

Subcontract General Conditions

formula
proven.

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Background

- A The Contractor carries on the business of providing commercial office fit-outs.
- B The Contractor wishes to engage the Subcontractor to be available to the Contractor to complete Subcontract work which may be specified by Purchase Order from time to time.
- C The Subcontractor agrees to make itself so available and the parties have executed this document and/or a Purchase Order to record the terms of agreement between them.

Parties

Contractor

Name Formula Interiors Pty Ltd
 ABN 91 128 925 066

Notice details	Attention:	General Manager
	Address:	PO Box 1038 Coorparoo DC QLD 4151
	Email:	info@formulainteriors.com.au
	Email for Tax Invoices:	
	Queensland Branch	ap.fbq@formulainteriors.com.au
Victoria Branch	ap.fbv@formulainteriors.com.au	
New South Wales Branch	ap.fbn@formulainteriors.com.au	

Subcontractor

Name _____

ABN _____

Notice details	Attention:	_____
	Address:	_____

	Email:	_____

General Conditions

1. Engagement of Subcontractor

1.1 The parties agree:

- (a) the Subcontractor will be bound by the Subcontract immediately upon either:
 - i. the Subcontractor signing these Subcontract General Conditions; or
 - ii. the Subcontractor's acceptance of a Purchase Order by signature or conduct;
- (b) the Subcontract comprises:
 - i. these Subcontract General Conditions; and
 - ii. the relevant Purchase Order issued by the Contractor to the Subcontractor;
- (c) the Subcontract is the entire agreement between the Contractor and the Subcontractor and takes effect despite any inconsistent prior agreement between the parties;
- (d) neither party relies on any prior conduct or representation by the other party in entering into the Subcontract; and
- (e) the Subcontract applies to all work carried out by the Subcontractor in connection with the Works prior to a Purchase Order being given by the Contractor, or the Subcontract being entered into, and that work is included in the Subcontract Sum.

1.2 The Subcontractor acknowledges and agrees that:

- (a) the Contractor may engage the Subcontractor to perform the Works but it is not required to engage the Subcontractor to perform any minimum or maximum quantity of the Works;
- (b) the Contractor is not obliged to issue any minimum or maximum quantity; of Purchase Orders to the Subcontractor;
- (c) the Contractor may determine in its absolute discretion:
 - (a) the quantity or type of Works it will require;
 - (b) the quantity or type of Works it will require in any Purchase Order;
 - (c) the timing, including frequency, of Purchase Orders;
- (d) in entering into this Subcontract, the Subcontractor has not relied on any estimate provided by or on behalf of the Contractor as to the quantity of Works the Contractor will engage the Subcontractor to perform under the Subcontract;
- (e) this Subcontract does not give the Subcontractor any exclusive or preferential right to perform work in the nature of the Works, and the Contractor may contract with any other party to supply work of the same or a similar nature to the Works;

- (f) the Contractor has made no representation and gives no warranty or guarantee as to the matters referred to in clauses 1.2(a) - 1.2(e);
- (g) the Contractor may contract with any other party to perform works of the same or a similar nature to the Works.

2. Order of Precedence

2.1 In the event of any ambiguity, inconsistency or discrepancy between any of the documents comprising the Subcontract, the documents shall be read in the following order of priority:

- (a) these Subcontract General Conditions;
- (b) Special Conditions to the relevant Purchase Order (if any);
- (c) the relevant Purchase Order;
- (d) the Purchase Order Standard Terms and Conditions (attached to the Purchase Order);

except to the extent that a document lower in the order of precedence imposes duties, standards or obligations on the Subcontractor which are greater than those arising under a document higher in the order of precedence, and in those circumstances the Subcontractor must meet or discharge that greater duty, standard or obligation.

3. Head Contract Requirements

- 3.1 The Subcontractor acknowledges that the Contractor may have contracted with a Principal under a Head Contract for performance of other work incorporating the Works under the Subcontract.
- 3.2 If the Contractor has contracted with a Principal under a Head Contract, a copy of the Head Contract will be made available to the Subcontractor upon request.
- 3.3 The Subcontractor will assume towards the Contractor all of the obligations and responsibilities owed under the Head Contract by the Contractor to the Principal in respect to the Works under the Subcontract, save to the extent any such obligations and responsibilities are inconsistent with the Subcontract.
- 3.4 Notwithstanding clause 3.3 above, the Subcontractor will not have the benefit of any rights under the Head Contract.
- 3.5 In the event that the Head Contract is terminated, for any reason, the Contractor may by notice in writing to the Subcontractor immediately cancel the Works under the Subcontract, and in that case the Subcontractor will only be entitled to payment for the costs of any goods or material already supplied and fixed, and/or services already provided or work performed up to the time notice of cancellation is given. The amount to be paid will be determined by the Contractor, acting

reasonably, having regard to the proportion of the Works under the Subcontract actually completed, within 15 Business Days after giving notice of cancellation.

4. Obligations of the parties

4.1 The Subcontractor must carry out and complete the Works:

- (a) in a proper and tradesperson like manner;
- (b) in accordance with the Subcontract and the Contractor's directions including any relevant Purchase Order;
- (c) in accordance with all legislative requirements including any relevant Australian Standards applicable to the Works;
- (d) using materials that are new, free of defects and of the highest quality for the purpose or application required;
- (e) with due diligence, expedition, and without delay; and
- (f) by the Date for Practical Completion.

4.2 The Subcontractor must not perform any Works except in the manner and on the terms set out in the relevant Purchase Order and these Subcontract General Conditions.

4.3 The Contractor is not obliged to issue any Purchase Order.

5. Subcontractor's warranties

5.1 Without limiting the generality of clause 4, the Subcontractor warrants to the Contractor that the Subcontractor:

- (a) enters into the Subcontract based on the Subcontractor's own investigations, interpretations, deductions, information and determinations and will carry out any work pursuant to a Purchase Order based on the Subcontractor's own investigations, interpretations, deductions, information and determinations;
- (b) at all times shall be suitably qualified, experienced and resourced, and shall exercise due skill, care and diligence in the carrying out and completion of the Works;
- (c) will ensure that the Subcontractor's subcontractors, agents or consultants are suitably qualified, experienced and resourced;
- (d) shall carry out and complete the Subcontractor's obligations to accord with the Subcontract;
- (e) has examined any documents supplied by the Contractor and is satisfied that such documents are suitable, appropriate and adequate for the purpose supplied;
- (f) shall carry out and complete the Works in accordance with any documents supplied by the Contractor so that the Works, when completed, shall:

- (a) be fit for their stated purpose; and
 - (b) comply with all the requirements of the Subcontract;
 - (g) will ensure that the Subcontractor or the Subcontractor's employees, subcontractors, agents or consultants will not infringe the Intellectual Property rights of any party in completing the Works; and
 - (h) shall liaise cooperatively with any and all other parties engaged for the purposes of the Project;
 - (i) the Subcontractor bears the entire risk of any Design used in, or prepared as part of the Works and the Subcontractor has no Claim (and the Contractor assumes no liability) in relation to any review, comment, approval or rejection of, or change requested to, the Design Documents by the Contractor;
 - (j) has examined and carefully checked all information relevant to any risks and contingencies, including any design risks or contingencies and other circumstances, including access to the site and labour conditions, which could have an effect on the performance and costs of executing the Works and the restrictions with which the Subcontractor shall comply on site.
- 5.2 The warranties remain unaffected notwithstanding:
- (a) that design work (including the preliminary design) has been carried out by or on behalf of the Contractor and included in the Subcontract;
 - (b) any receipt or review of, or comment or direction on, the design documents or any other document provided by the Subcontractor by or on behalf of the Contractor; or
 - (c) any Variation.
- 5.3 The Subcontractor acknowledges that the warranties set out in this Subcontract are separate to, and independent of, one another and were relied on by the Contractor in deciding to enter into this Subcontract.
- 5.4 The Subcontractor represents and warrants that it is, and shall remain throughout the term of the Subcontract, financially capable to perform the Works.
- 5.5 The Subcontractor shall immediately notify the Contractor if the Subcontractor considers that it is, or may become, insolvent or financially unable to proceed with the Subcontract.
- 5.6 From time to time and at the Contractor's request, the Subcontractor shall provide information satisfactory to the Contractor to verify the Subcontractor's financial capability. Such information shall be provided within 5 days of the Contractor's request.
- 5.7 If the Contractor fails to demonstrate its financial capability after any such request:
- (a) the Subcontractor shall be in substantial breach of the Subcontract; and
 - (b) the Contractor may withhold payment to the Subcontractor in full until such time that the Subcontractor demonstrates its financial capacity to perform the Subcontract.

6. Relationship between the parties

- 6.1 The relationship between the parties is one of Contractor and independent Subcontractor, not employer and employee, agency or partnership.
- 6.2 The Subcontractor and any of its employees, subcontractors and agents are not entitled to any payments or benefits from the Contractor other than those provided for in the Subcontract.
- 6.3 Unless expressly authorised by the Contractor in writing and then only strictly in accordance with any written authorisation, the Subcontractor acknowledges and agrees that it does not have the right or authority to act on behalf of or bind the Contractor and will not indicate to any third party that they have any such right or authority.

7. Subcontract and Subcontract Sum

- 7.1 These Subcontract General Conditions apply to any Purchase Order issued by the Contractor.
- 7.2 Where the Subcontractor has provided its own written contract terms of any kind, by way of quotation or otherwise, their contract terms shall have no effect and the terms of the Subcontract shall apply and shall constitute the entire agreement between the parties.
- 7.3 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in the Subcontract.
- 7.4 Each party acknowledges and agrees that it did not rely on any prior conduct or representation by the other party in entering into the Subcontract.
- 7.5 Subject to the terms of the Subcontract, in relation to each Purchase Order, upon completing the Works to the reasonable satisfaction of the Contractor, the Contractor shall be obliged to pay the Subcontractor the Subcontract Sum.
- 7.6 The Subcontract Sum is deemed to include all necessary components, works or services reasonably inferable to design and deliver the Works strictly in compliance with the Subcontract and in a complete and serviceable condition. Minor items not expressly provided in the Subcontract, but which are necessary or incidental to the performance of the Subcontractor's obligations under the Subcontract, shall be supplied and executed by the Subcontractor.

8. Goods and Services Tax (GST)

- 8.1 Any terms capitalised in this clause 8 and not defined in clause 38 have the same meaning given to those terms in the GST Act and:
 - (a) Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156-5 GST Act; and
 - (b) Supplier means the entity making the Supply.

- 8.2 Except under clause 8, the consideration for a Supply made under or in connection with the Subcontract does not include GST.
- 8.3 If a Supply made under or in connection with the Subcontract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Subcontract for that Supply; and
 - (b) the Supplier must give the Recipient a Tax Invoice for the Supply.
- 8.4 For the avoidance of doubt, the GST payable under clause 8.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- 8.5 If either party has the right under the Subcontract to be reimbursed or indemnified by another party for a cost incurred in connection with the Subcontract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.
- 8.6 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 8.7 Where a Supply made under or in connection with the Subcontract is a Progressive or Periodic Supply, clause 8.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

9. Payment

- 9.1 In relation to each Purchase Order, the Subcontractor shall be entitled to claim payment of the Subcontract Sum:
- (a) on the 25th day of the month the Works were carried out (i.e progressively) for Works carried out on and up to that 25th day of the month and on Practical Completion of the Works; or
 - (b) in the amounts set out in a Purchase Order upon achievement of prescribed milestones set out in a Purchase Order; or
 - (c) as otherwise set out in the relevant Purchase Order; and
 - (d) a final claim within 14 days of completion of the Works.
- 9.2 A valid invoice must:
- (a) be submitted to the Contractor via the Contractor's email address listed under the Parties section on page 4 of this Subcontract;
 - (b) be submitted to the Contractor in a valid GST tax invoice format;

- (c) clearly state the amount claimed and include full details of the Works which has been satisfactorily completed by the Subcontractor;
- (d) identify the relevant Purchase Order number and Project;
- (e) list the Subcontractor’s electronic banking transfer details;
- (f) be submitted with any additional information required as set out in the relevant Purchase Order, including but not limited to statutory declarations as to the payment of suppliers and/or employees and other forms regarding payment of workers’ compensation insurance premiums and payroll tax; and
- (g) if the invoice is for a claim for payment under Security of Payment Legislation, conform in all respects with the requirements of a valid claim for payment in the applicable jurisdiction.

9.3 The final claim for payment shall include a final statement setting out the details of all monies claimed or owing in respect to the Works under the Subcontract and otherwise releasing the Contractor from any further liability.

9.4 The Contractor shall issue to the Subcontractor a payment schedule within the time worked out under this clause:

For Works carried out in Queensland -	Within 25 business days (as defined in the Security of Payment Legislation for Queensland) of the Contractor’s receipt of the invoice.
For Works carried out in any other State or Territory -	Within 10 business days (as defined in the applicable Security of Payment Legislation) of the Contractor’s receipt of the invoice.

9.5 A payment schedule given by the Contractor to the Subcontractor shall:

- (a) identify the payment claim (invoice) to which it responds;
- (b) state the amount of the payment, if any, that the Contractor proposes to make;
- (c) if the amount proposed to be paid is less than the amount stated in the payment claim (invoice) —state why the amount proposed to be paid is less, including all the Contractor’s reasons for withholding any payment.

9.6 Subject to the provisions of this Subcontract, the Contractor shall pay to the Subcontractor, or the Subcontractor shall pay to the Contractor, as the case may be, an amount not less than the amount shown in the payment schedule as due to the Contractor or Subcontractor, as the case may be, within the following times:

- (a) For Works carried out in Queensland, within 25 Business Days (as defined in these Subcontract General Conditions) of the Contractor’s receipt of the invoice; or

- (b) For Works carried out in any State or Territory other than Queensland, within 45 days from the end of the month to which the invoice relates.
- 9.7 Payment by the Contractor of any invoice is a payment on account only and not evidence that the Works have been carried out satisfactorily.
- 9.8 In relation to each Purchase Order, the Contractor may deduct and set-off from any payment otherwise due to the Subcontractor, any debt or other amount due from the Subcontractor to the Contractor or any claim to payment which the Contractor may have against the Subcontractor whether for damages or otherwise under the Subcontract or otherwise (including under any other Purchase Order or other agreement), or at law relating to the Works and if those moneys are insufficient, the Contractor may have recourse to Security.
- 9.9 On payment of the final claim, the Subcontractor releases and discharges the Contractor from and against all claims arising out of or in connection with the Works except for any payment which is due as set out in a payment schedule, a claim for release of Security or claims the subject of a notice of dispute given under clause 32.
- 9.10 The parties agree:
- (a) a breach by the Subcontractor of this Subcontract is also a breach of every Purchase Order;
 - (b) a breach by the Subcontractor of any Purchase Order is a breach of this Subcontract and every other Purchase Order;
 - (c) without limiting any other right of the Contractor, the Contractor may set off any amount owing by it under any Purchase Order with any amount owed to it under any Purchase Order.

