

**1. Terms and Conditions for Purchase Orders**

1.1 The terms and conditions as contained in this document, the terms of any relevant head agreement, relevant plans and specifications and the Purchase Order together form the terms and conditions upon which a Subcontractor provides any work, goods and/or services to Stubbs Constructions and the Subcontractor, and Stubbs Constructions all agree to be bound by the terms and conditions as defined above.

1.2 The terms and conditions for Purchase Orders will be taken as accepted by the Subcontractor if the Subcontractor either advises of such agreement orally, in writing or by email to Stubbs Constructions or if the Subcontractor commences the Works as per the Purchase Order.

**2. Works**

2.1 Unless otherwise provided for in the Purchase Order the Subcontractor must carry out the works, services or goods as described in a Purchase Order (the "Works") unless the Subcontractor queries the Purchase Order within 5 business days after receiving it.

**3. Conduct Works**

3.1 The Subcontractor must carry out the Works:

- (a) in a proper and workmanlike manner personally or by the Subcontractor's employees or agents;
- (b) as part of or incidental to the trade or business regularly carried out by the Subcontractor;
- (c) using the Subcontractor's own or hired plant and equipment which must be properly maintained, compliant with all applicable laws and regulations and be suitable for the purposes for which it is intended;
- (d) and where the Works includes the provision of goods the Subcontractor warrants the goods are suitable for the purpose for which they are supplied, unless both parties agree in writing to allow another named party to perform them.

3.2 The Subcontractor must not accept any direction or instruction from any person other than an authorised representative of Stubbs Constructions unless Stubbs Constructions notifies the Subcontractor in writing of a person or persons who may give directions or instructions on behalf of Stubbs Constructions.

3.3 Stubbs Constructions holds FSO accreditation and certification to OHS standard ISO 45001:2018 and the subcontractor, its employees and agents must abide by these standards along with other Australian standards and codes of practice applicable to the building and construction industry. The Subcontractor, its employees and agents will comply with all lawful directions, including site instructions and directions, given by Stubbs Constructions.

3.4 The subcontractor must present a risk assessment and skills training matrix (also known as a Safe Work Method Statement [SWMS]) which details the work method, equipment used and the reference standards, codes, legislation and regulations relevant to the risk assessment. Stubbs Constructions does have templates available if requested by the subcontractor to assist in the drafting of the risk assessment. The risk assessment must be submitted to and approved by Stubbs Constructions prior to work commencing on site. This clause also applies to any high risk work and high risk work risk assessment.

3.5 Fall arrest systems will be used where required for any work at heights and such work will only be undertaken by fully trained personnel in fall protection equipment.

3.6 The Subcontractor, its employees and agents must attend and participate in Toolbox Meetings and participate in the Workplace Safety Inspection checklist on a roster basis as advised. The Subcontractor further warrants that all its employees and agents will read and understand the Daily Pre-start meeting minutes, sign the access log, present their white card and all MSDS for hazardous substances.

3.7 The Subcontractor agrees to comply with Stubbs Constructions' Integrated Management System which requires that trade inspections and checklists be completed and endorsed by the Project Supervisor and the Subcontractor at appropriate times as notified by Stubbs Constructions.

3.8 Breach by the Subcontractor of any of the terms in clause 3 will entitle Stubbs Constructions, without affecting any other right or legal remedy, to terminate the Subcontractor's engagement under this subcontract by written notice and seek compensation for any loss, cost and expense resulting from the Subcontractor's breach and the loss, cost and expense from any money due or to become due to the Subcontractor. Any shortfall may be recovered by Stubbs Constructions as a debt due and payable to it by the Subcontractor.

3.9 If Stubbs Constructions does not exercise its right under Sub clause 3.8 Stubbs Constructions may serve a notice requiring the Subcontractor to rectify any breach within the time stated in the notice and to recover the administrative costs associated with Stubbs Constructions dealing with such a breach. The parties agree that the amount of \$100 per breach is a fair and equitable assessment of the sum to serve as liquidated damages in regards to administrative costs and that this sum may be deducted by Stubbs Constructions from any payment due or to become due to the Subcontractor under this agreement. If there is no sum from which Stubbs Constructions may so recover the liquidated damages then the amount may be recovered as a debt due by the Subcontractor arising out of a construction contract.

**4. Insurances**

The Subcontractor indemnifies the Builder against any claim, liability or action as a consequence of any lack of skill, care or diligence on the part of the Subcontractor, its employees or agents in the performance or otherwise of its obligations under this subcontract.

