



Subcontract Agreement Terms and Conditions

1. DEFINITIONS

- (a) Where the context so permits 'merchandise' means all goods, chattels, plant, equipment, machinery, items of furniture and fittings and the like.
- (b) 'Purchaser' means Urbane Projects Pty Ltd and 'Vendor' means the person or entity from whom the merchandise and/or Works have been ordered.
- (c) 'this agreement' means the documents which form the subcontract between the Purchaser and the Vendor as listed in the Formal Instrument of Agreement.
- (d) 'Contract Sum' means the amount stated in Item 3 of the Particulars.
- (e) 'COVID-19 pandemic' means the pandemic globally named 'COVID-19' (and any subsequent strains or other variants evolving therefrom).
- (f) 'Date for Practical Completion' means the date specified in Item 5 of the Particulars.
- (g) 'Date of Commencement' means the date specified in Item 4 of the Particulars.
- (h) 'Date of Practical Completion' means the date the Purchaser notifies the Vendor in writing that Practical Completion has been achieved under clause 16.
- (i) 'Defects Liability Period' has the meaning provided in clause 21.
- (j) 'Formal Instrument of Agreement' means the document titled 'Subcontract Agreement' to which these terms and conditions relate to.
- (k) 'Particulars' means the details listed under the heading 'PARTICULARS' in the Formal Instrument of Agreement.
- (l) 'Practical Completion' has the meaning provided in clause 16.
- (m) 'Site' means the location at which the Works are to be carried out as specified in the Formal Instrument of Agreement.
- (n) 'Works' means the work to be carried out by the Vendor including the supply of materials, labour, supervision, equipment and plant as specified in this agreement.

2. CONTRACT

This agreement is the only agreement which will be recognised by Purchaser as authority for charging merchandise and service to its account and supersedes all previous communications and negotiations. No terms by another Vendor in making a quotation or accepting or acknowledging this agreement and which differ from the terms of this agreement shall be binding upon the Purchaser or shall be deemed to be any part of the agreement between Vendor and Purchaser. Vendor may not assign this agreement without Purchaser's prior written consent. No waiver of a breach of any provision of this agreement shall constitute a waiver of any other breach, or of any other provision.

3. INSPECTION IN PROGRESS

Vendor agrees that Purchaser or its authorised agent shall have the right of inspection of all work contained in the order including any subcontracted work while in any stage of engineering, manufacture or installation. The Purchaser or its designated agent may reject any work performed or being performed that does not comply with the terms and conditions in this agreement. Work that is rejected shall be rectified or removed and replaced properly at no additional cost to Purchaser. Any acceptance or approval of work upon inspection by the Purchaser will be deemed to be no more than prima facie evidence of completion and shall not relieve the Vendor of its obligations contained in this agreement.

4. CANCELLATION

The Purchaser may, at its option, cancel the delivery of any merchandise which has not been dispatched if this agreement covers any standard stock merchandise. The Purchaser's only obligation shall be to pay for the merchandise which has been dispatched prior to cancellation.

If this agreement covers merchandise which the Vendor must arrange to be manufactured or fabricated to the Purchaser's specifications (if any), then upon receipt of a notice of cancellation the Vendor shall cease to manufacture, supply or work in accordance with, and to the extent specified, in the notice and shall immediately do everything possible to mitigate any costs after such cancellation. Then, provided that the Vendor is not in default:

- (a) the Vendor may, within 10 days of the cancellation, submit a written claim for payment of the cost incurred by Vendor in connection with this agreement prior to the date of cancellation (if any) along with sufficient information and supporting documentation to evidence the amount claimed; and
- (b) if the claims are valid, the Purchaser may make such payment.

Upon such payment by the Purchaser, title to and property in material or merchandise which has been completed, shall be passed to the Purchaser.



5. DEFAULT BY VENDOR

In the event that the Vendor:

- (a) breaches any of the terms, conditions or warranties contained in this agreement; or
- (b) becomes insolvent; or
- (c) a receiver, administrator or liquidator of its business assets is appointed; or
- (d) makes any assignment or arrangement for the benefit of credits, then in any one or more of such cases, without prejudice to any other rights it may have, Purchaser may by written notice:
 - (e) cancel the delivery of any undelivered merchandise; or
 - (f) terminate this agreement.

The Purchaser shall not be obliged to make any payment thereafter or in respect of a delivery which has been cancelled in accordance with this clause.

