

1. Definitions and Agreement

- 1.1 In this Contract, unless the context requires otherwise:
"us" and **"we"** means the SRG Global entity submitting the Quote or our related company performing the work.
"you" means the party engaging us as a contractor (or subcontractor) pursuant to these terms and conditions.
"Contract Sum" has the meaning in clause 6.1.
"Supply" means the supply of works, goods and/or services as covered by our Quote.
"Site" means the address where the Supply is to be carried out or delivered, as the case may be.
"Quote" means our written response to your request for tender / price and any ancillary documents we supplied to you.

- 1.2 We agree to provide the Supply as specified in the Quote, and you agree to purchase those works, goods and/or services on these terms and conditions.
- 1.3 Upon acceptance of the offer contained in our Quote, by way of you signing the Quote, placing a purchase order or otherwise, these enclosed terms and conditions are deemed accepted.
- 1.4 These terms and conditions will govern the Supply and will remain in force until the parties negotiate, agree and execute another form of agreement (for example, a subcontract) to replace these terms and conditions.
- 1.5 If the Supply is in connection with a head contract, you acknowledge that the head contract conditions (if any) have not been considered by us and do not govern the Supply.
- 1.6 Together the following documents constitute the "Contract" between us and you, and irrespective of any other clause to the contrary, in the event there is any ambiguity or conflict the order of precedence shall be:
 (a) the Supplemental Conditions contained in the Addendum (if any);
 (b) these Terms and Conditions;
 (c) our Quote;
 (d) the Australian Standard contract stated in the Addendum (if any);
 (e) the request for tender and other ancillary documents; and
 (f) the terms and conditions attached to your purchase order (if any).
 Where a discrepancy in the drawings or documents exists, the structural/or "for construction drawings" shall take precedence over all others unless otherwise agreed. Without limiting the order of precedence set out above, any conditions within any Contract document that seek to amend the provisions of this clause 1 or clauses 3.4, 7.4 and 10 of these terms and conditions shall be void and of no effect.

2. Scope

- 2.1 We will perform the Supply in accordance with this Contract, and all applicable laws and standards.
- 2.2 We warrant to you that the Supply will be:
 (a) performed in a good and workmanlike manner;
 (b) performed in accordance with the legislation, regulations, requirements of any authority in the State or Territory relevant to the provision of the Supply;
 (c) performed otherwise in accordance with this Contract; and
 (d) performed so that the Supply and all materials, equipment and goods incorporated into the Supply, are new, of good quality and free of defects.

3. Performance and Time for Performance

- 3.1 We will commence and complete the Supply on the dates stated in our Quote, or, in the absence of such details within our Quote, on the dates stated elsewhere in the Contract documents listed in clause 1.6. If no dates are stated in the Contract documents, the commencement and completion dates will be as reasonably inferred by the Contract documents and subject to the order of precedence in clause 1.6.
- 3.2 The commencement or completion date(s) will be adjusted in the event of any delay to the Supply caused by an act, default or omission of you or your consultants, agents or other contractors or any other event outside our reasonable control, including but not limited to inclement weather, events of force majeure, national and state wide industrial disputes, illness, disease or pandemic, delays or directions by authorities and changes in legislative requirements.
- 3.3 Any costs incurred by us due to any delay to the Supply caused by you or any other event outside our reasonable control, including the costs to mitigate any delay, will be priced as a variation and added to the Contract Sum.
- 3.4 For the avoidance of doubt, the effects of any adverse conditions on the Site or its near surrounds, including artificial things, weather conditions and the effects of weather conditions, will be a deemed variation entitling us to an extension of time in accordance with clause 3.2 and payment in accordance with clause 13.