4.1 The Subcontractor must effect and maintain the following policies:

- (a) public liability insurance for \$10,000,000 cover for each claim against the Subcontractor's liability for damage against any person or property and any associated costs occasioned by the Subcontractor or its employees or agents;
- (b) workers compensation insurance which complies with all applicable legislation and regulations; and
- (c) any other insurance that may be required by law.

4.2 The Subcontractor must ensure that all required insurance cover is activated before commencement of the Works and remains current throughout the performance of this subcontract. The Subcontractor must provide proof of cover to Stubbs Constructions within 14 days of any request by Stubbs Constructions.

4.3 The Subcontractor must ensure that its workers compensation insurance policy provides for Stubbs Constructions to be notified if it is cancelled.

**5. Compliance with Laws, Terms of Head Contract, etc.**

5.1 The Subcontractor and its agents, if any, must perform the Works in accordance with the Workplace Health & Safety Act 2012 and all other relevant laws (which includes regulations, codes of practice, industry agreements and any other statutory requirement) at their own respective cost.

5.2 The Subcontractor must ensure that all of its employees and all employees of its agents, if any, are employed in accordance with the provisions of the relevant awards, workplace agreements, determinations, subcontracts and statutory requirements applicable to the Works.

5.3 The Subcontractor must ensure adequate safety and first aid equipment is on site for the performance of the Works.

5.4 Stubbs Constructions is bound by the terms of the Head Contract regarding the provision of goods and services some of which Stubbs Constructions has contracted with the Subcontractor to supply. The Subcontractor agrees to be bound by any terms in the Head Contract which relate to the performance, delivery, quantum and standard of goods and services that the Subcontractor is supplying to Stubbs Constructions for the Principal. The Subcontractor confirms that it has had the opportunity of inspecting the Head Contract prior to being bound by these terms and conditions.

5.5 Stubbs Constructions may by notice require the Subcontractor to provide evidence of compliance that satisfies Stubbs Constructions to any of the conditions set out in Clause 5 of this agreement. Such evidence must be provided to Stubbs Constructions within 5 days. Compliance with such a request is a condition precedent to the right to either send a payment claim or for a payment claim to become due and payable. If such a notice is not complied with then the right to issue a further payment claim becomes the day upon which compliance is achieved by the Subcontractor or if a payment claim has already been issued then the due date will become the day upon which compliance is achieved by the Subcontractor.

**6. Variations**

6.1 The Subcontractor must not carry out any variation or vary any part of the Works' plans and specifications without the written consent of Stubbs Constructions (unless otherwise required by law) in which case the subcontractor must advise details to Stubbs Constructions within 1 working day).

6.2 The Subcontractor indemnifies Stubbs Constructions for any loss, claim, expense or similar liability suffered by Stubbs Constructions as a result of the Subcontractor's failure in any such respect.

6.3 The price of any variation must be added to or deducted from the contract price for the Works.

6.4 If the Subcontractor undertakes any variation without the written consent of Stubbs Constructions the Subcontractor agrees it is not entitled to any compensation for the work completed in relation to the variation under this agreement or under common law and the Subcontractor agrees it is stopped from making any claim in relation to the variation.

6.5 If the parties do not agree on the price of the variation, Stubbs Constructions may require the Subcontractor to execute the variation while the price is determined by the process as set out in the Head Contract or if there is no such process in the Head Contract then the price will be determined by referring the matter to a Panel Expert as a dispute under the contract pursuant to clause 20.

6.6 The Subcontractor indemnifies Stubbs Constructions for any loss, claim or expense suffered by Stubbs Constructions as a consequence of the Subcontractor's interference.

**7. Discrepancies**

7.1 In the event of any discrepancy between figured and scaled dimensions in the Works' plans and specifications, the figured dimensions prevail.

7.2 If either party finds any discrepancy or ambiguity in the Works' plans and specifications, it must immediately notify the other in writing and request clarification of the issue. A response is to be issued within one working day.

7.3 If a party fails to so notify the other party of a found discrepancy or ambiguity then the other party may recover from the party in breach for any loss that may occur due to that breach and that loss may be added on to or deducted from the contract sum as the case may be.

#### **8. Work Times**

No part of the Works may be conducted outside Stubbs Constructions' ordinary working hours without the prior written consent of Stubbs Constructions, such consent not to be unreasonably withheld.

#### **9. Works Maintenance and Defects Liability**

The Subcontractor must, at its own cost, maintain the Works until their completion and make good all defects that appear in the Works after completion and before the expiration of the defects liability period specified in this subcontract's head contract.