10. Indemnity and insurance

- 10.1 The Subcontractor must indemnify, and keep indemnified, the Contractor from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from any breach of any warranty or any of the other terms and conditions of the Subcontract by the Subcontractor or the Subcontractor's personnel or any negligent act or omission of the Subcontractor or the Subcontractor's personnel, except to the extent of liability which is caused by the willful misconduct or a negligent act or omission of the Contractor or the Contractor's personnel.
- 10.2 Without limiting the preceding paragraph, the Subcontractor indemnifies the Contractor against:
- (a) loss or damage to property, including existing property on or around the Site including property belonging to third parties;
 - (b) claims against the Contractor in respect of personal injury, death, or loss or damage to any property;
 - (c) any costs, losses or damages that the Contractor pays or becomes liable to pay under the Head Contract, or otherwise, to the extent that such payment or liability arises out of the Subcontractor's failure to comply with the Subcontract; and

- (d) any loss of profit, loss of production, loss of opportunity, loss of revenue, loss of business, loss of use, third party financial costs or loss of contracts, to the extent that such loss or cost arises out of the Subcontractor's failure to comply with the Subcontract.
- 10.3 The Subcontractor must effect and maintain the insurance specified in the relevant Purchase Order and each policy of insurance must be on the terms satisfactory to the Contractor and, other than workers' compensation insurance, name the Contractor as an insured. If the Subcontractor fails to effectively maintain the insurance the Contractor may do so and the cost will be a debt due and payable by the Subcontractor to the Contractor.
- 10.4 The Subcontractor acknowledges the Contractor is not responsible for and is not obliged to maintain workers' compensation or similar insurances in respect of the Subcontractor or its workers.
- 10.5 The insurance to be effected and maintained pursuant to the relevant Purchase Order shall not be less than:
- (a) for public liability insurance, \$10,000,000.00;
 - (b) for professional indemnity insurance, \$5,000,000.00;
 - (c) for contract works insurance, the value of the Subcontract Sum plus 30 per cent; and
 - (d) for workers' compensation insurance, the requirements of the relevant jurisdiction or the relevant Purchase Order, whichever is greater.

11. Security

- 11.1 Security must be provided by the Subcontractor equal to 5 per cent of the Subcontract Sum until practical completion under the Head Contract, reducing to 2.5 per cent of the Subcontract Sum at the commencement of the defects liability period of the Head Contract.
- 11.2 Where the Subcontractor provides a bank guarantee in lieu of cash retention, the bank guarantee shall be unconditional and contain no expiry dates.
- 11.3 If the Subcontract Sum increases, the Contractor may require, and the Subcontractor must provide, additional Security.
- 11.4 The Contractor may have recourse to Security:
- (a) where an amount that is due to the Contractor, under the Subcontract or otherwise, remains unpaid after the time for payment;
 - (b) in respect of any claim for payment (liquidated or otherwise) that the Contractor may have against the Subcontractor under the Subcontract or otherwise on the giving of written notice to the Subcontractor; or
 - (c) in respect of any claim against the Contractor by the Principal under the Head Contract where the Contractor is entitled to an indemnity from the Subcontractor under the Subcontract.

11.5 Subject to any right under subclause 11.4, the balance of any remaining Security must be released to the Subcontractor within 15 Business Days of the expiry of the Defects Liability Period.

12. PPSA

12.1 For the purposes of this clause 12:

- (a) the Contractor's Personal Property means all personal property the subject of a security interest granted under the Subcontract; and
- (b) words and phrases used in this clause 12 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

12.2 If the Contractor determines that the Subcontract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Subcontractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Contractor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Contractor to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- (c) enabling the Contractor to exercise rights in connection with the security interest.

12.3 The Contractor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

12.4 The Subcontractor shall notify the Contractor as soon as the Subcontractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Contractor's Personal Property becomes an accession to the Contractor's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
- (b) if any of the Contractor's Personal Property is located or situated outside Australia; or
- (c) upon request by the Contractor, of the present location or situation of any of the Contractor's Personal Property.

12.5 The Subcontractor shall not:

- (a) create any security interest or lien over any of the Contractor's Personal Property whatsoever (other than security interests granted in favour of the Contractor);
- (b) sell, lease or dispose of its interest in the Contractor's Personal Property;
- (c) give possession of the Contractor's Personal Property to another person except where the Contractor expressly authorises it to do so;
- (d) permit any of the Contractor's Personal Property to become an accession to or commingled with any asset that is not part of the Works;

- (e) change its name without first giving the Contractor 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 12.6 Everything the Subcontractor is required to do under this clause 12 is at the Subcontractor's expense.
- 12.7 Neither the Contractor nor the Subcontractor shall disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor shall not authorise, and shall ensure that no other party authorises, the disclosure of such information.
- 12.8 Subclause 12.7 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

13. Intellectual property

- 13.1 The Contractor exclusively owns and is entitled to the exclusive benefit of its Intellectual Property.
- 13.2 The Contractor exclusively owns and is entitled to the benefit of all Intellectual Property developed by the Subcontractor or any of their employees, subcontractors or agents, arising out of the operation of the Subcontract or in the course of completing the Works, including:
- (a) as a consequence of or in relation to the performance of the Works;
 - (b) use of premises, resources or facilities of the Contractor or any Principal of the Contractor;
 - (c) directly or indirectly as a result of access to Intellectual Property of:
 - i. the Contractor; or
 - ii. any Principal of the Contractor.
 - (d) in respect of or associated with any of the Contractor's products or services including:
 - i. any alterations or additions to; or
 - ii. methods of making, using, marketing, selling or providing these goods or services; or
 - (e) directly or indirectly as a result of access to other Intellectual Property.
- 13.3 The Subcontractor must:
- (a) assign to the Contractor and ensure that the Subcontractor's employees, subcontractors or agents assign to the Contractor, all Intellectual Property covered by clause 13.2, that is developed by them; and
 - (b) take and ensure that their employees, subcontractors and agents take, any action that may be necessary to give full effect to this clause, including executing any documents.

- 13.4 The Subcontractor will not use or reproduce, and will ensure their employees, subcontractors and agents do not use or reproduce, any of the Contractor's Intellectual Property (including the Intellectual Property of any Associated Entity) without the Contractor's written authorisation.
- 13.5 The Subcontractor consents to the Contractor infringing and waives any moral rights that the Subcontractor may have or become entitled to in any work created, developed, modified or enhanced in the course of performing the Works.

