



# Works Order Terms and Conditions

For the engagement of Ausco's Subcontractors

## 1. Definitions

Unless the context requires otherwise or as defined in clause 27 of these terms and conditions, capitalised terms in this Contract have the meaning given to them in the Works Order.

## 2. Formation of Contract

Every Works Order Ausco issues is an offer to engage the Subcontractor for the performance of the Works subject to the Works Order, these Works Order Terms and Conditions and any Subcontractor Documents (collectively the **Contract**). Where the Subcontractor accepts a Works Order, either by signing or by performance, a contract is formed between the parties on that basis.

Any terms and conditions in the Subcontractor's quote, offer document, order acceptance or any other document supplied by the Subcontractor are excluded, except where the Contract is replaced by a formal agreement for the Subcontractor's performance of the Works which is signed by both parties.

## 3. Performance

The Subcontractor shall complete the Works in compliance with the Contract.

The Works are to be started on the Start Date, unless instructed by Ausco, and diligently carried out and completed by the Date for Completion.

The Subcontractor must complete the Works:

- (a) in the manner and to the standard to be expected of a competent subcontractor;
- (b) using materials which comply with the Contract and which are of good quality, fit for the purpose and which are new, unless the Contract expressly provides otherwise;
- (c) so that any goods provided by it as part of the Works will have manufacturers warranties that expire no earlier than the end of the Defects Liability Period or such other longer period nominated by Ausco;
- (d) following Ausco's reasonable directions; and
- (e) in compliance with all applicable laws and regulations.

The Subcontractor must, unless the Contract expressly says otherwise, supply at its cost and expense, everything required to complete the Works. The Subcontractor shall not be paid any travel expenses or allowances of any type unless expressly stated in the Works Order.

The Subcontractor warrants that it holds and will keep all qualifications, licences and permits required by law and necessary to do the Works.

Ausco will notify the Subcontractor of the working hours and working days on the Site before the Start Date. Ausco must approve any variation to working hours or days.

The Subcontractor acknowledges and agrees that its responsible for the wages, salaries, paid public holidays, annual leave, sick leave, superannuation, PAYE and other taxes, workers' compensation and

other insurances of its employees and all other obligations arising out of or in connection with the activities of the Subcontractor.

The Subcontractor is responsible for the care of the Works until the Date of Completion and will promptly make good any loss or damage to the Works, Ausco's property or any third party property caused by any act or omission of the Subcontractor or its agents, employees and contractors.

## 4. Head Contract

If the terms of the Head Contract are inconsistent with the terms of the Contract about the Works, then the Subcontractor must follow the terms of the Head Contract.

Without limiting any other obligation of the Subcontractor under the Contract, the Subcontractor must do everything required to support Ausco in meeting its obligations under the Head Contract and not do anything or allow anything to be done, that would cause Ausco to breach the Head Contract.

## 5. Site

Ausco will grant the Subcontractor a non-exclusive licence to enter the Site for the sole purpose of carrying out the Works.

The Subcontractor warrants it has inspected and examined the Site and that the Contract Price is sufficient to allow it to complete the Works unless an experienced and competent contractor who had inspected and examined the Site would not have detected or anticipated the condition of the Site.

While on Site, the Subcontractor and its agents, employees, and contractors, must follow:

- (a) all applicable requirements of, or otherwise connected with the Relevant Laws;
- (b) all of Ausco and the Principal's site policies and procedures; and
- (c) all directions given by Ausco or the Principal.

The Subcontractor acknowledges that Ausco or the Principal may immediately remove from the Site any person who fails, or is reasonably suspected of failing, to comply with the Relevant Laws or any direction from Ausco or the Principal.

The Subcontractor must ensure that the part of the Site on which it is carrying out work is always clean and tidy. If it is not clean and tidy, Ausco may have it cleaned and tidied by others, at the Subcontractor's sole costs and expense, which will become a debt due and owing.

## 6. Completion of the Works

More than 5 Business Days, or other period instructed by Ausco, before the date the Subcontractor anticipates Completion to occur, the Subcontractor must give Ausco written notice advising when the Works will reach Completion (**Completion Notice**).

