

TAYLORS ENGINEERING AND WELDING SERVICES – WORKS - PURCHASE ORDER TERMS AND CONDITIONS

1. Contract and Term

- 1.1 You agree to carry out the Works in accordance with the Subcontract Order, these general conditions and the Plans supplied or made available by us to you (together the **Contract**). Any special conditions in the Subcontract Order will take precedence to the extent of any conflict with these general conditions.
- 1.2 We will determine the interpretation of the Contract to the extent of any inconsistency, conflict or ambiguity in the documents comprising it. You will not be entitled to any claim whatsoever including for costs, time or otherwise in connection with the determination.
- 1.3 The Contract starts on the date of the Subcontract Order and continues until final completion and acceptance by us of the Works. Any Works performed before the date of the Contract will be governed by the Contract and included in the Contract Price.
- 1.4 You must assume and perform all of our obligations under the Head Contract (if any) applicable to the Works, and must adhere to and not cause any breach or default by us of the Head Contract (if any).
- 1.5 Unless expressly stated to the contrary, you bear all risks and costs (whether or not ascertainable at the date of the Contract) of undertaking the Works and complying with your obligations under the Contract.

2. The Works and Performance

- 2.1 The Works must, and you warrant that the Works will be:
 - (a) of good quality, free of Defects and fit for the purpose communicated to you or reasonably inferable;
 - (b) comprised of new materials that are free from defects in design, construction and manufacturing;
 - (c) made and performed in compliance with:
 - (i) the Plans, our directions, and all rules, policies and procedures notified to you by us from time to time;
 - (ii) all Laws; and
 - (iii) Good Industry Practice.
- 2.2 You must not take any action in relation to the Works based on instructions from any person other than us, except with our prior written consent.
- 2.3 You warrant that you have:
 - (a) the skill, competence, resources and experience required to properly undertake the Works;
 - (b) all appropriate licences, approvals, permits, authorisations and accreditations to perform the Works;
 - (c) adequate personnel to perform the Works who are appropriately trained and will be supervised by a person who has the requisite experience and qualifications to undertake that supervision;
 - (d) conferred with us to ensure you have ascertained and fully understood our requirements and objectives for the Works;
 - (e) thoroughly reviewed, inspected, investigated and made your own independent assessment of the Plans and conditions at the Site and confirmed them to be adequate and suitable. You acknowledge that we do not warrant, guarantee or make any representation concerning the condition of the Site or the accuracy or adequacy of the Plans or any information we make available to you.
- 2.4 Your warranties remain unaffected despite our review, approval or rejection of, or comment on, your works, plans, materials or documents which will not impose any liability whatsoever on us or entitle you to make any claim.
- 2.5 You agree to allow us to inspect, examine, review, test and witness the performance of the Works. The costs of tests will be borne by us except where the test is consequent upon, or reveals your failure to comply with the Contract.
- 2.6 Legal title in the Works passes to us on the earlier of incorporation into the Project or payment. Risk in the Works passes to us upon final completion and our acceptance of the Works, and you must rectify any loss or damage to the Works that occurs prior to that time at your cost.
- 2.7 Risk in any materials and equipment provided by us passes to you on delivery and ceases on our reacceptance of them.

- 2.8 You are solely responsible for all work methods, techniques, sequences and procedures in carrying out and completing the Works, and will supply all labour, materials, plant, equipment and other items and execute works not expressly mentioned in the Contract but which are necessary for the carrying out and completion of the Works in accordance with the Contract.
- 2.9 You are responsible to ensure all Plans you work to are current issue, and must check all measurements before proceeding with the Works and immediately notify us of any discrepancies.
- 2.10 Final completion and acceptance of the Works will be subject to, and will in no event constitute a waiver of, your warranties and indemnities under the Contract and our corresponding rights and remedies.