4. Personnel/Labour

- 4.1 We will:
 (a) engage and, pay all costs and expenses for, personnel required by us to provide the Supply;
 (b) ensure that our personnel have the skill, ability, experience and equipment to perform the Supply, and that all personnel are appropriately trained, licensed, accredited and experienced and supervised by a person who has the requisite experience and qualifications to undertake that supervision; and
 (c) comply with all applicable laws, industrial awards and workplace agreements relating to the engagement of our personnel.
- 4.2 If necessary for the carrying out of the Supply and reasonably directed by you, we will ensure that our personnel participate in any induction or training at the Site. If the behaviour of any of our personnel results in or contributes to any non-compliance with this Contract or is not otherwise acceptable to you, you may give us reasonable written notice to remove them from the Site.
- 4.3 Unless our Quote states otherwise, we have only allowed for normal working hours between Monday to Friday, but excluding RDO's, Public holidays, standard industry holidays and non-workdays. The terms and conditions of our Industrial or Enterprise Agreement (IA/EA) will override any site-specific conditions. A copy of our IA/EA is available upon request. Unless specifically stated otherwise, all the rates quoted are based on the above working hours and are exclusive of living away from home allowance and travel outside the applicable metropolitan area.

5. Governing Acts and Regulations

- 5.1 Where any part of the Supply is performed on the Site:
 (a) you acknowledge that you are the person conducting a business or undertaking (PCBU) in accordance with the WHS legislation in the jurisdiction of the Site or, where PCBU is not defined by the relevant State WHS legislation, that you are responsible for the safe management of the Site and you must comply, and must ensure that your employees, contractors or agents comply with, and do not place us in breach of, any legislation applicable to the Site, including occupational health and safety, environment protection, dangerous goods, building safety and electrical safety and any regulations made under such legislation; and

- (b) we must comply, and must ensure that our employees, contractors or agents comply with, and do not place you in breach of, any legislation applicable to the Site, including occupational health and safety, environment protection, dangerous goods, building safety and electrical safety and any regulations made under such legislation and any reasonable directions from you or your subcontractors in relation to occupational health and safety.
- 5.2 You agree to indemnify and hold us harmless for any breach by you of any legislation, regulation or requirements of any authority governing any part of our works under (including the performance or execution of) the Supply referred to in clause 5.1(a).

6. Price

- 6.1 The parties agree that Contract Sum means, if our Quote indicates:
 (a) a lump sum price, that lump sum price;
 (b) that rates will apply, the amount ascertained by multiplying the measured quantity of each section or item of Supply actually carried out under the Contract by the corresponding rate for that section or item; or
 (c) that both a lump sum and rates will apply, the aggregate of the sums referred to in subclauses (a) and (b) above, including any provisional sums but excluding any additions or deductions which may be required to be made under this Contract.
- 6.2 You agree to pay us the Contract Sum for the Supply as set out in our Quote or otherwise calculated in accordance with the provisions of this Contract.
- 6.3 You also agree to pay us for any additions or variations made pursuant to this Contract.
- 6.4 Our quoted price/rates are fixed for the specified or reasonably implied duration of the Supply as set out in our Quote. Thereafter, our price/rates may be subject to rise and fall in proportion to the additional costs for plant, materials and/or labour incurred by us.
- 6.5 Where a schedule of quantities forms part of this Contract, with quantities provided by you or on your behalf, we have not verified the accuracy of the quantities provided unless otherwise stated in our Quote. Where actual quantities of an item are greater or less than expressed in the schedule of quantities, the upper and lower quantities limits shall be + 5% of the quantities expressed. Where this lower limit is exceeded, we reserve the right to increase the values within the bill of quantities at this time.
- 6.6 We will be entitled to payment for permanent materials, fabricated or in raw condition, held on or off site, subject to proper documentation and insurance. We will also be entitled to payment for unfixed materials and work done off site to the end of the month concerned.