Within 5 Business Days of receiving the Completion Notice, Ausco will give the Subcontractor a written notice saying either (**Completion Notice Response**):

- (a) Ausco agrees that the Works have been brought to satisfactory Completion at that time; or

- (b) Ausco disputes that the Works have been brought to a satisfactory Completion and detailing any further work to be carried out or further information to be provided as preconditions to Completion.

Ausco may issue a Completion Notice Response even if the Subcontractor did not provide a Completion Notice.

If the Completion Notice Response states further work or information is needed to achieve Completion, the Subcontractor must carry out such further work or provide such further information and then give Ausco a further Completion Notice.

If the Works do not reach Completion by the Date for Completion, Ausco will be entitled to liquidated damages at the Liquidated Damages Rate, for every day after the Date for Completion up to and including the Date of Completion. Notwithstanding the Liquidated Damages Rate, Ausco will be entitled to recover from the Subcontractor any damage it suffers directly arising from the Works not reaching Completion by the Date for Completion.

### 7. Variations

Before Completion, Ausco may give the Subcontractor a written direction to carry out a Variation. If so, it may provide the Subcontractor a written request for advice on the impact of the Variation on the scope of the Works, the Date for Completion and the Contract Price, if any. The Subcontractor must respond to Ausco's request in full within 3 Business Days of receiving the request.

If Ausco then directs the Subcontractor in writing to carry out a Variation, the Contract Price is adjusted by:

- (a) if Ausco and the Subcontractor have agreed on a price for the Variation, that price; or
- (b) if Ausco and the Subcontractor have not agreed on a price for the Variation, the reasonable value of the Variation, including a reasonable allowance for profit and overheads, as determined by Ausco.

The Subcontractor must not carry out a Variation unless Ausco provides the Subcontractor with a written direction to carry out the Variation and the Subcontractor will not be entitled to payment for any work completed if Ausco does not give a written direction. Except as provided in this clause 7, the Subcontractor will not be entitled to any increase in the Contract Price as a result of any Variation directed by Ausco.

### 8. Extension of Time

Within 2 Business Days after the Subcontractor becomes aware, or ought to have become aware, that the Works are being, or will be, delayed for any reason, it must give Ausco a notice (**Delay Notice**) stating:

- (a) the cause of the delay;
- (b) the length of the delay; and
- (c) the extension, in days, to the Date for Completion being claimed by the Subcontractor because of the delay.

If the Subcontractor followed this clause and provided there is no additional cause of delay that does not qualify for an extension of

time, the Subcontractor will be entitled to an extension to the Date for Completion for:

- (a) a delay caused by any act, default or omission of Ausco or its employees or agents; or
- (b) any reasonably foreseeable delay arising from the matters in the Delay Notice and that would be beyond the reasonable control of a competent and experienced subcontractor, other than delays arising from an act or omission of the Subcontractor or its subcontractors, suppliers or agents, industrial conditions or inclement weather.

Where more than one event causes concurrent delays, and the cause of at least one of those events, but not all, is not a caused delay listed in the sub-paragraphs (a) and (b) immediately above, then to the extent that the delays are concurrent, the Subcontractor will not be entitled to an extension of time to the Date for Completion.

Within 15 Business Days of receiving a Delay Notice, Ausco will issue the Subcontractor a written notice, either:

- (a) granting the full extension to the Date for Completion requested by the Subcontractor;
- (b) stating the amount of time that Ausco is granting as an extension of time to the Date for Completion and the reasons why Ausco is not granting the full extent of the extension claimed by the Subcontractor; or
- (c) completely rejecting the extension of time requested by the Subcontractor and the reasons for doing so.

Despite this clause, before Completion, Ausco may for its benefit and any reason, grant an extension to the Date for Completion regardless of whether the Subcontractor has made any claim under this clause.

### 9. Suspension

The Subcontractor acknowledges and agrees that Ausco may direct the Subcontractor to suspend carrying out the whole or part of the Works for any reason, at no cost or expense to Ausco. The Subcontractor must recommence the Works as soon as practical after notice to do so if provided by Ausco.

### 10. Defects Liability Period

The Subcontractor must ensure that any Defects are remedied within a reasonable time of receiving Ausco's written direction to remedy the Defect and otherwise before the expiry of the Defects Liability Period, which starts on the Date of Completion.

