COD AUSTRALIA PTY LTD

AND: *trade contractor* D M WATERS CONSTRUCTION PTY LTD

1 In consideration of:

- (a) the *trade contractor* agreeing to quote for *trade works* whenever asked by the *principal contractor*; and
 - (b) the *principal contractor* agreeing to pay, on demand by the *trade contractor*, the sum of \$1,
- the parties agree that the period trade contract conditions overleaf are deemed to be incorporated into each *trade contract* for a period of 12 months from the date of this agreement.

2 The *trade contractor* acknowledges and agrees that:

- (a) the *principal contractor* has not made any representation; and
- (b) the *trade contractor* has not relied on any representation made by the *principal contractor*, as to the availability of work or the number of work orders that will be issued by the *principal contractor*.

3 The parties agree that for each *trade contract* the scope of the *trade works*, the commencement and completion dates of the *trade works* and the price of *trade works* will be set out:

- (a) in a quote from the *trade contractor* that is accepted by the *principal contractor*;
- (b) in a work order issued by the *principal contractor* that is accepted by the *trade contractor*; or
- (c) as otherwise evidenced in writing and signed by the parties.

4 The parties agree that this agreement does not form a contract to carry out work. The obligation to carry out work arises on the formation of a *trade contract* as described in paragraph 3 above.

5 "Defects liability period" in a *trade contract* means a period of 12 weeks/~~months~~ from the practical completion of the work under the *head contract*.

INFORMATION TO BE COMPLETED BY THE TRADE CONTRACTOR

LICENCE NO. (if required) 280169C

PUBLIC LIABILITY INSURANCE

Company: AUSTBROKERS

Policy No. 122A010011TSP Current to 24/02/2018

WORKERS COMPENSATION INSURANCE

Policy No. MWP013201703304 Current to 31/01/2018

PERSONAL SICKNESS AND

Company: Austbrokers

ACCIDENT INSURANCE

Policy No. 0531687 Current to: 24/02/18

Note: The *trade contractor* should consider the indemnity in clause 6(i), seek confirmation whether the *principal contractor's* (or ultimate *head contractor's*) building works insurance policy provides appropriate cross cover for the *trade contractor* and seek insurance advice accordingly.

ABN No. 65 604 319 182

Are you registered for GST? YES/NO

THE PARTIES AGREE that the period trade contract conditions referred to above are those that appear on the next page (see over).


Gary Klomp – Construction Manager
PRINCIPAL CONTRACTOR'S SIGNATURE


TRADE CONTRACTOR'S SIGNATURE



TRADE CONTRACTOR'S COPY

PERIOD TRADE CONTRACT CONDITIONS (ALL STATES)

1 TRADE WORKS

- (a) The trade contractor must carry out and complete the trade works:
 - (i) to the reasonable satisfaction of the principal contractor;
 - (ii) in accordance with the plans, the specifications and the law; and
 - (iii) at the reasonable times directed by the principal contractor.
- (b) If the trade contractor discovers any inconsistency, ambiguity or discrepancy in or between the plans and the specifications, the trade contractor must immediately seek the principal contractor's direction as to the interpretation to be followed.
- (c) The trade contractor must supply everything necessary to carry out the trade works.
- (d) The trade contractor may employ or engage others to carry out some or all of the trade works. Use of sub-contractors does not relieve the trade contractor from liability for the trade works.

2 VARIATIONS

- (a) The trade contractor must not:
 - (i) make any changes to the trade works;
 - (ii) carry out any extra work; or
 - (iii) leave any detail of the trade works unfinished, unless directed in writing by the principal contractor.
- (b) The principal contractor may, by giving a written direction, require the trade contractor to carry out a variation.
- (c) The price of a variation is:
 - (i) that agreed by the parties; or
 - (ii) failing agreement, an amount reasonably decided by the principal contractor.
- (d) The contract price is to be adjusted by the price of a variation at the next payment.

3 ACCEPTANCE OF BASE WORK

- On commencing to carry out the trade works the trade contractor is:
- (i) deemed to have accepted the base work as satisfactory; and
 - (ii) not entitled to payment or recompense for other additional work carried out as a result of unsatisfactory base work, unless a competent contractor who had examined, inspected and tested the base work would not have detected or anticipated the unsatisfactory base work.

4 WARRANTIES

- The trade contractor warrants that:
- (i) the trade works will be carried out in a proper and skilful manner;
 - (ii) materials supplied by it will be suitable, new and free of defects; and
 - (iii) it holds all licences required to carry out the trade works.

5 DEFECTS LIABILITY PERIOD

- (a) The trade contractor must, at its own cost, make good any work that does not conform with the requirements of this trade contract before the end of the defects liability period.
- (b) The principal contractor may direct the trade contractor to correct, remove or replace any non-conforming work before or during the defects liability period.
- (c) If the trade contractor does not comply with such a direction, the principal contractor may have that work carried out by others and the cost is a debt due and payable by the trade contractor to the principal contractor.
- (d) In addition to exercising other rights and remedies, the principal contractor may set-off such debt against a retention held and any amount due or which becomes payable to the trade contractor in connection with this trade contract.