5A. REMEDIES IN THE EVENT OF DEFAULT

The Purchaser shall be entitled to recover any loss or damage it suffers by reason of a default by the Vendor as moneys due and payable under clause 19 (including any release or reduction of retention money if applicable).

If the Purchaser exercises its rights under subclause 5(e) or 5(f) above, the Purchaser may:

- (a) engage a third party to supply any merchandise which the Vendor has not delivered or take over and complete the whole or part of the Works remaining to be completed; or
- (b) direct the Vendor to:
 - (i) promptly execute a deed of novation in the form of Annexure Part A to novate to the Purchaser or such other party as designated by the Purchaser in writing all contracts entered into between the Vendor and any subcontractors or suppliers or third parties; and/or
 - (ii) immediately make available for collection, or if requested by the Purchaser, deliver to Site any materials or merchandise not incorporated into the Works regardless of whether they are located at or outside of the Site.

For the purposes of effecting a novation under subclause 5A(b)(i) above, the Vendor hereby irrevocably appoints the Purchaser to be the Vendor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Vendor accordingly.

6. WARRANTIES

(a) The Vendor warrants that:

- (i) it is at all times suitably qualified and experienced to complete the Works;
- (ii) it shall use proper and tradesmanlike workmanship;
- (iii) it shall comply with all applicable legislative requirements;
- (iv) all Vendors, employees and agents of Vendors engaged by Vendor are suitably qualified and experienced to complete the work it is engaged to complete.

(b) The Vendor warrants that the merchandise supplied by the Vendor:

- (i) comply with the description and specification set out in this agreement;
- (ii) are new and fit for the known purposes for which it is supplied;
- (iii) have a warranty period as stated in Item 6 of the Particulars; and
- (iv) are in proper working condition.

(c) These warranties are in addition to any warranty or service guarantee contained in the order or implied by law. In the event that the Vendor breaches any of the warranties included in this clause, the Vendor agrees to indemnify the Purchaser against any loss or damage (including legal fees and costs) arising from or in connection with such breach.

7. PATENTS, TRADEMARK AND COPYRIGHTS

Vendor warrants to Purchaser and its successors in interest that the manufacture, sale or use of the merchandise will not infringe or contribute to the infringement of any patents, trademarks, designs or copyrights in Australia. Vendor indemnifies Purchaser and its successors in interest against any loss or damage (including legal fees and costs) arising from a breach of this warranty or any prevention or hindrance of use of the merchandise arising out of or in connection with a breach of this warranty.



8. TRANSPORTATION

Immediately after the Vendor has dispatched the merchandise, Vendor shall notify Purchaser of the date and time of dispatch, the number of the order, the kind and amount of merchandise to be transported, tracking number and the estimated date of delivery.

All merchandise shall be:

- (a) packed, marked and transported in a safe, secure and suitable manner; and
- (b) delivered in good order and condition by an internationally certified courier, in accordance with the proper and legislative requirements of the carriers and the Australian States and Territories in which the Works are provided.

As soon as practicable after becoming aware of any factors which may affect the delivery, the Vendor must notify the Purchaser and keep the Purchaser updated on the effects of such factors.

Upon delivery of the merchandise, the Vendor shall obtain a receipt from the consignee showing the materials delivered, the condition of such materials at the time of delivery and the date of delivery.

9. RETENTION

If applicable, the Purchaser will deduct from each progress claim the amount stated in Item 7 of the Particulars up to a maximum of the amount stated in Item 8 of the Particulars (being a percentage of the Contract Sum). An amount equivalent to the percentage stated in Item 9 of the Particulars shall be released to the Vendor on the Date of Practical Completion and the balance to be released at the end of the Defects Liability Period.

10. PERFORMANCE OF WORK

Where the Vendor is required to perform work on or near the premises specified in this order, the following conditions apply:

- (a) Vendor shall supply all labour, tools, equipment, services and material necessary to perform and complete the work specified in this agreement;
- (b) Vendor shall not prevent the Purchaser or any of its other vendors from performing their work;
- (c) Vendor enters the premises on which the work is to be performed at its own risk and indemnifies the Purchaser against any loss, damage claims and liability arising out of or in connection with the performance of the Works or presence of Vendor and its workmen, agents and subcontractors on the said premises;
- (d) Vendor shall not subcontract or assign work under this agreement, which is to be performed on the said premises, without the written consent of the Purchaser.

11. TIME

The Vendor agrees to commence the Works on the Date of Commencement and complete the Works by the Date for Practical Completion and in accordance with all of the terms and conditions stated herein.