3. Programming

- 3.1 You must ensure the Works reach Practical Completion by the Date for PC and perform the Works with due expedition, without delay and in accordance with any program for the Works provided or approved by us (including the program under the Head Contract (if any)) as may be varied from time-to-time, time being of the essence.
- 3.2 Except as provided in clause 3.4:
 - (a) you accept the risk of delay and increased costs resulting from delay or disruption to the Works; and
 - (b) We are under no obligation to extend the Date for PC at any time
- 3.3 You must pay us the Liquidated Damages specified in the Subcontract Order for each day after the Date for PC that Practical Completion is not achieved. You agree that the Liquidated Damages reflect a genuine pre-estimate of our loss in the event that the Practical Completion is late, and does not constitute a penalty. Where no amount of Liquidated Damages is stated in the Subcontract Order, we retain our right to common law damages for delay.
- 3.4 You will be granted a reasonable extension of the Date for PC as your sole remedy if:
 - (a) a Delay Event occurs that has not been caused or contributed to by your act, default or omission and causes you to be delayed in carrying out the Works;
 - (b) you have taken all available steps to prevent and mitigate the effects of the Delay Event; and
 - (c) within 5 days of becoming aware of the Delay Event, you have given us written notice of the Delay Event, including details of its nature, the estimated delay, the steps that will be taken by you to deal with and mitigate the delay, and other details reasonably required by us.
- 3.5 If, in our reasonable opinion, progress of the Works is not in compliance with the Contract or there is (or is likely to be) a delay in Practical Completion, we may:
 - (a) direct you to accelerate, reschedule, reprogram and/or reallocate your resources and the sequencing of the Works and you must comply (at your cost and without entitlement to any extension of time) with such directions; and/or
 - (b) engage any third party to assist with the Works and you must assist such third parties as necessary for them to perform the tasks assigned to them; and/or
 - (c) omit any part of the Works and undertake that part of the Works ourselves or by use of third parties, and in each case the Contract Price will be reduced by our costs, losses, damages and expenses incurred as a consequence. If the balance of the Contract Price is less than the amount of such reduction, the difference will be a debt due by you to us on demand.

4. Site

- 4.1 On condition that you have completed Site induction and provided us with evidence of your required insurance (and, as we require, job safety analysis, material data safety sheets and electrical equipment registers), we will provide you with non-exclusive access to the Site as necessary to perform the Works. You must at your cost:
 - (a) keep the Site clean and tidy;
 - (b) not cause any contamination or pollution of or at the Site;

- (c) comply with our requirements for use of the Site including with respect to scheduling and timing for access;
 - (d) ensure that your personnel complete induction training as directed by us and sign and adhere to any confidentiality requirements including from the Project principal (if any);
 - (e) coordinate and share access to the Site and work fronts with us and other contractors at the Site;
 - (f) coordinate and integrate the Works with the other work under the Head Contract (if any) and attend related meetings; and
 - (g) co-operate and comply with any direction of the Site principal contractor and do all other things reasonably required by us to comply with occupational health and safety or environmental Laws and requirements.
- 4.2 You must immediately notify us of any accident, incident or near miss occurring in connection with the Works and provide further information to us as requested.
- 4.3 We may direct you to remove from the Site any of your personnel who in our opinion is incompetent, negligent or in breach of your obligations under the Contract.

5. Quality of Works

- 5.1 The Defects Liability Period will commence on Practical Completion and apply again with respect to any works undertaken by you to remedy a Defect in the Works.
- 5.2 If, prior to the expiration of the Defects Liability Period, we discover or consider that there is a Defect, we may do any one or more of the following with respect to the Works:
- (a) reject them (even if we have previously accepted or paid for them) and assess the reduction in value of the Works as performed and any additional costs or losses suffered by us as a result of that reduction and deduct that amount from the Contract Price;
 - (b) require you to rectify them at your cost and within any time that may be specified by us and if you fail to do so, we may elect any other remedy provided in this clause 5.2;
 - (c) rectify or engage another party to rectify the Works, assess the cost of those rectification works and deduct that amount from the Contract Price;
 - (d) accept them and reduce the Contract Price by a reasonable amount in our discretion; or
 - (e) where they cause the carrying out of abortive work or rework, assess the cost of that work and deduct that amount from the Contract Price.
- 5.3 If the balance of the Contract Price is less than the aggregate amount of the deductions available to us under clause 5.2, the difference will be a debt due and payable by you to us on demand.
- 5.4 You must refund to us on demand any payments made by us in respect of Works which we reject.

