

BD Building Projects Australia Pty Ltd

ABN: 50 612 119 409

1. Interpretation and scope

1.1 The agreement of the parties is comprised in:

- (a) these **General Contract Terms** as updated and/or amended from time to time in accordance with clause 1.3; and
- (b) the **Work Order**

The **Client** is deemed to have agreed to the terms contained in the **Work Order** and these **General Contract Terms** if, having been provided with a copy in electronic or hard copy form by **BD Building Projects Australia Pty Ltd**, the **Client** continues to request services and the supply of **BD Personnel** from **BD Building Projects Australia Pty Ltd**.

1.2 In the **Agreement**:

- (a) bold terms are as defined in clause 13 and in the **Work Order**;
- (b) the rules governing the interpretation of the **Agreement** are set out in clause 13.2; and
- (c) if there is any inconsistency between the terms of these **General Contract Terms** and a **Work Order**, the work order will prevail to the extent of the inconsistency.

1.3 These **General Terms of Contract** may be updated and/or amended from time to time. Amended versions of these terms will be posted on the **BD Building Projects Australia Pty Ltd** website from time to time. **Clients** are deemed to have accepted and must comply with the provisions of this **Agreement** as amended when requesting the supply of **BD Personnel** for any **Job**.

2. Engagement

2.1 The **Client** engages **BD Building Projects Australia Pty Ltd** to supply **BD Personnel** in accordance with the **Work Order** and these **General Contract Terms**.

2.2 The **Client** acknowledges and agrees that if **BD Building Projects Australia Pty Ltd** supplies **BD Personnel** to it or if it accepts the supply of **BD Personnel** from **BD Building Projects Australia Pty Ltd**, it does so on the terms of this **Agreement**.

2.3 Variations

- (a) The **Client** may make a reasonable request for a **Variation** to the **Work Order**. The client must give 48 hours written notice to **BD Building Projects Australia Pty Ltd** of any **Variation** it requests. In this respect, time is of the essence of the **Agreement**.
- (b) **BD Building Projects Australia Pty Ltd** is under no obligation to make the **Variation** to the **Work Order**. If the **Client** gives 48 hours written notice of the request for a **Variation**, **BD Building Projects Australia Pty Ltd** will make reasonable endeavours to comply with the request for the **Variation**.

2.4 Obligations of **BD Building Projects Australia Pty Ltd**. Subject to this **Agreement**, **BD Building Projects Australia Pty Ltd** agrees to:

- (a) supply **BD Personnel** in accordance with a **Work Order** and these **General Contract Terms**. **BD Building Projects Australia Pty Ltd** makes no warranty or representation as to the training, competence or experience of any **BD Personnel**. **BD Building Projects Australia Pty Ltd** is not responsible for any defective workmanship of any **BD Personnel** and accepts no liability for any defective workmanship of any **BD Personnel**;
- (b) make reasonable endeavours to comply with a reasonable request for a **Variation** by the **Client** if and only if the **Client** Gives 48 Hours Written Notice to **BD Building Projects Australia Pty Ltd** of any request for a **Variation**.
- (c) provide the hand and power tools requested by the **Client** in a **Work Order**. For the avoidance of doubt **BD Building Projects Australia Pty Ltd** will only supply the customary hand and power tools used for contracted labour-only carpentry, unless specialist tools have been requested in a **Work Order**.
- (d) Review any work carried out by a **BD Personnel** if, and only if, requested in writing by the **Client** within 48 hours of the **BD Personnel** carrying out the work (and in this respect, time is of the essence of the **Agreement**) and may in its absolute sole discretion rectify or decline to rectify any work carried out by **BD Personnel** claimed by the **Client** to be defective.

2.5 The **Client** acknowledges and agrees that it may not refuse to pay any invoice on the basis that any **BD Personnel** are or were unsatisfactory.