14. Confidentiality

- 14.1 The Subcontractor must not at any time, whether during or after termination of the Subcontract, use or disclose any Confidential Information except:
- (a) with the Contractor's prior written permission;
 - (b) where it is strictly necessary so the Subcontractor can complete the Works under the Subcontract; or
 - (c) for the purpose of disclosure, but only where the Subcontractor is legally obliged to do so by a Court or statutory authority.
- 14.2 Any reference to the Contractor in this clause 14 in relation to their Confidential Information includes any Associated Entity.
- 14.3 When Confidential Information is disclosed, as permitted, the Subcontractor must ensure that the person to whom the information is disclosed is made aware of its confidential nature and uses its best endeavours to ensure that the person does not use or disclose that information.
- 14.4 On the termination of the Subcontract, or on request at any time by the Contractor, the Subcontractor will provide the Contractor with any Confidential Information or record of Confidential Information in the Subcontractor's possession, power or control.
- 14.5 This clause 14 continues to apply after the Subcontract comes to an end.

15. Non-competition and conflict of interest

- 15.1 During the period of the Subcontract, the Subcontractor and any individual engaged in completing the Works will:
- (a) avoid any actual or potential conflict of interest with the interests of the Contractor (including any Associated Entity);
 - (b) advise the Contractor immediately of any conflict of interest that may arise or has arisen; and
 - (c) not engage, in any capacity, in any business or activity that is competitive with that part of the business of the Contractor in relation to which the Subcontractor is completing the Works.

16. Variations

- 16.1 The Subcontractor must not vary the Works except in accordance with the Contractor's written Direction.
- 16.2 The Contractor may direct the Subcontractor to carry out any Variation to the Works.
- 16.3 If the Contractor exercises a Variation Direction in respect of the omission of any part of the Works, the Contractor may (itself or by engaging others) carry out the omitted work.
- 16.4 The price for a Variation is to be as agreed or if not agreed as determined by the Contractor using the following order of precedence:
- (a) where the Subcontract prescribes specific rates or prices, applying those rates or prices;
 - (b) where the Subcontract includes a schedule of rates, using those rates or prices to the extent that it is reasonable to use them; then
 - (c) to the extent that neither clauses 16.4(a) and (b) applies, a fair and reasonable valuation of the price of the Variation.
- 16.5 The Subcontractor is barred from any Claim, has no entitlement to payment and releases the Contractor from all liability in connection with any Variation to the Works that has not been directed in writing or approved in writing by the Contractor prior to the work commencing.
- 16.6 Despite any other provision of the Subcontract, if the Contractor gives the Subcontractor a Direction which, in the opinion of the Subcontractor, involves a Variation, other than a Direction which the Contractor expressly acknowledges in writing involves a Variation, the Subcontractor shall, within 5 days of receipt of the Direction and in any event before complying with the Direction, notify the Contractor in writing of the Subcontractor's estimate of the additional work necessary to give effect to the Variation (including any likely delay, extension of time and cost).
- 16.7 The Subcontractor shall not be entitled to any Claim or additional cost unless it strictly complies with subclause 16.6 in all respects.

17. Site conditions

- 17.1 The Subcontractor shall properly and adequately investigate and satisfy itself in all respects as to the Site and its surroundings.
- 17.2 The Subcontractor bears the risk of all physical conditions on the Site and its surroundings, whether or not those conditions differ from those expected by the Subcontractor at the time the Subcontractor entered into the Subcontract.

17A. Site and Base Works

- 17A.1 The Subcontractor must inspect the Base Works before commencing any part of the Works which may be affected by the Base Works.
- 17A.2 If the Subcontractor becomes aware of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which may affect the Works or the Subcontractor's ability to carry

out the Works in compliance with the Subcontract, the Subcontractor must, before proceeding with the Works and within 5 Business Days of becoming aware, advise the Contractor, in writing, of the condition, inadequacy or omission. The Contractor may, on receipt of advice from the Subcontractor, give a direction to the Subcontractor as to the carrying out of the Works, the timing of the Works or a Variation to the Works. The Subcontractor must comply with any such direction.

- 17A.3 Without limiting the warranties given by the Subcontractor in clause 5, the Subcontractor acknowledges that it has no Claim in relation to the adequacy of the Base Works.
- 17A.4 The Subcontractor bears the risk of any condition in the Base Works, or any inadequacy in or omission from the Base Works, which affects the Works in any way or the Subcontractor's ability to carry out the Works in compliance with this Subcontract.
- 17A.5 The Subcontractor acknowledges that:
- (a) the Contractor has no obligation to give to the Subcontractor any access to the Site which is greater than or more beneficial than the access to which the Contractor is granted under the Head Contract; and
 - (b) the Subcontractor has no Claim against the Contractor, and the Contractor has no liability to the Subcontractor, in respect of any constraint or interference to the Subcontractor's access to the Site.
- 17A.6 The Subcontractor:
- (a) must ensure that all its representatives, staff, employees and Secondary Subcontractors undergo induction training required for the Site, in accordance with the requirements of the Contractor before they are given access to the Site; and
 - (b) acknowledges that it:
 - (i) has made a sufficient programming allowance and in the Subcontract Sum for, and assumes the risk of any delays arising out of, or in connection with, the induction training required under clause 17A.6(a); and
 - (ii) will not be entitled to make Claim arising out of or in connection with that induction training.
- 17A.7 The Subcontractor shall allow the Principal, the Contractor, authorised consultants and other persons authorised in writing by the Contractor, access at all times to the Works for any purpose.
- The Subcontractor shall at all reasonable times after reasonable notice, give the persons referred to in the preceding paragraph access to all places where the Works are being performed and shall provide all facilities for such access as may be reasonably necessary.
- 17A.8 The Subcontractor acknowledges that:
- (a) the Subcontractor will not have unrestricted possession of or access to all of the Site; and
 - (b) the Works are being carried out as part of other works and there will be Other Contractors working on the Site.
- 17A.9 The Subcontractor must:

- (a) diligently and carefully coordinate and integrate the Works with the works, services, or the products of works or services, performed or to be provided by the Other Contractors;
- (b) liaise, cooperate and confer with the Other Contractors as necessary for the performance of the Works in accordance with this Subcontract;
- (c) ensure that all Subcontract Material and other products of the Works are coordinated and interfaced with the designs, drawings and specifications produced by the Other Contractors;
- (d) not interfere with, delay or damage the work of Other Contractors;
- (e) comply with all Directions of the Contractor regarding the coordination between the Subcontractor and Other Contractors; and
- (f) immediately advise the Contractor in writing of any delay, interference or damage caused by the Other Contractors.

17A.10 The Subcontractor is not entitled to Claim an extension of time or any costs or damages for delay, disruption or inconvenience suffered by the Subcontractor where the Claim is in any way connected with or arises out of an act or omission of the Other Contractors.

18. Work health safety and the environment

18.1 The Subcontractor must comply with all WHS Legislation, related Law and any Contractor work, health, safety and environmental requirements and policies (as amended from time to time).

18.2 Before commencing the Works, the Subcontractor will be required to:

- (a) Submit a Site specific safety work plan and safe work method statement of its own to the Contractor or, alternatively, complete a blank safe work method statement template supplied by the Contractor prior to commencement of any works.
- (b) Ensure any persons engaged by the Subcontractor in connection with the Works completes the Contractor's on-line induction prior to commencement of any works.