6. Price and Payment

- 6.1 The Contract Price is inclusive of all works, materials, labour, services and all other costs necessary to perform the Works and your obligations under the Contract, subject to adjustment only on account of Variations. The Contract Price is not subject to adjustment for fluctuations in the cost of labour or materials.
- 6.2 We agree to pay only the Contract Price for the Works stated in the Subcontract Order where the Works have been made and performed in accordance with the Contract.
- 6.3 You must submit payment claims monthly (or as otherwise specified in the Subcontract Order) on the days we direct, during performance of the Works, for the portion of the Works completed in the claim period, in the form of a valid tax invoice noting the Subcontract Order number. Claims received after the required date of submission will be deemed included in the following payment claim.
- 6.4 We will assess your payment claim and make payment of amounts we approve (less retention for security and deduction for amounts we are entitled to set-off) within 42 days (or such other period specified in the Subcontract Order or agreed by us) of receipt of your tax invoice, or if required by us, evidence (including a statutory declaration signed by an authorised representative of you) that all amounts due and payable to your subcontractors and employees in relation to the Works have been paid.
- 6.5 Payment is made on account only and is not proof or admission that the Works are to our satisfaction.
- 6.6 We may set-off from payment any amount due by you to us, and the amount of any costs or damages we consider you may be liable to us for.

7. Intellectual Property

- 7.1 All Intellectual Property created by you in connection with the Works will vest in us or as we direct from the time of creation.
- 7.2 You grant us a non-exclusive, perpetual, transferrable (with rights to sub-licence), royalty free, non-revocable licence to use your Intellectual Property as necessary for the use of the Works.
- 7.3 You warrant that the Works and your performance of them will not infringe any Intellectual Property of third parties.

8. Confidentiality

- 8.1 You must not disclose the Contract (or its contents) or any documents, know-how or confidential information of or about us or the Works, Head Contract (if any) or the Project which you become aware of or generate in connection with the Works, except to your personnel who have a need to know or as required by Laws.
- 8.2 You must return or destroy, as and when we direct, all original documents and copies (including electronic form) in your possession or control which comprise, contain, reproduce, are based on, or utilise such confidential information.

9. Liability

- 9.1 You indemnify and hold us harmless against all losses, costs (including legal fees on an indemnity basis), liabilities, damages and claims suffered or incurred by us or our personnel in connection with:
- (a) any personal injury or death, loss of or damage to property, or claims of nuisance, noise or disturbance, arising in relation to the performance or non-performance of the Works; or
 - (b) any infringement of Intellectual Property or obligations of confidentiality by you; or
 - (c) your negligence, wilful misconduct or breach of the Contract.
- This indemnity will be reduced to the extent that the loss is caused, or contributed to, by our negligence.
- 9.2 The operation of Part 1F of the *Civil Liability Act 2002 (WA)* is excluded in relation to the Contract and any related claim in tort (including negligence), in equity, under statute or otherwise.