3. Client's Duties and Obligations

3.1 The **client** acknowledges and agrees that at all times throughout the **Period of Hire** it:

- (a) occupies and controls the **Worksite**;
- (b) is responsible for assigning duties and providing appropriate instructions to the **BD Personnel** about the work and outcomes expected with respect to the work of **BD Personnel** on the **Job**;
- (c) will comply with all **Laws** applying to the **Worksite**, this **Agreement** and **The Job**;
- (d) will, without limiting the obligations in subclause (c), ensure that no act or omission occurs that constitutes or may constitute unlawful discrimination, bullying or harassment of the **BD Personnel**;
- (e) will consult with **BD Building Projects Australia Pty Ltd** if it wishes to relocate any **BD Personnel** from one **Worksite** to another.

Work Health and Safety

3.2 The **Client** must ensure that all **Laws** related to occupational health and safety requirements are complied with in respect to the **Job** and the **Worksite**. The **Client** warrants that it has obtained all necessary certificates, licenses, consents, permits and approvals of any organisation having control of the land on which the **Worksite** is located or any other person with an interest in the **Job**.

3.3 Without in any way limiting the **Client** obligations under clause 3.3, the **Client** must comply with the obligations set out in the **Work Health and Safety Act 2011** (and any of its regulations), **The Protection of the Environment Operations Act (NSW) 1997** (together **WHS**).

3.3 **BD Building Projects Australia Pty Ltd** will provide at **Client's** request, evidence that the **BD Personnel** have completed:

- (a) the **WorkCover Accredited General Induction for Construction Work**; and
- (b) the **Work Activity Induction** (as per **WorkCover Code of Practice for WHS Induction Training** in the construction industry).

BD Worker Reporting

3.5 **BD Building Projects Australia Pty Ltd** will make reasonable endeavours to procure that the **BD Personnel** immediately report to both the **Client** and **BD Building Projects Australia Pty Ltd**:

- (a) any changes to their work conditions or equipment that in the reasonable opinion of the **BD Workers** or any of them, create additional or inappropriate risk.
- (b) all incidents, including damage, near misses, injuries, illness, plant and equipment failure at the worksite including defects in equipment or the maintenance of **WHS** standards.

3.6 The **Client** agrees to provide to **BD Building Projects Australia Pty Ltd** copies of all documentation created by or for the client as a result of any incident, near miss, injury, illness, equipment failure or defect as soon as is reasonably practicable following creation.

Access by **BD Building Projects Australia Pty Ltd** to the Worksite

3.7 The **client** must on reasonable notice, at any time during the term of any **Work Order**, permit authorised officers, employees and agents of **BD Building Projects Australia Pty Ltd** to:

- (a) enter and have access to all parts of the **Worksite** and during that inspection to inspect any work, material, machinery, appliance, article or facility; and
- (b) inspect and copy any documentary record relevant to the **Job**, as is reasonably required for **BD Building Projects Australia Pty Ltd** to investigate and confirm the client's compliance with the **WHS**.

4. Payment by Client

4.1 The **Client** must pay **BD Building Projects Australia Pty Ltd** the **BD Charges** calculated in accordance with the **Charge Rates** for every **BD Personnel** supplied by **BD Building Projects Australia Pty Ltd** being calculated as a multiple of the number of hours/days (as appropriate) during which **BD Personnel** have been provided at the relevant **Charge Rate**.

4.2 The **BD charges** incurred for the supply of **BD Personnel** must be paid by the **Client** whether or not the services of the **BD Personnel** are utilised by the **Client**.

4.3 The **Charge Rates** include **BD Building's** fees, calculated as a percentage of a **BD Worker's Charge Rate**. **BD Building Projects Australia Pty Ltd** may on reasonable notice increase the **Charge Rates** to take into account any statutory or other legal change, including, without limitation, changes to superannuation entitlements and compulsory employee benefits, which leads to an increase in **BD Building Projects Australia Pty Ltd's** statutory and/or legal obligations resulting in an increase in the cost of supply.

4.4 The **Client** agrees to pay to **BD Building Projects Australia Pty Ltd** any costs (including legal costs on a solicitor client basis) incurred by **BD Building Projects Australia Pty Ltd** in recovering any money payable by the **Client** under the **Work Order** or the **General Contract Terms** and that these costs may be included in any **Tax Invoice**.

Tax Invoices

4.5 **BD Building Projects Australia Pty Ltd** will issue a **Tax Invoice** every week.