Ausco may, at its discretion, elect to accept the Defect and the Contract Price will be adjusted by Ausco to reflect the difference in value between the Works without the Defect and the Works with the unremedied Defect.

If the Subcontractor fails to comply with a written direction given to it under this clause, Ausco may have the Defects remedied by others and will be entitled to the costs it reasonably incurred in having the Defects rectified as a debt due and owing.



In addition to exercising other rights and remedies, Ausco may set-off such debt against any monies owing by Ausco to the Subcontractor or have recourse to any security held by Ausco.

A further Defects Liability Period will apply to each remedied Defect.

This clause shall not exclude the Subcontractor from any liability otherwise arising under the Contract or at law.

### 11. Security

If specified in the Works Order, the Subcontractor must provide the Security before the Start Date. The Subcontractor must provide the Security by way of two bank guarantees each equal to 50% of the value of the Security, on the Start Date.

One bank guarantee will be released to the Subcontractor with 10 Business Days of the Date of Completion, subject to the completion of the works to rectify any defects notified to the Subcontractor before that date, and the balance will be released on within 10 Business Days of the end of the Defects Liability Period.

### 12. Payment

Subject the terms of the Contract and the Subcontractor meeting its obligations under the Contract, Ausco will pay the Subcontractor all amounts owing under the Contract plus any applicable GST.

The Subcontractor is to claim payment on a progressive basis by submitting written progress claims on the 25th day of the month (a Reference Date) in which the Works first started and after that on the 25th day of each month where Works are carried out. An early progress claim shall be deemed to have been made on the Reference Date for making that progress claim.

Each payment claim must be compliant with GST legislation, be given in writing to Ausco and must include:

- (a) details of the value of work done up to and including the Reference Date;
- (b) details of other monies then due to the Subcontractor under the Contract (if any);
- (c) any other information reasonably requested by Ausco; and
- (d) if requested by Ausco, a signed statutory declaration stating that all of the Subcontractor's suppliers and employees have been paid all amounts due in respect of the Works to the date of the progress claim (including all superannuation and statutory payments) and if requested, satisfactory evidence of such payments.

Provided the Subcontractor's payment claim meets the above conditions, within 10 Business Days of receipt of the payment claim, Ausco will respond to the payment claim by giving the Subcontractor a payment schedule which:

- (a) identifies the payment claim to which it responds; and
- (b) states the amount of the payment, if any, that Ausco proposes to make; and
- (c) if the amount proposed is less than the amount stated in the claim – says why the amount proposed to be paid is less, including Ausco's reasons for withholding any payment.

Except where stated otherwise, each amount payable under this Contract in respect of a taxable supply is expressed as a GST inclusive amount.

Ausco will pay the Subcontractor the Contract Price progressively under the Contract and within the Payment Period or, if no period is stated, within 25 Business Days, after Ausco's receipt of a valid payment claim. Payment is on account only.

Where any amount in a payment claim is related to items not yet incorporated into the Works or not yet delivered to the Site Ausco may require Security in an amount equal to relevant claimed amount before making the payment.

### 13. Final Claim

Within 5 Business Days of the Date of Completion, the Subcontractor must give Ausco its final payment claim for the Works (**Final Claim**) for payment following clause 12.

If a Final Claim is submitted, the Subcontractor fully releases and discharges Ausco and its employees and directors from and against all claims arising out of or in connection with the Contract, other than claims which are properly included in the Final Claim.

If within 10 Business Days of the Date of Completion, the Subcontractor has not made a Final Claim, the Subcontractor fully releases and discharges Ausco and its employees and directors from and against all claims arising out of or in connection with the Contract.

### 14. Indemnity and release

The Subcontractor indemnifies Ausco and its officers and employees against any liability for personal injury or death of a person, or damage to property, arising out of, or in connection with, the Works, except to the extent that the injury, death, or damage was caused by a negligent act or omission of Ausco.

The Subcontractor releases and indemnifies Ausco against any loss (including consequential loss) or cost (including legal costs) directly or indirectly suffered or incurred by Ausco as a result of any claim by the Subcontractor's officers, employees or contractors arising out of, or in connection with, the Works.

### 15. Insurances

The Subcontractor shall effect and maintain during the performance of the Contract and, if requested, provide evidence of, each of the insurances set out in the Works Order.