If the progress of the Works is delayed, by any of the following causes or conditions, resulting from the causes (each referred to as a 'qualifying cause of delay'):

- (a) because of variations directed by the Purchaser;
- (b) by severe weather conditions which make it unsafe or unreasonable for the Vendor to perform any work (e.g. heavy rain and storm);
- (c) because of proceedings being taken or threatened by, or disputes with, adjoining or neighbouring owners or residents;
- (d) because of any civil commotion, strikes or lockouts affecting the Works or affecting the manufacture or supply of materials;
- (e) any act, default or omission on the Purchaser's part;
- (f) any directions or delays by local, state, national, public or other statutory authorities (not caused by the Vendor);
- (g) proceedings before courts, tribunals or for the purpose of alternative dispute resolution;
- (h) unavailability of labour, transport or materials;
- (i) the COVID-19 pandemic and any directions by local, state, national, public or other statutory authorities issued due to the COVID-19 pandemic;
- (j) by any other matter, cause or thing beyond the Vendor's control and the Vendor has complied with the notice requirements set out in clauses 11A and 11B, the Vendor shall be entitled to an extension of time in which to bring the Works to Practical Completion and an extension of time shall be its sole remedy. The Vendor will be barred from making any claim for an extension of time if it fails to comply with such notice requirements.

11A. NOTICE OF DELAY

Within 5 days of becoming aware of a qualifying cause of delay which may cause delay to the Works, the Vendor shall give to the Purchaser a written notice of that cause and the estimated delay.



11B. EXTENSION OF TIME

The Vendor shall only be entitled to an extension of time under this clause if the Vendor:

- (a) has been, or will be delayed, in reaching Practical Completion by a qualifying cause of delay; and
- (b) gives to the Purchaser, within 14 days of when the Vendor should reasonably have become aware of the qualifying cause of delay, a written claim for an extension of time evidencing the facts of causation and of the delay to the Works (including the extent) with supporting documentation (if any).

Within 28 days after receiving a claim for an extension of time from the Vendor, the Purchaser shall give to the Vendor a written rejection or approval of the extension of time. If the Purchaser rejects the Vendor's claim, the Purchaser must include in writing reasons for its rejection.

12. INSURANCE

Prior to the commencement of the Works and whenever requested by the Purchaser, the Vendor shall:

- (a) effect and maintain each of the insurances listed in clauses 12A to 12D:
 - (i) in a form acceptable to the Purchaser with an insurer authorised by APRA to carry on insurance business in Australia; and
 - (ii) for the duration of the performance of the Works and the Defects Liability Period;
- (b) produce evidence of each policy of insurance which has been effected and maintained to the satisfaction of the Purchaser (i.e. by presenting a Certificate of Currency).

The Vendor must ensure that any subcontractor it engages in connection with the Works also procures and maintains the insurances listed in clauses 12A to 12D.

If the Vendor defaults in the obligation to insure under clauses 12, 12A, 12C and 12D, the Purchaser may insure and deduct the premium paid from any money due or to become due to the Vendor.

12A. INSURANCE OF THE WORKS

The Vendor is solely liable for and must insure the Purchaser (naming the Purchaser as an 'insured') against any loss, destruction or damage arising from, or in connection with, the Works (including but not limited to theft, fire, explosion, earthquake, lightning, storm, tempest or civil commotion) but excluding:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude any loss or damage resulting therefrom;
- (b) the cost of making good faulty workmanship and materials, but shall not exclude any loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude any loss of or damage to the Works;
- (d) damages for the failure to complete the Works, for at least the full reinstatement value of all work executed and materials and goods both on and off the Site, including any unfixed materials or goods.

On the insurer's written authorisation or settlement of any claim under the policies, the Vendor must diligently proceed to rebuild or repair the Works and replace or repair the materials or goods lost, destroyed or damaged.

12B. WORKERS' COMPENSATION

The Vendor must procure and maintain workers' compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Vendor in connection with the Works (including liability under any applicable workers' compensation legislation and at common law). The workers' compensation policy must provide common law liability to a limit of not less than \$50 million in relation to any one occurrence and unlimited as to the number of occurrences, and must include a Principal's Indemnity extension for both Workers' Compensation Act Benefits and common law in favour of the Purchaser, its related entities and their respective employees and must include a waiver of subrogation in favour of the Purchaser, its related entities and their respective employees.