#### **10. Extensions of Time**

If the Works are delayed because of events outside the reasonable control of the Subcontractor including but not limited to:

- (a) industrial issues;
- (b) inclement weather;
- (c) the general unavailability of necessary materials;
- (c) agreed variations;
- (e) orders or notices issued by authorities with a legal power to do so; or
- (f) any breach of this contract by Stubbs Constructions;

The Subcontractor is entitled to a fair and reasonable extension of time to complete the Works if it notifies Stubbs Constructions of the cause and estimated length of a delay within 7 days of its commencement or if Stubbs Constructions is aware at the time the delay occurs of the delay and that an extension of time would normally be allowable.

#### **11. Liquidated Damages**

11.1 A party may deduct any liquidated damages specified in the Head Contract or if the Head Contract is silent on the issue of liquidated damages the amount specified in the Purchase Order as liquidated damages from any money owed, or from any retention money held, by it where the Works are not completed by the due date as specified in the Purchase Order. Any shortfall may be recovered by the party as a debt due and payable to it by the other party.

11.2 The liquidated damages sum has been calculated to reasonably reflect the actual loss and costs incurred by the breach but if a panel expert or court should find the amount specified in the Purchase Order is not reasonably reflective of the actual loss the panel expert or court may substitute a different amount be it higher or lower.

#### **12. Completion of the Works**

12.1 The Works will not be complete until the Subcontractor:

- (a) has supplied Stubbs Constructions with all legally required compliance certificates;
- (b) has supplied Stubbs Constructions with all documentation and information required for the use, operation and maintenance of the Works (including manuals as stated in any Purchase Order, instruction manuals and manufacturers' warranties and guarantees);
- (c) has removed all trade waste generated by the Works, all excess materials and all of the Subcontractor's plant and equipment from the building site of which the Works are a part; and
- (d) has made good any untidiness resulting from the Works or such removal (if required).

12.2 If the Subcontractor fails to do so within 5 working days following written notice from Stubbs Constructions, Stubbs Constructions may carry out the necessary work and deduct the cost from any money due or to become due to the Subcontractor. Any shortfall may be recovered by Stubbs Constructions as a debt due and payable to it by the Subcontractor.

12.3 The items as contained in sub clause 12.1 are an essential part of the Works and no entitlement to issue a final payment claim nor will a reference date in relation to the final payment for the purposes of the Building and Construction Industry Security of Payment Act 2009 arise until all such items are completed.

#### **13. Payment**

13.1 Stubbs Constructions must pay the Subcontractor (inclusive of GST):

- (a) on completion of the Works; or
- (b) by progress payments in accordance with the purchase order.

13.2 The Subcontractor must serve a payment claim and tax invoice in accordance with the purchase order or if the purchase order is silent in accordance with the Building and Construction Security of Payment Act 2009. The payment claim must be in writing; and

- (a) can only be for work completed or services supplied and all items must be installed and permanently fixed;
- (b) must contain information detailing the project, location, date, purchase order number and sufficient detail for Stubbs Constructions to understand what work the payment claim relates to. The payment claim must be clearly broken down to indicate each purchase order line item for which the claim is made, the % of work completed for each line item and the \$ value claimed for each line item. The payment claim should be sub-totaled, indicate previous payment claims and clearly specify GST considerations. Payment claims submitted incorrectly will be returned to the Subcontractor for re-submission by the required date.
- (c) must be received by Stubbs Constructions no later than 23<sup>rd</sup> day of each month. Payment claims received after the 23<sup>rd</sup> will be treated as the following months invoice; and
- (d) Stubbs Constructions must pay the payment claim in accordance with the purchase order or if the purchase order is silent then in accordance with the Building and Construction Security of Payment Act 2009 but where a payment claim is for work not completed or for work that is defective or not in accordance with the plans and specifications Stubbs Constructions may withhold payment until the work is completed or rectified.

13.3 The Subcontractor agrees that it has no entitlement to final payment or to make a claim for final payment unless all Work is completed as defined in clause 12.

13.4 Stubbs Constructions may retain 10% of progress payments due and payable to the Subcontractor under this subcontract until the sum retained is equal to 5% of the cost of the Works.

13.5 One half of the retention must be released when Stubbs Constructions reaches practical completion under the Head Contract. The other half must be released upon expiry of the defects liability period as stated in the Head Contract.