7. Payment

- 7.1 Unless we agree otherwise in writing, payment claims will be made monthly.
- 7.2 You will have 10 business days to assess any payment claim or variation claim provided by us under this Contract, otherwise you will be deemed to have accepted the entire claim.
- 7.3 You will pay us the amount of any payment claim the earlier of 30 days from the date of the payment claim, 20 days after receiving a tax invoice from us or, if applicable, a shorter timeframe as specified under any legislative requirement. If you do not pay us, interest will apply at 15% per annum pro-rata for every day your payment is late.
- 7.4 The Contract Sum excludes Goods and Services Tax (GST), and any other duty, tax or charge that is payable in respect of the Supply. If GST is payable for the Supply, you will pay us the amount due for GST in addition to the Contract Sum.
- 7.5 You have no right to set off or back charge and are not permitted to make any deduction for damages or losses or other claims from interim payments.
- 7.6 This clause 7 survives termination or expiry of the Contract.

8. Supply of Goods

- 8.1 You may inspect any goods that are part of the Supply after delivery and (acting reasonably) reject any goods that do not comply with the requirements of this Contract.
- 8.2 If applicable, goods delivered will be accompanied by any necessary instructions and technical documentation, including operating and service manuals.
- 8.3 If any goods benefit from any third party guarantee or warranty, we will assign or transfer any benefit to you or if it cannot be assigned or transferred, we will hold the benefit of the guarantee or warranty as trustee for you and on your behalf.
- 8.4 We shall not provide any guarantee or warranty beyond that provided by the original manufacturer or fabricator of the goods.

9. Title and Risk

- 9.1 The legal title in any goods, designs or other materials that are part of the Supply passes to you on payment of the Contract Sum.
- 9.2 Risk in the goods passes to you when you have accepted the goods at the delivery point.

10. Liability and Indemnity

- 10.1 You agree to indemnify and hold us harmless against any and all liability arising from:
 (a) losses, including loss of use of, or damage to any property owned by us, or to which we are responsible for, including property held in trust;
 (b) claims for personal injury, death, loss of (including resultant loss) or damage to any other property not owned or controlled by us;
 (c) a breach by you of this Contract; and
 (d) any claim for loss, damages or expenses suffered or incurred by us, arising out of your acts, defaults or omissions.
- 10.2 Your obligation to indemnify us shall be reduced proportionately to the extent our negligence contributed to an indemnity event under clause 10.1.
- 10.3 Liquidated damages will only be applicable if we have agreed in writing that the rate is acceptable, and any liquidated damages will be your sole remedy for any delay in connection with this Contract. In any event, liquidated damages will be limited to 5% of the Contract Sum in the aggregate.
- 10.4 Notwithstanding any other provision of this Contract, our liability in connection with, arising out of or related to the Supply performed under this Contract, whether in contract, tort (including negligence), under statute (to the extent that it is possible to exclude such liability), pursuant to an indemnity, or on any other basis in law, in equity or otherwise, and whether arising in connection with one or more events, is limited to 50% of the Contract Sum.
- 10.5 Notwithstanding any other provision of this Contract, we are not liable for any of the following types of loss, however arising:
 (a) any financial or economic loss, including loss of profit, loss of revenue, loss of use, loss of production, loss of agreement or contract, loss of goodwill or loss of business opportunity;
 (b) any new or increased costs and expenses, including financing, capital or operating costs;