### 16. Labour Hire

The Subcontractor will comply, as applicable, with the *Labour Hire Licensing Act 2017* (Qld) or the equivalent law or regulation in the Jurisdiction (**Labour Hire Law**).

If the Subcontractor provides labour-hire services under the Contract according to the Labour Hire Law, it will, before providing such services to Ausco, provide Ausco with a copy of their Labour Hire Licence and any further information reasonably requested by Ausco concerning the Subcontractor's compliance with the Labour Hire Law.

## 17. Code Compliance

Notwithstanding any other provision in this Contract, the Subcontractor:

- (a) must, always:
  - a. achieve Code compliance on the Site and in executing and carrying out the Works; and
  - b. follow the Code on all privately funded projects undertaken by Ausco at any time before Completion; and
- (b) declares that, as at the Start Date, it complies, and its contractors comply, with the Code.

The Subcontractor warrants that:

- (a) it is Code compliant;
- (b) it is not the subject of any exclusion sanction; and
- (c) it is not excluded from undertaking work funded by a state or territory government (unless the ABC Commissioner has granted Ausco approval to engage the Subcontractor).

## 18. Audit

The Subcontractor will cooperate with Ausco to the extent necessary to do any audit required by Ausco, or requested by the Principal, or otherwise required under the Head Contract in each case for any reason whatsoever

## 19. Termination

By written notice to the Subcontractor, Ausco may terminate the Contract at once:

- (a) for Ausco's convenience at any time for any reason within its sole discretion;
- (b) where the Head Contract is terminated for any reason; or
- (c) where the Subcontractor becomes or threatens to become insolvent or bankrupt or enter a compromise or arrangement with creditors or any form of external administration.

Otherwise, if the Subcontractor is in breach of the Contract, Ausco may give the Subcontractor a written notice to show cause by a nominated date.

If the Subcontractor does not show reasonable cause by the nominated date, Ausco may by further written notice the Subcontractor terminate the Contract.

If the Subcontractor receives a notice of termination it must immediately cease its performance of the Works, remove its plant and equipment from the Site, and take all available steps to mitigate any cost or expense that it or its contractors may incur or has incurred concerning its obligations under the Contract.

In the event of termination, the Subcontractor will be entitled to give Ausco a progress claim for the unpaid value of the Works carried out by the Subcontractor up to, and including, the date on which it received Ausco's written notice of termination, and the Subcontractor shall have no other entitlement or claim as a result of the termination of the Contract. A Reference Date is deemed to arise at the date of termination.

Ausco may, in its absolute discretion, complete the uncompleted parts of the Works either itself or by engaging others.

Any termination under the Contract will be without prejudice to any accrued rights.

## 20. Intellectual Property

Copyright in any plans or designs supplied by Ausco to the Subcontractor or created by Ausco belong to Ausco, and the Subcontractor must not reproduce or use any plans or designs, in whole or in part, other than to complete the Works.

The Subcontractor grants Ausco and its nominees a perpetual, irrevocable royalty-free, non-exclusive, worldwide licence to any plans, designs or other copyright material produced by the Subcontractor under the Contract.

## 21. Confidentiality

The Subcontractor, its officers, employees, or contractors must not, without Ausco's prior written consent:

- (a) disclose or make public any of Ausco's confidential information; or
- (b) make any public announcement about this Contract or the Project.

## 22. Dispute resolution

Nothing in this clause prejudices a party's rights under the law or otherwise, to seek injunctive or urgent declaratory relief.

If a dispute arises out of, or otherwise in connection with, the Contract either party may give the other party a written notice of dispute stating the details of the dispute.

Within 7 Business Days after a party receives a notice of dispute, the parties must confer at an executive level at least once to try to resolve the dispute or to agree on methods of doing so.

If the dispute has not been resolved, or the parties have not agreed on methods to resolve the dispute, within 14 Business Days after a party receives a notice of dispute, either party may start proceedings in a court of competent jurisdiction.

Notwithstanding the commencement of proceedings under this clause, the parties must continue to meet their obligations under the Contract.