18.3 The Subcontractor and any persons engaged by the Subcontractor in connection with performance of the Works must:

- (a) hold a current general safety induction certificate;
- (b) use appropriate personal protective equipment at all times including any equipment provided by the Contractor, provided that any such equipment supplied by the Contractor must be returned to the Contractor on the termination of the Subcontract;
- (c) report to the foreperson, or other nominated person, on Site before commencing work or deliveries to the Site;
- (d) take directions relating to safety or any work related issues from the Contractor's Site foreperson, or other nominated person, and
- (e) adhere to the Contractor's safety policies (available on request).

- 18.4 The Subcontractor has a duty to consult, cooperate and coordinate, so far as is reasonably practicable, with other duty holders in relation to the Works and the Site and must ensure that the Works do not affect work, health, safety and environmental obligations required of the Contractor or on the Site.
- 18.5 When directed by the Contractor, the Subcontractor must provide reasonable evidence of such compliance with this clause.
- 18.6 The Subcontractor must immediately rectify any unsafe condition, act or omission in relation to the Works and give the Contractor written notice and adequate details of any such event and as required under any WHS Legislation.
- 18.7 The Contractor and the Subcontractor may from time to time appoint nominated Site representatives and any relevant matters within the knowledge of each party's nominated representatives will be deemed to be within the knowledge of the other party.
- 18.8 Where the Contractor becomes aware of any unsafe condition, act or omission it may give written notice to the Subcontractor to immediately (and not more than 1 day after issue of the notice by the Contractor) remedy and rectify that unsafe condition, act or omission.
- 18.9 Should the Subcontractor fail to remedy or rectify an unsafe condition, act or omission within the time provided in any Contractor's notice under subclause 18.8 and/or to the satisfaction of the Contractor, the Contractor may at its sole and absolute discretion and without liability:
- (a) suspend the performance of the Works and the Contractor will correct the unsafe condition (and the costs incurred by the Contractor shall be a debt due and owing to Contractor by the Subcontractor); or
 - (b) immediately and without notice, terminate the Subcontract.

19. Quality

- 19.1 Unless otherwise provided the Subcontractor shall use suitable new materials and proper and tradesmanlike workmanship.
- 19.2 The Contractor may direct the Subcontractor to:
- (a) plan, establish and maintain a conforming quality system; and
 - (b) ensure that the Contractor has access to the quality system of the Subcontractor so as to enable monitoring and quality auditing.

20. Examination and testing

- 20.1 At any time before the expiry of the Defects Liability Period, the Contractor may direct that any of the Works be tested. The Subcontractor shall give such assistance and samples and make accessible such parts of the Works as may be directed by the Contractor.

- 20.2 The Contractor may direct that any part of the Works shall not be covered up or made inaccessible without the Contractor's prior written direction.
- 20.3 Tests shall be conducted by the Contractor or a person (which may include the Subcontractor) nominated by the Contractor.
- 20.4 The Contractor or the Subcontractor (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the test. If the other does not attend, the test may nevertheless proceed.
- 20.5 Without prejudice to any other right, if the Subcontractor or the Contractor delays in conducting a test, the other, after giving reasonable written notice of intention to do so, may conduct the test.
- 20.6 On completion of the tests, the Subcontractor shall make good the Works so that the Subcontractor fully complies with the Subcontract.
- 20.7 Results of tests shall be promptly made available by each party to the other.
- 20.8 Costs in connection with testing pursuant to this clause shall be borne by the Contractor except where the test is consequent upon, or reveals a failure of the Subcontractor to comply with the Subcontract (including this clause 20).

21. Defects

- 21.1 The Subcontractor must rectify at its own cost any part of the Works that is defective (including omitted) within 7 days of being notified in writing by the Contractor.
- 21.2 As soon as possible after Practical Completion the Subcontractor must rectify all defects existing at Practical Completion.
- 21.3 During the Defects Liability Period, the Contractor may give the Subcontractor a Direction to rectify a defect within a certain time period. The Subcontractor must carry out rectification as directed and at times and in a manner causing as little inconvenience to the occupants or users of the Project as is reasonably possible.
- 21.4 If the rectification is not carried out as directed, the Contractor may have the rectification carried out by others and the costs incurred will be a debt due and payable by the Subcontractor to the Contractor.

22. Care of Works

- 22.1 The Subcontractor is responsible for care of the Works from and including the Date for Commencement until 4:00 pm on the Date of Practical Completion.
- 22.2 The Subcontractor will keep each work Site clean and tidy, and, where specified in the relevant Purchase Order, on completing the Works under the Subcontract will, if directed by the Contractor, perform a thorough trade clean to the satisfaction of the Contractor's designated representative, and remove all of the Subcontractor's plant and equipment.

22.3 If the Subcontractor fails to clean and tidy as directed under clause 22.2, or fails to remove any of the Subcontractor's plant and equipment, the Contractor may carry out whatever may be reasonably required to attend to the cleaning and tidying or removing of plant and equipment and the associated costs may be deducted from any funds that are due or may become payable to the Subcontractor.

23. Programming

23.1 The Contractor may direct in what order and at what time the various stages or portions of the Works shall be carried out, and the Subcontractor shall not be entitled to additional compensation in relation thereto.

24. Time and progress

- 24.1 The Subcontractor will be entitled to make a written claim for an extension of time ("EOT") if the Subcontractor is, or will be, delayed in achieving Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay. That claim must be given to the Contractor within 5 Business Days of the occurrence of the delay.
- 24.2 Within 20 Business Days of receiving the Subcontractor's claim for an EOT, the Contractor will give the Subcontractor a written notice assessing the EOT claim.
- 24.3 If the Subcontractor does not comply strictly with the requirements of this clause 24 the Subcontractor will not be entitled to make a claim, nor be granted an EOT.
- 24.4 Notwithstanding that the Subcontractor is not entitled to or has not claimed an EOT, the Contractor may at any time and from time to time direct an EOT for any reason in its sole discretion (including for an act or omission of the Contractor or the Contractor's employees, agents, other contractors and consultants). The discretion granted to the Contractor is for the benefit of the Contractor and the Contractor is not under any obligation to exercise this discretion for the benefit of the Subcontractor. The Subcontractor shall not be entitled to any additional payment or to make any Claim because of any EOT directed by the Contractor under this subclause 24.4.
- 24.5 The Subcontractor accepts:
- (a) the risk of all increased costs resulting from delay or disruption to the Works and the performance of its other obligations under the Subcontract; and
 - (b) that it has no Claim arising out of or in any way in connection with such delay or disruption (including for any directions given under the Subcontract) with the exception of a claim for an EOT under this clause 24.

25. Suspension

- 25.1 The Contractor may direct the Subcontractor to suspend the carrying out of the whole or part of the Works for such time as the Contractor thinks fit, if the Contractor is of the opinion that it is necessary:
- (a) because of an act, default or omission of the Subcontractor or any of the Subcontractor's employees, agents, subcontractors, or consultants;
 - (b) for the protection or safety of any person or property; or
 - (c) to comply with a court order.
- 25.2 The Subcontractor shall not suspend carrying out of the Works otherwise than in accordance with the Contractor's direction under clause 25.1.
- 25.3 As soon as the Contractor becomes aware that the reason for any suspension no longer exists, the Contractor shall direct the Subcontractor to recommence the Works as soon as reasonably practicable.
- 25.4 The Subcontractor shall bear the cost of suspension pursuant to 25.1(a), and if the Subcontractor made the protection, safety or court order necessary, by reason of the Subcontractor's act or omission, the Subcontractor shall bear the cost of suspension pursuant to 25.1(b) and/or 25.1(c).