4.6 A **Tax Invoice** may include **BD Charges**, interest payable under clause 4.10 the following clause and costs payable under the preceding clause 4.4.

4.7 The **Client** must pay the **Tax Invoice** within 7 days of the date of a **Tax Invoice**. Unless otherwise agreed by **BD Building Projects Australia Pty Ltd** all payments due to it by the **Client** are to be paid by direct bank transfer to an account nominated by **BD Building Projects Australia Pty Ltd** on the **Tax Invoice** or by eWay, cheque made payable to **BD Building Projects Australia Pty Ltd**, credit card or by any other method listed on the relevant **Tax Invoice**.

4.8 If the client does not agree with any amount charged by **BD Building Projects Australia Pty Ltd** in a **Tax Invoice** it must notify **BD Building Projects Australia Pty Ltd** within 5 **Business Days** of the date of the **Tax Invoice** providing **BD Building Projects Australia Pty Ltd** with the reasons for its disagreement and in this respect time is of the essence of the **Agreement**. The **Client** has no right of set-off, counter claim or defence whether at law or in equity are under any statute to any amount charged by **BD Building Projects Australia Pty Ltd** in a **Tax Invoice**. If the **Client** fails to notify **BD Building Projects Australia Pty Ltd** that it disputes any amount charged by **BD Building Projects Australia Pty Ltd** in a **Tax Invoice** within 5 **Business Days** of the date of the **Tax Invoice**, the **Client** agrees that it is liable to pay the whole of the amount charged in a **Tax Invoice** without any set-off, counter claim or defence whether at law or in equity or under any statute.

4.9 If the **Client** wishes to provide to **BD Building Projects Australia Pty Ltd** a payment schedule in accordance with the **Building and Construction Industry Security of Payment Act 1999, NSW**, it must do so within 5 **Business Days** of the date of the **Tax Invoice**.

Interest

4.10 The **Client** must pay interest on any overdue amount of money payable to **BD Building Projects Australia Pty Ltd** at a rate that is 8% per annum greater than the official cash rate set by the Reserve Bank of Australia from time to time. Interest will accrue on any overdue amount on a daily basis from the date a **Tax Invoice** was payable until the date of actual payment and will compound monthly. The **Client** agrees that this is the reasonable cost incurred by **BD Building Projects Australia Pty Ltd** when a **Tax Invoice** is not paid on the **Due Date for Payment**.

Timesheets

4.11 **BD Personnel** will complete timesheets in paper or digital format documenting their attendance at the **Worksite** during the **Period of Hire** and the **Client** must counter-sign each timesheet completed by **BD Personnel**.

4.12 If the **Client** refuses to sign a time sheet because it disputes the hours claimed, the **Client** must inform **BD Building Projects Australia Pty Ltd** as soon as is reasonably practicable and in any event within 48 hours of refusal to sign (and in this respect time is of the essence of the **Agreement**) and must co-operate fully and in a timely fashion with **BD Building Projects Australia Pty Ltd** to enable **BD Building Projects Australia Pty Ltd** to establish the hours during which the **BD Personnel** were available for work at the **Worksite**.

4.13 The **Client** acknowledges that:

- (a) failure by the **Client** to sign any time sheet does not absolve the **Client** from its obligation to pay **BD Building Projects Australia Pty Ltd** for the hours that the **BD**

Personnel were supplied;

(b) the **Client** must pay to **BD Building Projects Australia Pty Ltd** any portion of hours which the client accepts that the **BD Personnel** were available to perform work in accordance with clause 4.1.

Credit Limit

4.14 Despite anything to the contrary in the **Work Order** or the **General Contract Terms**, the **Client** acknowledges and agrees that when the amount of **BD Charges** has reached the **Credit Limit** it must pay the **Reduction Amount** to **BD Building Projects Australia Pty Ltd** within 24 hours and in this respect time is of the essence of the **Agreement**.

4.15 If the **Reduction Amount** is not paid within 24 hours, **BD Building Projects Australia Pty Ltd** has the right to suspend the supply of **BD Personnel**.

5. Termination

5.1 This **Agreement** may be terminated:

(a) by either party for convenience, without fault, at any time on service of a written notice 14 days in advance of the applicable termination date.