#### **14. Subcontractor's Default**

14.1 If: (a) the Subcontractor commits an act of bankruptcy, goes bankrupt, into administration, enters into a scheme with creditors or goes into liquidation;

- (b) the Works are suspended by the Subcontractor before their completion without reasonable cause;
- (c) the Works are not carried out regularly or completely; (d) the Works fail to comply with a provision of this subcontract;
- (e) the Subcontractor fails to maintain a reasonably clean and tidy working environment;
- (f) the Subcontractor fails to comply with the requirements of the Workplace Health and Safety Act 2012 any reasonable directions of Stubbs Constructions regarding any safety issue;
- (g) the Subcontractor fails to make good any damage caused by it or its employees or agents; or
- (h) the Subcontractor fails to comply with a notice from Stubbs Constructions requiring it to remove and replace defective work or materials;

Stubbs Constructions may give the Subcontractor written notice of the Subcontractor's default and require the Subcontractor to rectify it within 5 working days.

14.2 If the Subcontractor does not rectify the problem in time, Stubbs Constructions may, without affecting any other right or legal remedy, terminate the Subcontractor's engagement under this subcontract by written notice and seek compensation for any loss, cost and expense resulting from the Subcontractor's breach and the loss, cost and expense from any money due or to become due to the Subcontractor. Any shortfall may be recovered by Stubbs Constructions as a debt due and payable to it by the Subcontractor.

#### **15. Stubbs Constructions Default**

If Stubbs Constructions: (a) becomes bankrupt or goes into liquidation; or

- (b) fails to pay any money due and payable to the Subcontractor within the time specified by this subcontract without reasonable cause, the Subcontractor may give Stubbs Constructions written notice stating the default and requiring it to be rectified within 5 working days.

15.1 If Stubbs Constructions does not resolve the problem in time, the Subcontractor may, without affecting any other right or legal remedy, give written notice of termination of its engagement to Stubbs Constructions at which time any money due to the Subcontractor becomes a debt due and payable by Stubbs Constructions.

#### **16. Head Contract's Termination**

16.1 If this subcontract's head contract is terminated for any reason, Stubbs Constructions may immediately terminate the Subcontractor's engagement by written notice, in which case Stubbs Constructions must reimburse the Subcontractor for work already carried out and any other

reasonably incurred Works expense.

16.2 The Subcontractor is not entitled to recover loss of profit on that part of the Works not executed at the date of termination of the Subcontractor's engagement.

#### **17. Disruptive Workers**

The Subcontractor must immediately remove from the building site the subject of the Works any person employed by, or contracted to, the Subcontractor, if so directed by Stubbs Constructions. No reason for removal of the person need be given. If in complying with such a request the Subcontractor is disrupted in undertaking the Works then the Subcontractor may request an extension of time as provided for in clause 10. Any such directions under this clause by Stubbs Constructions are subject to review by a panel expert in accordance with the Dispute Resolution procedure contained elsewhere in these terms and conditions.

#### **18. Equipment**

18.1 Stubbs Constructions gives no warranty and no liability is created or implied as to the condition or suitability for use of any scaffolding or equipment used by the Subcontractor which belongs to or is provided by Stubbs Constructions.

18.2 Stubbs Constructions is not responsible for any loss or damage to the Subcontractor's plant, equipment and unfixed materials other than in circumstances caused by the negligence of Stubbs Constructions, its servants or agents.

18.3 A checklist with certifications, competency to operate and service records is required to be completed for all registered plant and presented to Stubbs Constructions prior to any plant being brought onto site. Any plant or equipment, including electrical equipment, found untagged, with an expired tag, unregistered or that Stubbs Constructions serves a notice on the subcontractor that Stubbs Constructions believes a specific piece of plant or equipment is not safe, will not be allowed onsite and if on site must be removed immediately upon receipt of the notice. Stubbs Constructions will not serve such a notice without reasonable cause.

18.4 Failure to comply with any notice served pursuant to the clause will entitle Stubbs Constructions to immediately terminate the agreement, as if it is a termination under clause 14, with the Subcontractor. This will not affect any other rights under the agreement or at law Stubbs Constructions might have.

#### **19. Income Tax Deductions**

Stubbs Constructions must not make any deduction in respect of taxation instalment, payroll tax, long service and like requirements of the relevant awards and/or statutory obligations for which the Subcontractor is responsible.

#### **20. Dispute Resolution**

20.1 In the event of any dispute or difference between the parties arising out of or in connection with this Agreement, either party shall commence the dispute resolution procedure provided for by this clause and the Rules as set out on Master Builders' Association of Tasmania Inc. (MBT) website at [www.mbatas.org.au](http://www.mbatas.org.au) by giving written notice to the other party of the matter/s in dispute.

20.2 If the dispute is not resolved within ten (10) business days of such notice, the parties agree to deal with the dispute through the means as further provided by this clause and as set out in the Rules on the MBT website at [www.mbatas.org.au](http://www.mbatas.org.au) at the time the dispute is notified under Sub-Clause 20.1.