12C. PUBLIC LIABILITY INSURANCE

The Vendor must procure and maintain public and products liability insurance in the amount of not less than \$20,000,000 in respect of any one claim and unlimited as to the amount of claims and endorsed to include a Principal's Indemnity extension. This policy must also include a Cross Liability clause, extend to cover goods in the physical and legal control of the Vendor and liability in respect of third party property damage or personal injury arising from the use of unregistered plant and equipment.

This policy must not exclude cover in respect of personal injury or death of any person and in respect of any damage to any real or personal property arising out of or in the course of or caused by the execution of the Works unless due to any act or neglect of the Purchaser or of other persons for whom the Purchaser is responsible.

12D. MOTOR VEHICLE INSURANCE

The Vendor must procure and maintain comprehensive motor vehicle insurance in respect of all vehicles owned, operated, leased, hired, or controlled by the Vendor or its employees, sub-subcontractors or agents, registered or required to be registered in accordance with any Law which are used (or to be used) on any road at any time in connection with the Works. The motor vehicle insurance policy must provide cover for material damage to all vehicles for not less than their market value, must include coverage for liability in respect of third party property damage or personal injury to a minimum limit of \$30,000,000 or in accordance with the normal limits provided in countries outside of Australia (to be agreed by the Purchaser), must include a Principal's Indemnity extension indemnifying the Purchaser, its related entities and their respective employees and must include a Cross Liability clause and a waiver of subrogation in favour of the Purchaser, its related entities and their respective employees.

13. VARIATIONS

(a) The Purchaser may direct the Vendor in writing to vary the Works by any one or more of the following as and when it believes such work is required (using its reasonable judgment):

- (i) increasing, decreasing or omitting any part;
- (ii) changing the character or quality;
- (iii) changing the levels, lines, positions or dimensions;
- (iv) carry out additional work;
- (v) demolish or remove material or work no longer required by the Purchaser.

(b) The Vendor shall not vary the Works except as directed by the Purchaser and the Vendor shall not be entitled to payment upon completion of a variation unless it has received written approval from the Purchaser as required under subclause (d) below.

(c) It is a condition precedent to the Vendor's entitlement to make any claim for or receive payment for the cost of executing a variation under this clause that the Vendor has given to the Purchaser its quotation for the cost of executing the variation within 10 days of the Purchaser's direction to vary the Works.

(d) If the variation is approved, the Purchaser shall give to the Vendor its written approval and direct the Vendor to execute the variation in accordance with the Vendor's quotation (or otherwise as advised) within 10 days of receipt of the Vendor's quotation.

(e) If the Purchaser has directed the Vendor to vary the Works by omitting any part, the Purchaser may, by written notice, engage a third party to perform and complete the omitted part.

14. PAYMENT

The Vendor shall submit a written claim for payment fortnightly or monthly as specified at Item 10 of the Particulars. Each progress claim shall include details of the value of the Works done and other moneys which, in the Vendor's opinion, is then due from the Purchaser to the Vendor in accordance with these terms and conditions, and any other information or documentation in support of its claims.

Except where the Vendor has failed to provide sufficient evidence in its progress claim, the Purchaser shall make payment of a progress claim by the date specified at Item 11 of the Particulars. In the event that the Purchaser does not agree with any portion of the value of Works stated in a progress claim, the Purchaser may reject that portion, provide reasons for its rejection and pay only the portion which it has agreed to.

15. PAYMENT IN ADVANCE OF MERCHANDISE

(a) If the Vendor claims payment for merchandise intended for incorporation into the Works but not yet delivered to Site, the Purchaser shall make payment if:

- (i) the Vendor is able to satisfy the Purchaser by way of evidence that:
 - (A) ownership of the merchandise will pass to the Purchaser upon payment;
 - (B) such merchandise is (or will be) properly stored, and adequately protected;
- (ii) the Vendor agrees to provide security by way of a bank guarantee in a form acceptable to the Purchaser in an amount equal to the claim for payment of the merchandise, as the case may be.

(b) If the Vendor fails to deliver the merchandise, the Purchaser shall be entitled to have recourse to the bank guarantee in part or in full as the case may be and receive and use the proceeds of the bank guarantee to remedy the non-performance of the Vendor.

(c) Otherwise, the Purchaser shall release the relevant bank guarantee to the Vendor within 10 business days after the Vendor has completed the delivery of the merchandise and after it has deducted any amounts from the bank guarantee to which the Purchaser is entitled to.