(b) by either party by notice in writing with immediate effect if the other party:

- i. has committed any serious or fundamental breach of this **Agreement** that is incapable of remedy;
- ii. has failed to rectify serious or repeated breach of this **Agreement** that is capable of remedy within 5 days of service of a breach notice by the party not in default of the **Agreement**; or
- iii. becomes bankrupt or applies for or has made against it a receiving order or makes any composition with its creditors or an administration order or order is made or resolution passed for its winding up or otherwise becomes unable to pay its debts;

(c) by either party by written notice in accordance with any termination provision set out in a **Work Order**.

5.2 Termination of this **Agreement**, howsoever caused, will not release the **Client** from its obligation to pay to **BD Building Projects Australia Pty Ltd** all amounts of money due up to the date of termination and is without prejudice to any other rights acquired by a party prior to termination.

6. Acknowledgments and Indemnity

6.1 Nothing contained in this **Agreement** will in any way constitute any **BD Personnel** as an employee, agent or partner of the **client**.

6.2 The **Client** acknowledges that **BD Building Projects Australia Pty Ltd** is not responsible for supervising, managing or directing the **BD Personnel** whilst working on a **Worksite** and that accordingly, the **Client** is in a position to assess and accept, and does accept, sole responsibility for all and any risks in respect of or during the **Job**.

6.3 The **Client** acknowledges and agrees that **BD Building Projects Australia Pty Ltd** accepts no responsibility for the quality of work carried out by the **BD Personnel** or the activities of those personnel at **Worksites**.

6.3 The **Client** acknowledges and agrees that **BD Building Projects Australia Pty Ltd** is not responsible for the completion or standard of a **Job**.

6.5 The **Client** releases and indemnifies **BD Building Projects Australia Pty Ltd** from and against any Claim suffered or incurred by the **Client** or any third party or made against it by the **Client** or any third party arising directly or indirectly from a **Job** or the **Worksite** or the **Activities of BD Personnel**.

6.6 **BD Building Projects Australia Pty Ltd's** maximum liability pursuant to or arising out of this **Agreement** will be limited (insofar as is permitted by law) to the maximum consideration paid by the **Client** during a **Job** at the time the liability is determined.

6.7 The **Client** will indemnify and keep indemnified **BD Building Projects Australia Pty Ltd** to the fullest extent permitted by law from and against all **Claims** (including any **Claim** by a third party) suffered or incurred by or made against **BD Building Projects Australia Pty Ltd** or any **BD Personnel** arising directly or indirectly from any damage, injury or loss caused by or resulting from any:

- (a) breach of the **Client's** obligations under this **Agreement**;
- (b) injury, disability or death caused by the **Client** or **BD Personnel** at the worksite;
- (c) damage to property (whether owned by **BD Building Projects Australia Pty Ltd** or not) caused by the **Client** or **BD Personnel** at the **Worksite**;
- (d) act or omission by **BD Building** or by the **Client** or any **BD Personnel**.

7. Confidentiality

7.1 Each party must ensure that:

(a) all matters relating to the affairs of the other party, including without limitation the **Charge Rates** will be kept confidential and will not at any time whether during or after the termination of this **Agreement** disclose any such information to any third party (including for the avoidance of doubt any contractor, consultant or other person engaged by the other party, any client of the other party or any competitor of the other party) or use that information for its own benefit;

(b) it will not during or after the termination or expiration of this **Agreement** make use of for its own purposes or disclose to any person (except the proper officers of the other party or as required by law) any information relating to the business, prospective business, finances, inventions, intellectual property rights, price lists or lists of customers and contractors of the other party of which they may during the term of this **Agreement** become possessed, all of which information will be deemed to be confidential.

7.2 **BD Building Projects Australia Pty Ltd** will use reasonable efforts to procure that the **BD Personnel** give any and all confidentiality undertakings that the **Client** may reasonably require from them.

