

ALL STATES

## PERIOD TRADE CONTRACT CONDITIONS

AN AGREEMENT DATED: 1<sup>st</sup> July 2017

BETWEEN: *principal contractor* CAPE COD AUSTRALIA PTY LTD

AND *trade contractor* ASHBY'S SCAFFOLDING 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) N/A

PUBLIC LIABILITY INSURANCE

Company: TU

Policy No. T162333 Current to 30/6/2018

WORKERS COMPENSATION INSURANCE

Policy No. WC217502157

106101001

Current to 3

PERSONAL SICKNESS AND

Company: \_\_\_\_\_

ACCIDENT INSURANCE

Policy No. \_\_\_\_\_


Current to: \_\_\_\_\_


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. 41 003 173 939

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*.