(d) Alternatively, to subclause (A)(ii) above, where the Vendor is a corporation duly incorporated with the Corporations Act 2001 (Cth), the Purchaser may request for the Vendor to provide a Personal Deed of Guarantee and Indemnity in the form of Annexure Deed of Guarantee and Indemnity shall be given by a director of the Vendor, in its personal capacity and the Purchaser shall be entitled to reject any proposed director on reasonable grounds.

15A. PERSONAL DEED OF GUARANTEE AND INDEMNITY

The Purchaser may, at any time, prior to the commencement of or during the Vendor's performance of the Works, request for the Vendor to provide a Personal Deed of Guarantee and Indemnity in the form of Annexure Part B for the performance of the obligations and the discharge of the liabilities of the Vendor under this agreement from a director of the Vendor (if any).

16. PRACTICAL COMPLETION

Practical Completion is that stage when:

- (a) the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose by the Purchaser;
- (b) testing or certification by any authority having jurisdiction has been complied with;
- (c) all warranties, certificates, operating and maintenance manuals and other documents and information required under this agreement which, in the opinion of the Purchaser, are essential for the use, operation and maintenance of the Works have been supplied;
- (d) all approvals required to be obtained by the Vendor which are necessary for the use and operation of the Works have been obtained and, where required by a legislative requirement, transferred to the Principal;
- (e) the Works are capable of being operated safely under all anticipated or likely operating conditions and in accordance with all legislative requirements.

When, in the Vendor's opinion, the Works have reached practical completion, the Vendor must give the Purchaser written notice stating that the Works have reached Practical Completion pursuant to clause 10 of this agreement and requesting the Purchaser to inspect the Works within 5 business days of receipt of the Vendor's notice.

Within 10 business days of receiving written notice from the Vendor, the Purchaser must inspect the materials supplied or work completed as part of the Works and provide the Vendor with written notice of the matters (if any) which the Purchaser considers are not minor defects and are required under this agreement to be done for Practical Completion to be achieved. The Vendor must promptly do those things (if any) and liaise with the Purchaser until the Purchaser is able to provide the Vendor with notice in writing that it has accepted the Works as complete except for minor defects and that Practical Completion has been achieved.

17. FINAL PAYMENT CLAIM

Within 28 days after the later of the expiry of the Defects Liability Period or the rectification of all defects identified during the Defects Liability Period, the Vendor may give the Purchaser a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of this agreement which the Purchaser has previously been notified of in accordance with the terms under this agreement.

Within the number of days specified at Item 11 of the Particulars following receipt of the final payment claim, or if no final payment claim has been received, within the number of days specified at Item 11 of the Particulars following the date on which a final payment claim was to be submitted under this clause, the Purchaser shall provide a final certificate evidencing the moneys finally due and payable (including any release or reduction of any retention money if applicable) between the Vendor and the Purchaser on any account whatsoever in connection with the subject matter of this agreement. If the Purchaser rejects an amount claimed by the Vendor in the final payment claim, the Purchaser shall state the reasons for such rejection in the final certificate. If the Purchaser fails to issue a final certificate in accordance with this clause, the final payment claim will be deemed to be disputed.

Within 5 business days of receipt of the final certificate, the Vendor must issue a tax invoice to the Purchaser for the amount stated as then payable in the final certificate.

Within 10 business days following the Purchaser's issue of a final certificate the parties must pay to each other the moneys certified as due and payable in the final certificate, as the case may be (regardless of whether the Vendor issues a tax invoice in the form stated above within time or not).

The Vendor agrees to accept payment by the Purchaser of the amount specified in the final certificate and release by the Purchaser of any retention moneys in accordance with the final certificate as full and final payment to the Vendor of all amounts due and payable at the time of the issue of the final payment claim or in the future in connection with this agreement and the Works or any other works executed by the Vendor and/or its subcontractors and suppliers on or about the Site of the Works. In consideration of such payment, the Vendor waives, releases and forever discharges the Principal from all or any claims, actions, proceedings, demands and the like which the Vendor may have at the time of the issue of the final payment claim or in the future whether arising under or in connection with this agreement or in any way connected with the execution of the Works or for the work performed or materials supplied at the Site.



18. LIQUIDATED DAMAGES

If the Vendor does not reach Practical Completion of the Works by the Date for Practical Completion, the Vendor shall be indebted to the Purchaser for liquidated damages at the rate set out at Item 12 of the Particulars for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion, termination of this agreement or the Purchaser taking the whole or part of the Work out of the hands of the Contractor.