26. Acceleration

- 26.1 If:
- (a) the Contractor forms the opinion that, without a Direction under this clause, the Works may not reach Practical Completion by the Date for Practical Completion for any reason; or
 - (b) the Subcontractor is entitled to make a written claim for an EOT to the Date for Practical Completion pursuant to clause 24,

the Contractor may require that the Subcontractor identify measures which may be implemented to accelerate, expedite or reschedule the performance of the Works to procure achievement of Practical Completion by the (then unextended) Date for Practical Completion.

If the Contractor forms the opinion in the above paragraph (a), it shall give the Subcontractor prior notice of this opinion and identify the basis of this opinion.

- 26.2 Following the consultation described in clause 26.1, the Contractor may, at its discretion, give the Subcontractor a written direction to take any measures identified by the Contractor (not limited to those identified by the Subcontractor under clause 26.1).
- 26.3 If the Contractor forms the reasonable view that the measures identified by the Subcontractor may not be sufficient to accelerate the performance of the Works, the Subcontractor shall:
- (a) implement the measures identified by the Contractor and otherwise comply with a Direction given under this clause; and
 - (b) in addition to any Direction given by the Contractor under this clause 26, take positive steps including rescheduling, reprogramming, expediting and adjusting activities, sequences and the carrying out of the Works to ensure (as far as reasonably practicable) that the effects and consequences of any delay are overcome or minimised and that Practical Completion is achieved by the Date for Practical Completion.
- 26.4 No Direction by the Contractor will constitute a Direction under this clause 26 unless it is in writing and expressly states that it is a Direction under clause 26.2.
- 26.5 The liability for the additional costs incurred reasonably by the Subcontractor to accelerate the Works pursuant to this clause 26 shall be determined as follows:
- (a) to the extent that the acceleration is necessary to overcome delays for which the Subcontractor is responsible (for which there is no entitlement to an EOT under clause 24), the Subcontractor shall bear the costs the Subcontractor incurs in connection with a Direction from the Contractor under clause 26.2;
 - (b) to the extent that acceleration is necessary as, in the Contractor's reasonable view (which may be formed where the Subcontractor has materially departed from the Subcontractor's program), Practical Completion will not be achieved by the Date for Practical Completion, the Subcontractor shall bear the costs the Subcontractor incurs in connection with a Direction from the Contractor under clause 26.2; or
 - (c) to the extent that the acceleration is necessary to overcome delays arising from a delay for which the Subcontractor is entitled to and has claimed an EOT, the Subcontractor is entitled to recover payment for that acceleration as if it was a Variation.

27. Liquidated Damages

- 27.1 In relation to each Purchase Order, if the Subcontractor does not achieve Practical Completion by the Date for Practical Completion, the Contractor is entitled to levy liquidated damages as specified in the relevant Purchase Order for every day after the Date for Practical Completion to and including the earlier of the Date of Practical Completion or the termination of the Subcontract or

the Contractor taking Works out of the hands of the Subcontractor. The amount calculated shall be a debt due and payable by the Subcontractor to the Contractor.

- 27.2 The parties acknowledge the liquidated damages specified in the relevant Purchase Order is a genuine pre-estimate of the loss that will be incurred by the Contractor if the Subcontractor does not achieve Practical Completion by the Date for Practical Completion.

28. Assignment and subcontracting

- 28.1 The Subcontractor must not assign the Subcontract or any right, benefit or interest under the Subcontract or subcontract any part of the Works without the Contractor's written approval which will not be unreasonably withheld.
- 28.2 If the Contractor provides written approval in accordance with clause 28.1, the Subcontractor shall, without entitlement to compensation, within 5 Business Days provide the Contractor with a copy of the Deed in Schedule 1 of these Subcontract General Conditions, completed by the assignee.
- 28.3 If approval is given by the Contractor under clause 28.1, the Subcontractor shall be liable to the Contractor for the acts, defaults and omissions of any assignee, and any and all of the assignee's personnel and agents, as if they were those of the Subcontractor.
- 28.4 Approval to further subcontract shall not relieve the Subcontractor from any liability or obligation under the Subcontract.

29. Compliance with statutes

- 29.1 The Subcontractor must comply with all Legislative Requirements relating to the Works, including any direction from a local authority or other body having jurisdiction over the carrying out of the Works.
- 29.2 The Subcontractor indemnifies the Contractor against all loss, damage, expenses or costs incurred or suffered by the Contractor arising out of or in connection with a breach of the Subcontractor's statutory and contractual obligations under clause 29.

30. Default and termination

- 30.1 If the Subcontractor commits a breach of the Subcontract, the Contractor may issue a notice to show cause to the Subcontractor requiring the Subcontractor to show cause why the Contractor should not terminate the Subcontract.
- 30.2 If the Subcontractor fails to show reasonable cause within 7 days of receipt of the notice, the Contractor may, by further notice in writing:
- (a) terminate the Subcontract; or
 - (b) take out of the Subcontractor's hands the whole or part of the Works remaining to be completed and suspend payment.

- 30.3 Where the whole or part of the Works are taken out of the Subcontractor's hands or the Subcontract is terminated and as a result, the Contractor incurs additional costs, those costs will be a debt due and payable by the Subcontractor to the Contractor.
- 30.4 If the Subcontract is terminated for a party's default, including repudiation, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Subcontract had the defaulting party repudiated the Subcontract and the other party elected to treat the Subcontract as at an end and recover damages.
- 30.5 Without prejudice to any of the Contractor's other rights under the Subcontract, the Contractor may:
- (a) at any time and for any reason, by 4 weeks' written notice to the Subcontractor, terminate the Subcontract; and
 - (b) either itself or by a third party complete the uncompleted part of the work under this Subcontract,

and the Subcontractor is entitled to claim for the cost of Works incurred up to that date but is not entitled to any payment for loss of profit on the Works that have not been performed at the time of termination of the Subcontract.

31. Insolvency

- 31.1 If either party:
- (a) being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors;
 - (b) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any agreement with its creditors,

the other party may, without issuing a notice to show cause, terminate the Subcontract by written notice.

32. Dispute Resolution

- 32.1 If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Subcontract, including a dispute concerning:
- (a) a Direction of the Contractor; or
 - (b) a claim:
 - i. in tort;
 - ii. under statute;
 - iii. for restitution based on unjust enrichment or other quantum meruit; or
 - iv. for rectification or frustration,

or like claim available under the law governing the Subcontract,

then either party shall, by hand or by certified mail, give the other a written notice of dispute adequately identifying and providing details of the dispute.

- 32.2 Notwithstanding the existence of a dispute, the parties shall, subject to either party's default, insolvency, termination by frustration or the operation of clause 32.6, continue to perform the Subcontract.
- 32.3 Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.
- 32.4 If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to mediation.
- 32.5 If within a further 14 days the parties have not agreed upon a mediator, the mediator shall be nominated by a third party agreed between the parties.
- 32.6 Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Subcontract or to seek injunctive or urgent declaratory relief.