6 INDEMNITY

- The trade contractor indemnifies the principal contractor against:
- (i) loss or damage to property (including the trade works);

- (ii) claims in respect of personal injury or death, arising out of, connected to or as a consequence of the trade contractor:
 - (A) carrying out or failing to carry out the trade works; or
 - (B) breaching this trade contract; and
- (iii) any liability that the principal contractor may suffer or incur under a statutory warranty in connection with the trade works.

7 INSURANCE

- (a) The trade contractor must take out prior to commencing, and maintain until completion of the trade works, the following:
 - (i) workers compensation or any like insurance as required by law;
 - (ii) public liability insurance to an amount not less than \$5,000,000; and
 - (iii) except as set out below, personal accident and disability insurance providing cover at least equivalent to that provided to an employee under insurance referred to in sub-clause 7(a)(i).
- (b) Sub-clause 7(a)(iii) does not apply where the trade contractor:
 - (i) does not personally carry out any part of the trade works on the site; or
 - (ii) establishes, to the principal contractor's satisfaction, that it is covered by the principal contractor's workers compensation insurance.
- (c) The trade contractor must, when asked by the principal contractor, produce evidence of the existence and currency of any insurances.

8 HEALTH AND SAFETY

- (a) In carrying out the trade works, the trade contractor and its agents and employees must observe all relevant occupational health and safety laws.
- (b) The trade contractor must, whenever carrying out the trade works, ensure that:
 - (i) no person (whether employed or not) is exposed to risk to their health and safety; and
 - (ii) the trade works are carried out using a safety management system.

9 DAMAGE AND SITE CLEANING

- (a) The trade contractor is responsible for:
 - (i) any damage caused by the trade contractor and its agents or employees;
 - (ii) keeping the trade contractor's areas clean at all times; and
 - (iii) the removal of its tools, plant and equipment, and if required the removal of debris and refuse, arising out of the trade works.
- (b) If the trade contractor fails to comply with sub-clause 9(a), the principal contractor may rectify the breach and the cost is a debt due and payable by the trade contractor to the principal contractor.

10 PAYMENT

- (a) If required, the trade contractor must give the principal contractor, as a precondition to payment, a signed statutory declaration that all its subcontractors and employees have been paid all amounts then due for work under this trade contract.
- (b) The principal contractor may withhold payment until the trade contractor gives the principal contractor an appropriate statutory declaration regarding payment of all workers compensation premiums and payroll tax in connection with the trade works.
- (c) Any payment, other than a final payment, by the principal contractor to the trade contractor is payment on account only.

11 EXTENSION OF TIME

- The trade contractor is entitled to an extension of time to complete the trade works as reasonably decided by the principal contractor if:
- (i) the trade works are delayed by an act, default or omission of the principal contractor beyond the control of the trade contractor; and

- (ii) the trade contractor gives the principal contractor written notice claiming the extension of time within 2 days of the cause occurring.

12 FREEDOM OF ASSOCIATION AND COMPLIANCE WITH INDUSTRIAL LAWS

A party or its agent must not support an industrial organisation to:

- (i) participate in any form of unauthorised industrial action or secondary boycott that affects the trade works; or
- (ii) except as required by law, demand or force any other person carrying out work on the site to:
 - (A) join a union;
 - (B) make contributions to a specified superannuation fund; or
 - (C) make payments for redundancy or long service leave into a specified fund.

13 DEFAULT

- A party is in default of this trade contract if it:
- (i) is in substantial breach of this trade contract;
 - (ii) becomes insolvent, bankrupt or makes an assignment of that party's estate for the benefit of creditors;
 - (iii) makes an arrangement or composition with creditors; or
 - (iv) being a company, goes into liquidation.

14 SUSPENSION

If work under the head contract has been suspended, the principal contractor may, by giving written notice to the trade contractor, immediately suspend the trade works.

15 ENDING THIS TRADE CONTRACT

If a party remains in default 3 working days after the other party has given it a written notice requiring the default to be remedied then, without prejudice to any other rights or remedies, the other party may, by giving a further written notice, end this trade contract.

16 HEAD CONTRACT ENDED

If the head contract is ended for any reason, the principal contractor may, by giving written notice to the trade contractor, end this trade contract and the trade contractor is:

- (i) entitled to be paid for work carried out; and
- (ii) not entitled to make any claim for loss of profit.

17 ADMINISTRATION

The trade contractor or its representative must:

- (i) attend site meetings if called on to do so;
- (ii) observe all directions given by the principal contractor under this trade contract; and
- (iii) co-operate with all workers and other contractors on the site.

18 COPYRIGHT

- (a) Copyright in any plans or designs supplied by the principal contractor to the trade contractor remains with the principal contractor.
- (b) The trade contractor must not reproduce or use any plans or designs, in whole or in part, other than for the purpose of completing the trade works.

19 DEFINITIONS

In this trade contract:

"base work" means the site conditions including work carried out by others in, on or over which the trade contractor is to carry out the trade works;

"head contract" means the contract between the principal contractor and its client which includes the trade works as part of its scope of work;

"site" means where the works under the head contract is carried out;

"trade contract" means a contract to carry out the trade works between the principal contractor and the trade contractor evidenced by the documents referred to in Clause 3 of the schedule (overleaf);

"trade works" means the work to be carried out under the trade contract including variations;

"variation" means to vary the trade works by:

- (i) carrying out additional work;
- (ii) omitting any part of the trade works; or
- (iii) changing the scope of the trade works.