The parties agree that the liquidated damages provided for in this clause are fair, reasonable and genuine pre-estimates of the loss and damage which the Purchaser is likely to suffer and incur if Practical Completion is not reached by the Date for Practical Completion and does not constitute a penalty.

The Vendor agrees that it will not commence any proceedings that any of the liquidated damages provided for in this clause are a penalty or that the obligation to pay such liquidated damages is void or unenforceable (whether in whole or in part).

19. RIGHT TO SET OFF

The Purchaser may deduct from moneys due to the Vendor any money due from or payable by the Vendor to the Purchaser (including liquidated damages under clause 18) under this agreement or otherwise and if those moneys are insufficient, the Purchaser may, have recourse to retention moneys retained under clause 9 (if applicable).

The Purchaser may elect to set off and deduct from moneys due to the Vendor, any other moneys due and owing by the Vendor to the Purchaser under other contracts or agreements not in connection with the subject matter of this agreement.

The Purchaser's entitlement to set off or have recourse to retention moneys (if applicable) will not be affected by:

- (a) whether the Works have reached Practical Completion or not; nor
- (b) the existence of a dispute regarding the Purchaser's right to set off or have recourse to or the amount which the Principal intends to set off or have recourse to.

20. DEFECTS

As soon as practicable after the Purchaser becomes aware of any work done (including material provided) by the Vendor which does not comply with the terms and conditions in this agreement, it shall give the Vendor written details thereof. The Vendor shall, at his own expense, obtain all licenses and permits, labour supervision and equipment to make good, remove or demolish and replace or reconstruct the defective materials or work.

If the Vendor fails to rectify the defective materials or work, the Purchaser shall, by written notice to the Vendor, take out of the Vendor's hands the whole or part of the defective work or materials which need to be rectified and engage a third party to complete the work taken out. The Vendor must pay to the Purchaser, the costs of completing the work taken out.

21. DEFECTS LIABILITY PERIOD

The Defects Liability Period shall commence at 4:00pm on the Date of Practical Completion and continue for a duration of the months stated in Item 13 of the Particulars. During the Defects Liability Period, the Vendor shall carry out the rectification of any defects identified by the Purchaser at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

22. INDUSTRIAL RELATIONS

The Vendor shall be fully responsible for all matters concerning its labour force and shall not claim nor be entitled to claim any compensation from the Purchaser nor any adjustment to this agreement for any cost or loss of time arising from any cause which is associated with or which arises from the provision of labour for the Works or from industrial relations connected with or arising on the site.

The Vendor shall indemnify the Purchaser from and against any cost or increased cost arising from any cause which is associated with or which arises from the provision of labour for the Works or from industrial relations connected with or arising on the site.

The Vendor shall immediately notify and provide full details to the Purchaser if industrial action or any other form of industrial dispute is threatened or occurs, and keep the Purchaser fully informed of all matters including any proceedings, negotiations or dealings regarding the industrial action or any other form of industrial dispute.

23. WORK HEALTH & SAFETY

The Vendor shall:

- (a) ensure, so far as is practicable, that the conditions of the premises on which work is to be performed is safe and without risk to health for its employees, Vendors and agents and members of the public;
- (b) at all times identify and exercise all necessary precautions for the safety and health of all persons including its employees, Vendors and agents who may be affected directly or indirectly by or as a result of the Works;
- (c) comply with all statutory requirements in relation to occupational safety and health, including but not limited to the Occupational Safety and Health Act 1984 (WA) and regulations made under that Act.



24. EXCLUSION OF PART 1F OF CIVIL LIABILITY ACT 2002

The operation of Part 1F of the Civil Liability Act 2002 (WA) shall be excluded in relation to all and any rights, obligations and liabilities under these terms and conditions whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

Without limiting the generality of the paragraph directly above, the rights, obligations and liabilities of the parties (including those relating to proportionate liability) shall be as specified in these terms and conditions and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort (including negligence), in equity, under statute or otherwise at law.

25. DISPUTE RESOLUTION

If a dispute between the Purchaser and Vendor arises out of or in connection with this agreement, then either party shall give to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

Unless the dispute has been settled within 5 business days after the notice, either party must refer the dispute to mediation. The mediator shall be appointed by Resolution Institute failing agreement by the parties. The mediation shall be conducted in accordance with Resolution Institute's 2016 Edition of the Mediation Rules. The parties must comply with the directions of the mediator for the conduct of the mediation and share the costs of the mediation equally.