10. Insurance

- 10.1 Prior to commencing the Works, as a condition to payment and when otherwise requested by us you must provide evidence to our satisfaction that you maintain the following insurance policies unless otherwise specified in the Subcontract Order:
- (a) workers' compensation insurance as required by applicable Laws endorsed to contain a principal's indemnity extension in favour of us and the Project principal (if applicable);
 - (b) general public and products liability insurance for at least \$20,000,000 per claim and unlimited in the aggregate;
 - (c) comprehensive motor vehicle insurance for personal injury and property damage arising from the use of motor vehicles/equipment in the execution of the Works for at least \$20,000,000 per claim and unlimited in the aggregate;
 - (d) insurance covering physical loss and damage to the Works to the replacement value of the Works; and
 - (e) where the Works include professional services, professional indemnity insurance for at least \$10,000,000 per claim and in the aggregate with one automatic reinstatement of the aggregate limit.
- 10.2 The policies required under clause 10.1 must:
- (a) be maintained for the duration of the Term and, in respect of professional indemnity insurance, for a minimum of 6 years after final completion and acceptance of the Works;
 - (b) name us and the Project principal (if any) as additionally insured parties (excluding professional indemnity insurance) and contain a cross-liability clause;
 - (c) contain a waiver of subrogation in favour of us and the Project principal (if any) whereby the insurer waives any right to claim against us notwithstanding any contribution by us to the incident the subject of a claim;
 - (d) be with an insurer rated no lower than A- (Standard & Poor's); and
 - (e) extend to cover all risks and perils typically covered by those types of insurance, and otherwise be on terms acceptable to us.

11. Security

- 11.1 We may withhold 10% of each payment claim as retention security. We may retain half of the security until Practical Completion and the remaining half until such time as we are