8. Insurance

8.1 Unless otherwise stated in a **Work Order**, prior to the commencement of the **Period of Hire** the **Client** must obtain and maintain such policies of insurance with a reputable insurer as are appropriate in connection with the **BD Personnel** and their performance, including without limitation:

- (a) public liability insurance in an amount of not less than \$20 million for any single occurrence; and
- (b) worker's compensation insurance in accordance with applicable State laws; and
- (c) any other insurances that a prudent and responsible **Client** would procure for the purposes of the activities and the business to be conducted by it in connection with this

Agreement.

8.3 The **Client** must produce evidence of the certificate of currency for each policy referred to in clause 8.1 to **BD Building Projects Australia Pty Ltd** within 48 hours of a request by **BD Building Projects Australia Pty Ltd**.

9. Amendment

9.1 This **Agreement** may only be amended by written agreement between a board director of **BD Building Projects Australia Pty Ltd** (or representatives duly authorised in writing by such board director) and an authorised representative of the **Client**. A written copy of the varied terms will be given to the **Client** stating the date on or after which such varied terms will apply.

10. Protection of Goodwill

10.1 The **client** must not, prior to the expiry of the period of six months after the termination or expiration of this **Agreement**, without **BD Building Projects Australia Pty Ltd's** prior written consent:

(a) enter into (or approach with a view to entering into) a contract of engagement whether by employment or subcontract or in any other capacity directly or indirectly with any **BD Personnel**, for services of a nature similar to those provided by any **BD Personnel** whilst he was engaged by **BD Building Projects Pty Ltd**;

(b) enter into (or approach with a view to entering into) a contract of engagement or for any services, or employment similar in nature to the **Agreement** between the **Client** and **BD Building** directly or indirectly with any client, customer or entity introduced to the **Client** by **BD Building Projects Australia Pty Ltd** or any **BD Personnel**.

(c) induce to leave or cease performing services for **BD Building Projects Australia Pty Ltd**, any **BD Personnel** with whom the **Client** had contact in the course of a **Job** at any time in the six months prior to the termination or expiry of this **Agreement**.

(d) Use a business name used by **BD Building Projects Australia Pty Ltd** for the purposes of a business similar to (or competing with) any business carried out by the **BD Building Projects Australia Pty Ltd**.

10.2 The provisions of this clause 10 will apply to activities of the **Client** alone or jointly with another or others in any capacity and whether or not for its or their direct or indirect benefit.

11. Communications and Notices

11.1 Any communication given under this **Agreement** or any **Law** must (unless specifically provided otherwise in this **Agreement**) be in writing and may be sent by hand, prepaid post, electronic mail or facsimile to an address of the **Party** stated on the **Work Order** as varied from time to time by written notification from one party to the other.

11.2 The **Client** expressly agrees to receiving communications electronically from **BD Building Projects Australia Pty Ltd** at an address notified in the **Work Order** as may be varied from time to time by written notification to **BD Building Projects Australia Pty Ltd**.

11.3 Any communication served by hand is deemed to be served at the time of actual delivery. Any communication served by post will be deemed served two business days following that on which it was posted in Australia. Any notice served by electronic means will be deemed served at the time of dispatch if dispatched on a business day before 5.30 pm or in any other case at 10.00 am on the business day after the day of dispatch (providing no transmission error report is received).

11.4 Signatures provided by electronic mail will legally bind the parties to the same extent as original signatures.

12. General

Entire Agreement

12.1 This **Agreement** contains the entire agreement of the parties concerning the subject matter hereof and supersedes all previous agreements, understandings or arrangements (if any) whether written, oral or implied between **BD Building Projects Australia Pty Ltd** and the **Client** in connection with it.

Representations

12.2 The **Client** declares and acknowledges that it is not entering into this **Agreement** in reliance upon any representation or warranty or understanding, express or implied, that is not contained in this **Agreement** and (for the avoidance of doubt) irrevocably and unconditionally waives any right to any remedy of whatsoever nature (whether damages, rescission or otherwise) for any breach of any such representation or warranty which there may have been or which may occur.

Assignment and Sub-contracting

12.3 This **Agreement** is personal to the **Client** and it must not assign or sub-contract its obligations or rights under this **Agreement** to any third party without the prior express written consent of **BD Building Projects Australia Pty Ltd**, which consent may be withheld in **BD Building Projects Australia Pty Ltd's** absolute discretion.