If the parties are unable to resolve the dispute by mediation, only then may either party issue proceedings to have the dispute determined in a court of competent jurisdiction. The parties agree to irrevocably submit themselves to the exclusive jurisdiction of the courts of Western Australia.

Nothing in this clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.



Annexure Part A to the Subcontract Agreement Terms & Conditions

Deed of Novation
(Subclause 5A(b)(i))

This Deed made the _____ day of _____ 20_____

Between _____ (“Continuing Party”)
of _____ ACN: _____
and _____ (“the Outgoing Party”)
of _____ ACN: _____
and _____ (“the Incoming Party”)
of _____ ACN: _____

witnesses that—

1. Upon receipt by the Continuing Party of all moneys owing under the prior secondary contract—
 - 1.1 the Incoming Party shall punctually perform the obligations of the Outgoing Party under the prior contract prescribed in the schedule hereto as far as they are not performed. The Incoming Party acknowledges itself bound by the provisions of the prior contract as if the Incoming Party had been named as the Outgoing Party in the prior contract;
 - 1.2 the Continuing Party shall punctually perform like obligations and be bound to the Incoming Party as if the provisions of the prior contract were incorporated herein; and
 - 1.3 the Outgoing Party and the Continuing Party shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The Outgoing Party and the Continuing Party each warrant to the Incoming Party that the Works, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Purchaser and the Vendor in accordance with the law for the time being in force in the State or Territory in which the Works are being carried out.

Schedule

Documents: _____



In witness whereof the parties have executed this Deed of Novation by affixing the seals.

THE COMMON SEAL of the Continuing Party (Purchaser)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of the Outgoing Party (Vendor)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)

THE COMMON SEAL of the Incoming Party (supplier)
was affixed to this document in the presence of:

Secretary/Director

Name (please print)

Director

Name (please print)



Annexure Part B to the Subcontract Agreement Terms & Conditions

Personal Deed of Guarantee and Indemnity

(Clause 15A)

This Deed made the _____ day of _____ 20_____

Between the person/s specified in the Schedule _____ (“Guarantor”) of _____

and Urbane Projects Pty Ltd (ABN 78 009 438 662) _____ (“Purchaser”) of 32A McCoy Street, Melville WA 6156.

Recitals

- A. The Vendor and the Purchaser are parties to a Subcontract Agreement.
- B. As a condition of the Purchaser entering into the Subcontract Agreement with the Vendor, the Purchaser has requested that the Guarantor give this Guarantee and Indemnity.

Agreement

1. Definitions and Interpretation

- 1.1 “Guarantor” means:
 - (a) If the Vendor is an individual, that individual and party to this Guarantee and Indemnity so described above and that party’s personal representatives, transferees and assigns;
 - (b) If the Vendor is an entity, the Director of the Vendor and party to this Guarantee and Indemnity so described above and that party’s personal representatives, transferees and assigns; and
 - (c) If there is more than one person described as so described above and that party’s personal representatives, transferees and assigns.
- 1.2 “person” includes a corporation.
- 1.3 “Primary Instrument” means the Subcontract Agreement entered into (or to be entered into) contemporaneously with this Deed between the Vendor and the Purchaser in respect of the supply of merchandise (as described in the Subcontract Agreement) and/ or performance of the Works (as described in the Subcontract Agreement).
- 1.4 “Purchaser” means the party named as the ‘Purchaser’ under the Subcontract Agreement and the party to this Guarantee and Indemnity so described above and that party’s personal representatives (or, in the case of a corporate party, its successors), transferees and assigns.
- 1.5 “State” means the State of Western Australia.
- 1.6 “Vendor” means the party named as the ‘Vendor’ under the Subcontract Agreement.
- 1.7 A word importing:
 - (a) the singular number includes the plural;
 - (b) the plural number includes the singular; and
 - (c) any gender includes every other gender.
- 1.8 A reference to this Guarantee and Indemnity includes a reference to any schedule to this Guarantee and Indemnity and a schedule, clause or paragraph refers to a schedule, clause or paragraph of this Guarantee and Indemnity.
- 1.9 A reference to an Act, Law, Regulation or By-law includes any amendment or re-enactment of it that is for the time being in force.
- 1.10 A reference to “writing” or “written” includes any such communication sent electronically.
- 1.11 “Including” and similar expressions are not words of limitation.

2. Guarantee and Indemnity

2.1 Guarantee

In consideration of the transactions secured by this Guarantee and Indemnity, the Guarantor guarantees to the Purchaser:

- (a) the due and punctual payment by the Vendor of all moneys payable under the Primary Instrument; and
- (b) the due and punctual performance and observance of every obligation imposed on the Vendor under the terms of the
Primary Instrument
("Guaranteed Obligation").