- (c) any special, incidental, indirect or consequential loss; and
 (d) any loss resulting from any liability of the other party to any third party whether arising under contract or otherwise.
- 10.6 Nothing under this clause 10 shall reduce or waive our right to be indemnified by you at law or other such relief made available under this Contract.
- 10.7 This clause 10 survives termination or expiry of this Contract.
- 11. Insurance**
- 11.1 Prior to carrying out the Supply we will take out and maintain with reputable insurers and on terms covering the scope of the Supply:
- (a) Public Liability Insurance, to a maximum of A\$20 million per occurrence; and
 (b) Workers Compensation, in accordance with the relevant State or Territory laws.
 (c) Professional Indemnity Insurance, where applicable, to A\$5 million per claim and in the aggregate.
- 11.2 Additional insurance, if required, will result in an additional charge to the quoted price.
- 11.3 Our Public Liability insurance will note your interests as a principal for any vicarious liability you incur from our works under this Contract.
- 11.4 The policies referred to in this clause 11 will be maintained for the duration of the Supply and, if applicable, any defects liability period. Where specifically detailed in our Quote, we shall maintain our professional indemnity, or continuously renew, for a period of six (6) years post expiry of the defect's liability period.
- 11.5 You are to arrange execution and extension of a (composite) contractors works insurance policy and other insurance policies to cover all construction works, obligations and liabilities until completion of the defects liability period with a cross liability, non-imputation and waiver of subrogation clause to ensure we are fully protected against all loss for our (and your) respective rights and interests as a named insured.
- 12. Defects Rectification**
- 12.1 Upon your reasonable request, we will correct any defect in the Supply, at any reasonable time up to the completion of the Supply or, if applicable, expiry of the defects liability period (which shall not exceed 12 months from completion of our Supply), at our cost.
- 12.2 If we do not correct the defect within a reasonable time following written notice, then you may:
- (a) correct the defect and we will be liable to reimburse you for the actual costs you reasonably and necessarily incurred; or
 (b) reject the part of the Supply containing the defect which has not been corrected and reduce the price by the amount reflecting the reasonable portion of the Supply rejected as a result of the defect.
- 13. Variations**
- 13.1 You may request a variation to the Supply in writing and we will undertake the variation when agreed in writing.
- 13.2 Notwithstanding clause 13.1, if a variation has not been confirmed in writing due to your acts or omissions and we have proceeded with the variation, you are bound by this variation and liable to pay the relevant variation sum and extend the date of completion to accommodate any variation.
- 13.3 The variation will be valued as agreed between the parties, or if we cannot agree, at reasonable market rates or prices as determined by us.
- 13.4 Unless otherwise agreed, we will be entitled to claim a 15% profit margin on all variations.
- 14. Security**
- 14.1 No allowance has been made for provision of security, however, if required, we will increase our quoted rates/price to allow for same. Once allowance has been made, we will provide, upon request, security in the form of an insurance bond to the total value of no more than 2.5% of the Contract Sum. Such security shall contain an expiry date not more than 12 months from the specified or reasonably implied date of completion and be released on completion of the Supply.
- 15. QSE Documentation**
- 15.1 We will provide quality, safety and environmental documentation reasonably required to be provided by us. The provision of quality, safety or environmental documentation is however in no way to be taken to be a requirement to be met by us as a precondition to the acceptance or payment of payment claims or acceptance that completion has been achieved.
- 16. Personal Property Security Act**
- 16.1 You consent for us to register any one or more security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth) ('PPSA')) ('Security Interest') under the PPSA and you undertake to promptly do all things reasonably required by us to enable us to do so. You must promptly do anything required by us to ensure that any Security Interest granted to us is a perfected Security Interest and has priority over all other Security Interests in any item of plant and equipment (whether fixed or unfixed) and/or any works.
- 16.2 You agree not to cause (directly or indirectly) the registration of a Security Interest, or the discharge of any registration, in respect of any item of plant or equipment of (whether fixed or unfixed) or any work the subject of the Supply under this Contract or to make any Amendment Demand (as that term is defined in the PPSA) without our prior written consent and payment by you to us in respect of that plant, equipment or work.
- 17. Our Equipment & Construction Plant**
- 17.1 You cannot under any circumstances use or hold a lien over any of our materials, equipment and construction plant without our prior express written consent for each piece of equipment, construction plant or material.