20.3 Within five (5) business days after the expiration of the period referred to in Sub-Clause 20.2 The party that issued the notice may apply to have a Panel Expert appointed. The Panel Experts are people nominated jointly from time to time by MBT, Consumer Affairs and may include any person duly appointed as an adjudicator for the purposes of the Building and Construction Security of Payment Act 2009.

20.4 Once the parties have been notified of the appointment of the Panel Expert the parties shall each pay a security deposit to MBT or its nominated agent within the time specified and for the amount as set out in the Rules.

20.5 The Expert's fee shall be borne by both parties equally unless the Panel Expert determines otherwise and the Panel Expert's determination shall be final and binding on both parties except as allowed herein 20.6 MBT or its nominated agent will appoint a Panel Expert from the list of Approved Panel Experts to determine the dispute as set out in the Rules on the MBT website at [www.mbatas.org.au](http://www.mbatas.org.au)

20.6 If a party is dissatisfied with the Panel Expert's determination that party may request a review of the determination as provided for in the Rules on the MBT website at [www.mbatas.org.au](http://www.mbatas.org.au). Any review is by way of a fresh hearing of the matter as set out in the Rules.

20.7 Any request for a review must be within ten (10) business days of the date of receipt of the determination for which the review is being requested.

20.8 The Panel Expert who made the determination for which a request for a review has been made may not act as one of the three reviewing Panel Experts.

20.9 The party requesting the review is responsible for the full cost of the review and must pay an amount equal to the estimated review costs to MBT or its nominated agent as set out in the Rules.

20.10 The parties are bound by the determination of the Panel Experts which will replace the earlier determination.

20.11 The parties agree to be bound by the Terms, Conditions and Process as contained in the above mentioned Rules and to comply with those Rules and to act in good faith in following the disputes resolution process.

#### **21. Notice**

21.1 Any notice is sufficiently given if it is delivered personally to the relevant party or its authorised representative on the building site the subject of the Works or if it is sent by pre-paid post, facsimile or by email to the relevant party in this subcontract or the party's last known address. It will be the responsibility of the parties to ensure that their up to date address current details are clearly and promptly provided to the other party at all times.

21.2 Any notice is taken to have been received, in the case of hand delivery, immediately, in the case of pre-paid post, 2 clear business days after it was posted and in the case of facsimile transmission, on the day the transmission report states that it was sent in full and without error or the next business day if the transmission occurred after 4.00pm on a business day or was sent on a non-business day. The notice is taken to have been received in the case of email, the date the email is sent without error or the next business day if the email was sent after 4.00pm on a business or was sent on a non-business day.

#### **22. Severability**

If any provision or part is void, unenforceable or illegal, that provision or part must be read down so as to be valid and enforceable or, if it cannot be so read down, must be severed from this subcontract without affecting the validity, enforceability or legality of the remaining provisions or parts which continue to have full force and effect.

#### **23. Assignment, etc.**

23.1 Neither party may assign this subcontract without the written consent of the other.

23.2 This subcontract binds the parties, their representatives and permitted assignees.

#### **24. Interpretation**

24.1 Words describing the singular describe the plural and vice versa.

24.2 Words describing one gender describe the others.

24.3 "Days" means calendar days unless described otherwise.

24.4 "MBT" means the Master Builders' Association of Tasmania Inc. or is nominated agent.

24.5 "MBT website" means [www.mbatas.org.au](http://www.mbatas.org.au) as updated from time to time

24.6 "Rules" means the Rules as published on the MBT website from time to time setting out the Dispute Resolution process, terms and conditions.

24.7 "SWMS" means Stubbs Constructions' format of the Safe Work Method Statement.

24.8 'Purchase Order' means an order or Letter of Engagement for specific works, goods or services issued by Stubbs Construction to a Subcontractor.

24.9 If any Act or Regulation mentioned in any clause of these terms has been repealed and replaced by another Act or Regulation then the clause should be read as if the new Act or Regulation is meant unless such a reading was to be nonsensical.

#### **25. Subcontractor Guarantee**

The subcontractor guarantees that the subcontractor meets all the legal requirements to be classified as a subcontractor and indemnifies Stubbs Constructions against any loss, expense, employee entitlements, fine or penalty Stubbs Constructions may suffer or incur due to it being held by a government department or agency, court or tribunal or any other body or person that the subcontractor is not a subcontractor for the purposes of any legislation or legal entitlement. This indemnity includes any costs or liability that may arise by the subcontractor being held to be an employee of Stubbs Constructions.

#### **26. Further Conditions**

The Purchase Order will contain additional terms and conditions which the Subcontractor agrees the Subcontractor has read and will be bound by and comply with.