12.4 **BD Building Projects Australia Pty Ltd** may sub-contract or assign its obligations under this **Agreement** to any third party or to any company within the **BD Building group**. In the event of an assignment, all references to **BD Building Projects Australia Pty Ltd** will be deemed to refer to the assignee.

Headings

12.5 The headings in this **Agreement** are for ease of reference only and do not affect its interpretation.

Governing Law and Jurisdiction

12.6 This **agreement** will be governed by and construed in all respects in accordance with the laws of New South Wales and the Commonwealth of Australia, and the parties irrevocably submit to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them.

Severability

12.7 The restrictions contained in this **Agreement** are considered reasonable by the parties but, if any such restriction will be found void but would be valid if some part were deleted or the period or area of application reduced, such restriction will apply with such modification as may be necessary to make it valid and effective.

12.8 A term or part of a term of this **Agreement** that is illegal or unenforceable may be severed from this **Agreement** and the remaining terms or parts of the term of this **Agreement** continue in force.

Advertising

12.9 The **Client** irrevocably authorises **BD Building Projects Australia Pty Ltd**, throughout the term of this **Agreement**, to issue or cause to be issued any and all advertisements about positions which the **Client** seeks to fill and in whatever form and media **BD Building Projects Australia Pty Ltd** deems appropriate.

Exercise of a Right and Waiver

12.10 No failure to exercise nor any delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise 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. A waiver is not valid or binding on the party granting that waiver unless made in writing.

13. Definitions

13.1 The following words in bold type as used in this **Agreement** will have the following meanings:

Agreement means the agreement between the parties identified in clause 1.1;

BD Building Projects Australia Pty Ltd means BD Building Projects Australia Pty Ltd ABN 50 612 119 409

BD Charges means the charges payable by a **Client** to **BD Building Projects Australia Pty Ltd** referred to in clause 4.1

BD Personnel/Workers means any person supplied to the **Client** by **BD Building Projects Australia Pty Ltd**.

Business Day means any day that is not a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

Charge Rates means the rates for **BD Workers** stated in a **Work Order**.

Claim means any allegation, debt, cost, damage, expense, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect.

Client means the client identified in the **Work Order**.

Construction Work has the same meaning as in the Building and Construction Industry Security of Payment Act 1999, NSW.

Credit Limit means the amount stated in the **Work Order**.

Due Date for Payment means the date 7 days from the date of a Tax Invoice.

Job means **Construction Work** undertaken to be carried out or being carried out by a **Client**.

Law means any statute, regulation order, rule, subordinate or delegated legislation in force from time to time in Australia whether made by a State, Territory, Commonwealth or local government body and includes the common law and equity;

Party means **BD Building Projects Australia Pty Ltd** or the **Client** as the case requires.

Period of Hire means the period stated in a **Work Order** during which the **Client** engages **BD Building Projects Australia Pty Ltd** to supply **BD Personnel**.

Reduction Amount means the amount stated in the **Work Order**.

Related Body Corporate is as defined under the Corporations Act 2001 (Cth);

Variation means a change to the number or the Start Date, Start Time, Finish Date or Finish Time of any **BD Personnel** in a **Work Order**.

Work Order means the document entitled "**Work Order**" for the supply of **BD Personnel** to a **Client at a Worksite**, including any Variation, and;

Worksite means the location of a **Job**.

13.2 The following rules of interpretation apply to this **Agreement**:

(a) Any references, express or implied, to legislation include references to

- i. that legislation as amended, extended or applied by or under any other legislation before or after this agreement;
- ii. any legislation which that legislation re-enacts (with or without modification); and
- iii. any subordinate legislation made (before or after this agreement) under any legislation, including one within paragraph (i) or paragraph (ii) above; but does not include any legislation after the date of this agreement to the extent that it is retrospective or would increase or extend the liability of **BD Building Projects Australia Pty Ltd**.

(b) Words denoting persons will include bodies corporate and unincorporated associations of persons.

(c) Where the context permits the singular includes the plural and vice versa and words denoting one gender will include any gender.

(d) Words of limitation such as 'including' do not limit what things are included.