33. Notification of claims

- 33.1 If the Subcontractor becomes aware of any Claim in connection with the subject matter of the Subcontract the Subcontractor must give the Contractor written notice, no later than 5 days after the Subcontractor becomes aware of the Claim. The notice shall contain particulars of the Claim including the quantum.
- 33.2 Clause 33.1 shall not apply to any Claim, including a Claim for payment, the communication of which is required by another provision of the Subcontract.
- 33.3 If the Subcontractor does not give the Contractor the notice in accordance with clause 33.1, or communicate a Claim in accordance with the relevant provision of the Subcontract, the Subcontractor shall not be entitled to the Claim and the Contractor shall be released for all time from the Claim.
- 33.4 Within 20 Business Days of receipt of the notice the Contractor shall assess the Claim and shall certify the amount of that assessment to be moneys then due and payable.

34. Governing law

- 34.1 The Subcontract must be governed in all respects by the laws of the jurisdiction within which the Works are carried out.
- 34.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the jurisdiction within which the Works are carried out and courts competent to hear appeals from those courts.

35. Term of the Subcontract

- 35.1 The term of the Subcontract shall continue until the Subcontract is terminated in accordance with clause 30 or until as otherwise advised in writing by the Contractor.

36. General

- 36.1 The Subcontract may only be amended by written agreement between all parties.
- 36.2 This Subcontract may be signed in any number of counterparts. All counterparts together make one instrument.
- 36.3 The Subcontract supersedes all previous agreements about its subject matter. The Subcontract embodies the entire agreement between the parties.
- 36.4 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in the Subcontract.
- 36.5 Each party must do all things reasonably necessary to give effect to the Subcontract and the transactions contemplated by it.
- 36.6 The failure of a party to require full or partial performance of a provision of the Subcontract does not affect the right of that party to require performance subsequently.
- 36.7 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 36.8 A right under the Subcontract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 36.9 A clause or part of a clause of the Subcontract that is illegal or unenforceable may be severed from the Subcontract and the remaining clauses or parts of the clause of the Subcontract continue in force.
- 36.10 If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from the Subcontract in the relevant jurisdiction, but the rest of the Subcontract will not be affected.
- 36.11 Each party bears its own costs in relation to the preparation and signing of the Subcontract.

37. Notice

37.1 A notice, consent or communication under this Subcontract is only effective if it is:

- (a) in writing in English, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) given as follows:
 - i. delivered by hand to that party's address;
 - ii. sent to that party's address by prepaid mail (post); or
 - iii. sent by email to that party's email address.

37.2 Notice is given:

- (a) if delivered by hand:
 - i. that day, if delivered by 5.00pm on a Business Day; or
 - ii. the next Business Day, in any other case.
- (b) if sent by post:
 - i. 3 Business Days after posting, if sent within Australia; or
 - ii. 7 Business Days after posting, if sent to or from a place outside Australia.
- (c) if sent by email:
 - i. at the time of departure from the sender's mail server unless the sender receives an automated message generated by the recipient's mail server (Failure Message) that the email has not been delivered within two hours;
 - ii. for the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message.

37.3 A party's address and email address are those set out in the relevant Purchase Order, or as the party otherwise notifies the sender.

38. Definitions and Interpretation

38.1 In the Subcontract except where the context otherwise requires:

"Associated Entity"

means, in relation to the Contractor, an associated entity as defined by the *Corporations Act 2001* (Cth).

"Business Day"

means a day that is not a Saturday, Sunday or a public holiday in the place where the Site is located.

“Base Works”

means those works (which are not part of the Works):

- (a) in or upon which the Works are to be carried out; or
- (b) which are otherwise relevant to the Works or the Subcontractor's ability to carry out the Works in compliance with this Subcontract;

“Claim”

means any claim for an entitlement to an extension of time, an adjustment to the Subcontract Sum or the recovery of cash, expenses, damages, liabilities or other amounts under the Subcontract or otherwise.

“Confidential Information”

includes information which:

- (a) the Contractor indicates as being confidential;
- (b) by its nature may reasonably be understood to be confidential;
- (c) relates to the Contractor's shareholders and their shareholding in the Contractor or any Associated Entity that is a body corporate;
- (d) relates to the Contractor's financial or business affairs;
- (e) relates to any transactions in which the Contractor is involved;
- (f) constitutes the Contractor's trade secrets;
- (g) all plans, drawings, designs or specifications supplied by the Contractor to the Subcontractor and any information derived from those things or otherwise communicated to the Subcontractor;
- (h) is or forms part of the Contractor's supplier, client/customer or prospective client/customer lists including contact details, addresses, personal information, requirements or any lists, records or databases containing such information;
- (i) relates to any of the Contractor's client's/customer's or identified prospective client's/customer's identity, contact details, addresses, or requirements;
- (j) relates to any agreements, arrangements or terms of trade with a client/customer or supplier or identified prospective client/customer or supplier, including fees, quotes, prices or changes in respect of products or services,

whether under negotiation, proposed, offered, accepted or finalised;

- (k) is contractual information relating to any of the Contractor's products or services;
- (l) relates in any way to the Contractor's Intellectual Property;
- (m) relates to any of the Contractor's business systems, procedures or manuals;
- (n) relates to the Contractor's marketing or sales techniques, including any marketing plans relating to any of the Contractor's products and services;
- (o) relates to or is contained in any of the Contractor's operating manuals, handbooks or procedures; and
- (p) is contained in or constituted by any notes or developments regarding any of the above, whether originals or copies, prepared by the Contractor or anybody else;

but excludes information that:

- (a) was rightfully in the Subcontractor's possession and not subject to an obligation of confidence on the Subcontractor before negotiations leading to the commencement of the Subcontractor's engagement by the Contractor; or
- (b) is in or enters the public domain (other than as a result of a breach of the Contractor's confidence by any person).

"Contractor"

means the entity listed as the Contractor in these Subcontract General Conditions and/or the relevant Purchase Order.

"Date for Commencement"

means the date stated in the relevant Purchase Order or such other date nominated by the Contractor in writing.

"Date for Practical Completion"

means the date listed in the relevant Purchase Order, as adjusted in accordance with the Subcontract.

"Date of Practical Completion"

means the means the date on which the Subcontractor achieves Practical Completion.

"day"

means calendar day.

"Defects Liability Period"

means the period commencing on the Date of Practical Completion, and expiring on the date that is 12 months after the Date of Practical Completion or on the date of expiry of the

defects liability period under the Head Contract, whichever is later.

“Design”

means the design evidenced by the Design Documents and includes any materials and methods of using, fixing or working required or contemplated by the Design Documents.

“Design Documents”

means the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created (and including, where the context so requires, the Developed Design Documents) for the construction of the Works.

“Developed Design Documents”

means complete architectural, structural design, urban design and landscape architectural design documents, drawings, plans, specifications, material and information which set out the developed design for the Works.

“Direction”

includes any direction, instruction or communication by the Contractor.

“GST Act”

means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Head Contract”

means the contract between the Principal and the Contractor for the execution of the Project.

“Intellectual Property”

means:

- (a) all Confidential Information, developments, discoveries, innovations, inventions, novel or technical designs, procedures and trade secrets;
- (b) the entire copyright (including future copyright and rights in the nature of or analogous to copyright) and moral rights in all works, including but not limited to all works as defined in the *Copyright Act 1968* (Cth);
- (c) all designs including within the meaning of the *Designs Act 2003* (Cth);
- (d) all patents and patented applications, processes and products, including within the meaning of the *Patents Act 1990* (Cth); and
- (e) any trade name, brand name, service mark, common law trademark, including any trademark within the meaning of the *Trade Marks Act 1995* (Cth).