- 18. Your Responsibilities**
- 18.1 Unless otherwise stated in our offer, you will provide a safe working Site that meets statutory requirements and the following services and facilities free of charge as and when required:
- (a) access and scaffolding in compliance with relevant Site safety standards;
 (b) fully maintained Site sanitary and ablution facilities including messing and change sheds that meet statutory standards to accommodate our personnel on Site;
 (c) adequate Site security;
 (d) provision for the removal of rubbish at locations and times adequate for the execution of the Supply;
 (e) provision and payment of all permits, approvals, taxes, duties or the like unless specifically included in this Contract; and
 (f) traffic management.
- 19. Termination and Suspension**
- 19.1 Either party may terminate this Contract where the other party:
- (a) has breached a material term of this Contract and has not remedied the breach within 14 days of written notice to do so; or
 (b) is made bankrupt, becomes insolvent or an external administrator, liquidator or receiver is appointed.
- 19.2 Termination of this Contract will not affect any right, power, remedy, obligation, duty or liability of any party under this Contract which has accrued at the date of termination.
- 19.3 Any clause capable of continuing to apply after the Supply is completed or terminated for any reason shall do so.
- 19.4 We may suspend the whole of the Supply or any part of the Supply:
- (a) if you fail to make payment of amounts due and payable to us by the due date;
 (b) pursuant to any right under a legislative requirement (relating to security of payment or work health and safety); or
 (c) if you fail to remedy a material breach of this Contract by the date and time required by clause 19.1(a).
- 20. Dispute Resolution**
- 20.1 If a dispute arises between the parties in connection with the subject matter of this Contract, then either party will give the other written notice adequately identifying and providing details of the dispute.
- 20.2 Within 5 business days after receiving notice of the dispute, the parties will confer to resolve the dispute. If the dispute is not resolved within 10 business days of service of the notice of dispute, the dispute may be referred to litigation or other dispute resolution method agreed by the parties in writing.
- 20.3 Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under this Contract.
- 21. General**
- 21.1 Nothing in this Contract creates or implies an obligation of exclusivity on either party.
- 21.2 All references to "you" in this Contract includes your employees, contractors, consultants or agents engaging us for the Supply or attending the Site.
- 21.3 You must maintain strict confidentiality about this Contract and may only use and disclose to employees who have a need to know, any documents, know-how and confidential information of or about us of which you become aware or generate in connection with us performing the Supply.
- 21.4 This Contract does not create a relationship of employment, agency or partnership between the parties.
- 21.5 This Contract constitutes the entire agreement between us and you in relation to the Supply. Any assumptions, conditions or qualifications in your request for tender/quote, any communication between the parties or other terms and conditions provided by you at any time do not form part of this Contract except to the extent expressly set out in this Contract (and not merely by incorporation by reference). For the avoidance of doubt, we will not be liable for any terms, condition, obligation or documentation of any head or principal agreement except to the extent expressly set out in this Contract.
- 21.6 We may, but you must not (without our prior written consent), assign, novate or otherwise transfer any rights and obligations under the Contract.
- 21.7 This Contract may not be amended, supplemented or varied other than in writing signed by each party.
- 21.8 Any notice required to be given under this Contract must be in writing and addressed to the designated contact in the Contract documents.
- 21.9 No waiver by us of any breach of this Contract by you will be considered as a waiver of any subsequent breach of the same or any other provision.
- 21.10 If any provision of this Contract is held invalid, unenforceable or illegal for any reason, the validity of all other provisions of this Contract are not affected.
- 21.11 Clause headings shall not form part of, and shall not be used in the interpretation of, this Contract.
- 21.12 A reference to a statute, ordinance, code or other legislation includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 21.13 You are required to obtain and comply with the SRG Global Code of Conduct, available at <https://www.srgglobal.com.au/wp-content/uploads/2020/05/Code-of-Conduct.pdf>
- 21.14 This Contract is governed by and to be construed in accordance with the laws of the State or Territory where the Supply is to be made.
- 21.15 Where we 'may' do or not do something, or otherwise have a discretion, that discretion is absolute. We are not required to exercise any discretion for your benefit, nor having regard to you, and the discretion given may include conditions.