## 23. Set-Off

Ausco may set-off or deduct from money due to the Subcontractor any money due or payable, or asserted by Ausco to be due and payable, from the Subcontractor to Ausco arising out of or in connection with the Contract, any other contract between Ausco and the Subcontractor or otherwise at law.

## 24. Assignment and Subcontracting

The Subcontractor must not subcontract or assign any part of the Works or Contract without Ausco's prior written approval, which Ausco may give at its discretion. The Subcontractor will remain principally liable for the performance of the Contract and the acts and omissions of any subcontractor.

Ausco may assign or novate this Contract to a third party. The Subcontractor appoints Ausco as its attorney for executing any documentation in connection with the assignment or novation which the Subcontractor has failed to sign.

### 25. Modern Slavery and Antibribery

The Subcontractor must provide any information requested by Ausco for Ausco to comply with its obligations under the Modern Slavery Law.

If the Subcontractor is aware, or becomes aware, that any activity that may be considered as modern slavery or bribery is taking place in its operations or supply chains the Subcontractor must notify Ausco immediately.

The Subcontractor must obtain similar commitments to those set out in this clause from its own subcontractors and consultants.

### 26. Miscellaneous

The Contract may only be varied with Ausco's written agreement.

The Contract together with any relevant provisions of the Head Contract that the Subcontractor must follow constitutes the entire agreement between the parties concerning its subject matter.

The parties are independent contractors. No relationship of employment, agency, partnership, or joint venture is created by the Contract.

Ausco's delay or failure to exercise a right under the Contract is not a waiver of that right or any other rights. Ausco's consent to a breach of the Contract is not a consent to any later breach.

If a term of the Contract is unenforceable for any reason, it shall be read down to the point of severance.

The Contract is governed by the law of the jurisdiction in which the Site is located (the **Jurisdiction**). The parties submit to the jurisdiction of the courts of that jurisdiction and waive any right to claim that those courts are inconvenient forums.

### 27. Definitions

**ABC Commissioner** has the meaning given to that term in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Business Day** means a day that is not a Saturday or a Sunday, or a public holiday, special holiday, or bank holiday in the location of the Site.

**Code** means the *Code for the Tendering and Performance of Building Work 2016*.

**Code compliance** means acting, in practice, solely by the Code, and **Code compliant** and **comply with the Code** have corresponding meanings.

**Completion** occurs when:

- (a) the Works are complete apart from minor Defects and minor omissions which do not prevent or unreasonably interfere with work to be carried out by Ausco in the completion of the Project; and

- (b) the Subcontractor has given to Ausco all certificates, approvals, warranties, drawings, manuals, and guarantees required by the Contract, together with those documents necessary for the reasonable and lawful use of the Works for their intended purpose.

**Date of Completion** means the date on which Completion is achieved.

**Defects** mean any part of the Works that are defective, incomplete, or not otherwise carried out per the Contract

**Environmental Law** means the *Environmental Protection Act 1994* (Qld) or the equivalent law or regulation in the Jurisdiction.

**GST** means the goods and services tax as provided for by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended or replaced from time to time and any associated legislation.

**Head Contract** is the agreement entered into between Ausco and the Principal for the Project.

**Modern Slavery Law** means any legislation (and any binding or non-binding guidelines issued by any entity under Modern Slavery Law), applicable in Australia, any State or Territory or otherwise applicable to Ausco from time to time with respect to reporting on and addressing the risks of Modern Slavery including but not limited to the *Modern Slavery Act 2018* (Cth).

**Relevant Laws** means the applicable Environmental Law and WHS Law.

**Security** means the security to be provided to Ausco by the Subcontractor as specified in the Works Order.

**Variation** means a change in the scope of the Works arising from:

- (a) an increase, decrease, addition, substitution or omission of work from the Works;
- (b) a change in the method or process for, or the sequence of, the carrying out of the Works required by Ausco;
- (c) an alteration to the specification of a material; or
- (d) changes in levels, dimensions, or the set out of the Works;

**WHS Law** means the *Work Health and Safety Act 2011* (Qld) or the equivalent law or regulation in the Jurisdiction.

**Works** means the whole of the work to be carried out and completed by the Subcontractor under the Contract, more specifically set out in the Works Order.

**Works Order** means the works order issued by Ausco to the Subcontractor for the performance of the Works.