“Law”

means any national, federal (including Commonwealth), state, territory or local government legislation, statutes, ordinances and other laws including regulations, by-laws and other

subordinate legislation or law, common law, equity and approvals (including any condition or requirement under them).

“Legislative Requirements”

includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works; and
- (c) fees and charges payable in connection with the foregoing;

“month”

means calendar month.

“Other Contractors”

means contractors and consultants engaged in relation to the Project, other than contractors and consultants engaged by the Subcontractor (including its employees, consultants and subcontractors).

“PPSA”

means the *Personal Property Securities Act 2009* (Cth).

“PPS Law”

means:

- (a) the PPSA;
- (b) any regulations made at any time under the PPSA;
- (c) any amendment to any of the above, made at any time; or
- (d) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPSA.

“PPSR”

means the Personal Property Securities Register established under Chapter 5 of the PPSA.

“Practical Completion”

means:

- (a) the stage when the Works are complete except for minor defects and/or omissions that do not prevent the Works from being capable of being used for their intended purpose;
- (b) any tests which the Subcontractor is required to carry out have been completed to the satisfaction of the Contractor;

- (c) all documents that are essential for the use, operation and maintenance of the Works for the intended purpose of the Works have been supplied by the Subcontractor to the Contractor;
- (d) as-built drawings have been supplied by the Subcontractor to the Contractor; and
- (e) all rubbish and equipment belonging to the Subcontractor has been removed from the Site.

“Principal”	means the entity or individual listed in the relevant Purchase Order as Principal under the Head Contract.
“Project”	means the Project listed in the relevant Purchase Order.
“Purchase Order”	means a written order titled “Purchase Order” issued by the Contractor to the Subcontractor from time to time for the performance of Subcontract work by the Subcontractor.
“Qualifying Cause of Delay”	means any act, default or omission of the Contractor or their agents or any act, default or omission of the Principal or its consultants or agents and a Variation.
“Secondary Subcontractor”	means a subcontractor, including a consultant and a supplier, to the Subcontractor.
“Security”	means cash retention, an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or major Australian trading bank, or other form approved by the Contractor.
“Security of Payment Legislation”	means: <ul style="list-style-type: none"> (a) in the Australian Capital Territory, <ul style="list-style-type: none"> i. <i>Building and Construction Industry (Security of Payment) Act 2009</i> (ACT). (b) in New South Wales, <ul style="list-style-type: none"> i. <i>Building and Construction Industry Security of Payment Act 1999</i> (NSW); and ii. <i>Contractors Debts Act 1997</i> (NSW). (c) in the Northern Territory, <ul style="list-style-type: none"> i. <i>Construction Contracts (Security of Payments) Act</i> (NT). (d) in Queensland, <ul style="list-style-type: none"> i. <i>Building Industry Fairness (Security of Payment) Act 2017</i> (Qld).

- (e) in South Australia,
 - i. *Building and Construction Industry Security of Payment Act 2009 (SA)*; and
 - ii. *Worker's Liens Act 1893 (SA)*.
- (f) in Tasmania,
 - i. *Building and Construction Industry Security of Payment Act 2009 (Tas)*.
- (g) in Victoria,
 - i. *Building and Construction Industry Security of Payment Act 2002 (Vic)*.
- (h) in Western Australia,
 - i. *Construction Contracts Act 2004 (WA)*.

"Site"	means the address listed and/or described in the relevant Purchase Order.
"Subcontract"	means the agreement of the Contractor and Subcontractor constituted by the Subcontract General Conditions and the relevant Purchase Order.
"Subcontract General Conditions"	means this document.
"Subcontract Material"	means those documents and goods and materials created or required to be created under the Subcontract or for the purposes of the Works or the Project and to be handed over to the Contractor and includes Design Documents, Documentation, calculations, analyses, reports, records, data, plans, specifications, drawings, manuals, models and samples.
"Subcontractor"	means the entity or individual listed as the Subcontractor in these Subcontract General Conditions and/or the relevant Purchase Order.
"Subcontract Sum"	means the amount payable to the Subcontractor by the Contractor, as set out in the relevant Purchase Order and as adjusted in accordance with the Subcontract.
"the Works"	means the whole of the goods and/or services to be supplied by the Subcontractor or reasonably inferable from the Subcontract, and includes, temporary works, constructional plant and Variations, which is generally described in the relevant Purchase Order and may be further particularised by attachments to the relevant Purchase Order.
"Variation"	means a change to the Works by changing, adding to or omitting from the Works.

“WHS Legislation”

means the relevant Work Health and Safety Acts, Regulations and Codes of Practice, as in force and amended from time to time.

In the Subcontract:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Subcontract and references to the Subcontract include any schedules or annexures;
- (b) clause headings and subclause headings do not form part of, nor are to be used in the interpretation of, the Subcontract;
- (c) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- (d) words importing a gender include every gender;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included;
- (g) no clause of the Subcontract will be construed against a party on the basis that the party or its lawyers were responsible for the drafting of that clause;
- (h) a reference to a party to the Subcontract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (i) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (j) a reference to '\$' or 'dollar' is to Australian currency.

Signing page

EXECUTED as an agreement.

**Executed by Formula Interiors Pty Ltd ACN
128 925 066 in accordance with s 127(1)
Corporations Act 2001 (Cth):**

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Date:

Date:

**Executed by the Subcontractor in accordance
with s 127(1) of Corporations Act 2001 (Cth):**

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Date:

Date:

Schedule 1

THIS DEED POLL is made by [insert name of Subcontractor's individual representative] of [insert address] (**Individual**) in favour of Formula Interiors Pty Ltd ACN 128 925 066 (**Contractor**).

BACKGROUND

- A. The Contractor operates a business in relation to which it has entered into a Subcontract dated [insert date of signature of Subcontract General Conditions or earlier signature or acceptance of the relevant Purchase Order] (**Subcontract**) with [insert Subcontractor's entity name and ACN] (**Subcontractor**).
- B. It is a term of the Subcontract that the Subcontractor provides the Contractor with an original deed in this form executed by each individual to be engaged by the Subcontractor in completing the Works under the Subcontract pursuant to the Subcontract.
- C. The Individual wishes to be engaged in completing the Works under the Subcontract pursuant to the Subcontract. In completing the Works under the Subcontract, the Individual will have access to Confidential Information and Intellectual Property as defined in the Subcontract and will be introduced to the Contractor's clients/customers.

OPERATIVE PARTS

1. Individual acknowledgment

The Individual acknowledges and agrees that they have been provided with a copy of the Subcontract, which they have read and understood.

2. Individual agreement

The Individual agrees to be bound by the provisions in the Subcontract regarding workplace health and safety, confidentiality, intellectual property, non-competition and conflict of interest as if they were named in the Subcontract as the Subcontractor and were a party to that agreement.

EXECUTED as a deed poll

SIGNED AND SEALED by the Individual

in the presence of:

.....
Signature of Individual

.....
Signature of Witness

.....
Name of Witness (BLOCK LETTERS)

.....
Address of Witness