2.2 Indemnity

(a) As a separate and severable liability, the Guarantor indemnifies the Purchaser, and agrees to keep the Purchaser indemnified, against any loss, damage, cost, claim, demand or liability or expenses suffered or incurred by the Purchaser arising out of:

- (i) a failure by the Vendor to observe or perform a Guaranteed Obligation whether actual or prospective;
- (ii) a Guaranteed Obligation being ineffective for any reason (whether or not the Purchaser knew or ought to have known of that reason) including:
 - (iii) a legal limitation, disability or incapacity of, or a lack or improper exercise of a power or authority in relation to, the Vendor;
 - (iv) the Vendor making an arrangement, assignment or composition for the benefit of its creditors or an order made or resolution effectively passed for its winding up or going into liquidation or a receiver, receiver and manager, administrator or provisional liquidator is appointed to the Vendor; or
 - (v) a Guaranteed Obligation being or becoming illegal, invalid, void, voidable or unenforceable.

(b) Any moneys payable by the Guarantor under this Guarantee and Indemnity are due and payable by the Guarantor to the Purchaser on demand without deduction or set off.

2.3 Continuing Security

Each of the guarantees and indemnities in this clause 2 shall be a continuing guarantee and indemnity and accordingly:

- (a) each shall constitute a principal obligation of the Guarantor to the Purchaser and shall not be affected by any claim or demand which the Vendor may at any time assert against the Purchaser on any account whatsoever; and
- (b) neither shall be discharged or released by any payment made by the Vendor or the Guarantor which is thereafter avoided by statute as a preference of for any other reason whatsoever.

2.4 Rights and Obligations of Guarantor

(a) The Purchaser shall not be required to give any notice to the Guarantor of a default by the Vendor nor to give any notice to or obtain any consent from the Guarantor before any variation is made to the terms of this Deed, the Primary Instrument or of any transaction which is subject to each of the guarantees and indemnities in this clause 2.

(b) The Guarantor waives:

- (i) any limitation on the liability of any of them which, but for this waiver, would arise by reason of the status of any of them as a surety;
- (ii) all rights of contribution, marshalling, consolidation and subrogation which the Guarantor would otherwise be entitled to assert; and
- (iii) all other rights which are inconsistent with the provisions of the guarantees and indemnities in this clause 2.



3. General

3.1 Joint and several liability

If more than one person is named in this Guarantee and Indemnity as Guarantor, this Guarantee and Indemnity shall bind every person who has signed this instrument as guarantor jointly and severally, and each of those signatories shall be bound by this Guarantee and Indemnity notwithstanding that any other person who is named herein as Guarantor may never sign this instrument.

3.2 Notices and Demands

(a) Any demand, notice, certificate, consent or other communication may be given or made under this Guarantee and Indemnity in writing by the Purchaser or by any other person authorised to do so on the Purchaser’s behalf by pre-paid mail or hand delivery and may be addressed or delivered to the party to receive it at the address shown in this Guarantee and Indemnity or later notified to the Purchaser.

(b) Any instrument sent or communication made in accordance with clause 3.2(a) will be deemed to have been effectively received:

(i) if hand delivered, on the day of its delivery; or

(ii) if sent by pre-paid mail, on the second day after the day of its posting (or, if sent to an address outside Australia, on the date when it could be expected to have been received in the ordinary course of airmail post).

3.3 Severance

(a) If any provision of this Guarantee and Indemnity:

(i) is or becomes void, voidable, illegal or unenforceable in its terms;

(ii) would not be void, voidable, illegal or unenforceable if it were read down; and

(iii) is capable of being read down,

then that provision will be read down accordingly.

(b) If notwithstanding sub-clause (a), a provision of this Guarantee and Indemnity is still void, voidable, illegal or unenforceable:

(i) if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and

(ii) otherwise, the whole provision is severed, and the rest of this Guarantee and Indemnity will be of full force and effect.

3.4 Governing Law and Jurisdiction

This Guarantee and Indemnity will be governed by, take effect and be construed in accordance with the laws in force in the State and the parties submit to the jurisdiction of the Courts of the State.

3.5 Costs

All solicitors’ costs of the instructions for and preparation of this Guarantee and Indemnity must be paid by the Guarantor.

Executed by the Guarantor as a Deed

Signed by

In the presence of:



Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