- satisfied that the completed Works are and have been free from Defects for the Defects Liability Period.
- 11.2 We may have recourse to the security whenever you owe us money or we suffer damages due to your default. We will return the balance of any security to you within 60 days after the end of the Defects Liability Period.
- 11.3 To the extent permitted by Laws, you irrevocably waive any and all:
- rights to notice of our intention to have recourse to the security;
 - liens and other rights in respect of the Works, the materials, plant or equipment of which they are comprised or their results; and
 - rights to notices required under any provision of the PPSA.
- 11.4 If we determine the Contract is or contains a security interest for the purposes of the PPSA, you agree to do anything we request for purposes of: ensuring that the security interest is enforceable and perfected; applying for any registration under the PPSA; and/or enabling us to exercise rights in connection with the security interest.
- 12. Variations**
- 12.1 We may direct a Variation at any time. You must not vary the Works other than pursuant to a written Variation directed or approved by us.
- 12.2 All Variations will be valued in accordance with the rates set out in the Contract or by prior written agreement between the parties or, if there is no prior written agreement, at a reasonable amount determined at our sole discretion.
- 12.3 You must obtain our written consent prior to providing any Works that are not specified in the Subcontract Order or would otherwise result in the Contract Price stipulated in the Subcontract Order being exceeded. If you fail to do so, we will not be liable for any amounts that exceed the Contract Price stipulated in the Subcontract Order, and will be entitled to retain and use the additional and/or excess Works at no cost.
- 12.4 We may omit any part of the Works by directing a Variation under this clause and in doing so you agree that we may perform the omitted work ourselves or engage a third party to perform the omitted works.
- 13. Termination and suspension**
- 13.1 We may terminate the Contract:
- at any time by giving you notice, and will pay you (as your sole entitlement and remedy) for any Works completed to the date of termination but for which we have not yet paid and for your reasonable direct costs of removal from the Site of your workers, tools, materials and rubbish if included in the Contract Price and not already paid;
 - immediately if you become insolvent, enter bankruptcy or administration or breach the Contract and do not remedy that breach within 10 days after notice from us. We will not be liable to you for any loss or cost you incur as a result of such termination.
- 13.2 You may terminate the Contract if we become insolvent, enter administration or fail to make payment in breach of clause 6.4 and such failure continues for 30 days after our receipt of written notice from you that such payment is past due.
- 13.3 We may direct you to suspend and re-commence the Works at any time and you must comply at your own cost.
- 13.4 Termination of the Contract will not affect any right, obligation, duty or liability of any party under the Contract which has accrued to the date of termination.
- 13.5 On termination you must immediately remove from the Site all of your workers, tools, plant, equipment, materials and rubbish.
- 14. General**
- 14.1 If a dispute arises between the parties which is related to a dispute between us and the Project principal under the Head Contract (if any), we may elect to have that dispute determined as part of the dispute under the Head Contract in which case you agree to be bound by any determination in the dispute resolution procedures under the Head Contract.
- 14.2 Should either party apply for adjudication of a payment dispute under the *Construction Contracts Act 2004* (WA), the Master Builders Association of Western Australia shall appoint the adjudicator.
- 14.3 Nothing in this deed creates an obligation of exclusivity or a relationship of employment, agency or partnership between the parties. You have no authority, and must not purport, to bind us with respect to any matter or thing.
- 14.4 Our rights or remedies specified in the Contract are non-exclusive, non-limiting and in addition to any other rights or remedies available to us at law or in equity.
- 14.5 In the Contract, all references to "you" means the contractor identified in the Subcontract Order and all references to "you" or "your personnel" includes that contractor's officers, employees, agents and subcontractors.
- 14.6 In the Contract, all references to "us" or "we" means Taylors Engineering and Welding Services Pty Ltd (ABN 84 178 503 196).
- 14.7 The Contract constitutes the entire agreement between you and us in relation to the Works and the Project and replaces and supersedes all prior agreements. Any qualifications, exclusions or other terms or conditions in any documentation provided by you to us do not form part of (and are superseded by) the Contract.
- 14.8 The Contract and may not be varied other than in a writing signed by all parties.
- 14.9 You must not assign the Contract or subcontract the whole or any part of the Works without our prior written consent. You will be liable for the acts and omissions of your subcontractors as if they were your own acts and omissions.
- 14.10 Notices under the Contract must be in writing and addressed to the party as provided for in the Subcontract Order (or otherwise notified) and will be effective:
- if delivered by hand (including via courier), on the date it is delivered to the recipient; or
 - if sent by post, on the third Business Day following the postage date; or
 - if sent by email, when it becomes capable of being retrieved by the addressee at the relevant email absent any return error message,
- provided that where any notice is received after 5.00pm or on a day other than a Business Day, the notice will be deemed as being received at 9.00am on the next Business Day.
- 14.11 No waiver by us of any breach of the Contract by you will be effective unless in writing and will not constitute a waiver of any other breach of the same or any other provision.
- 14.12 If any provision of the Contract is held to be invalid or unenforceable in whole or in part the validity of other provisions of the Contract are not affected.
- 14.13 The Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of that place.
- 14.14 Where we 'may' do or not do something, or otherwise have a discretion, the discretion is absolute and is not required to be exercised for the benefit of, or having regard to, you, and may be given with conditions.
- 14.15 All obligations in this deed to indemnify survive termination, are separate and continuing obligations, and do not require the indemnified party to first make payment.
- 14.16 Unless expressly stated, the Contract Price does not include Goods and Services Tax (GST). To the extent any supply made under the Contract is a taxable supply, the recipient must pay, in addition to and at the same time as making payment of the consideration for that supply, GST on that consideration. Where an amount is payable to a party as a reimbursement or indemnification calculated by reference to a loss, cost or expense, then such amount must be reduced by any part of that loss, cost or expense which is attributable to GST for which that party is entitled to an input tax credit. Where applicable, words or expressions used in this clause have the same meaning given in the GST Act.
- 14.17 The Contract may be executed in counterparts and via PDF copy attached to an email. All executed counterparts constitute one document. Commencement of the Works will be deemed your acceptance of the Contract.
- 14.18 In the Contract:
- Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.
 - Contract Price** means the price payable to you based on a fixed lump sum amount or a schedule of rates as specified in the Purchase Order.
 - Date for PC** means the date by which the Works must reach Practical Completion as set out in the Subcontract Order or any programme for the Works under clause 3.1;
 - Defect** means any defect, error, fault, deficiency or omission in the Works or their results, or the failure of any part of the Works to strictly comply with the requirements of the Contract.
 - Defects Liability Period** means the period of 12 months from the either the date of Practical Completion or where

we are party to a Head Contract, the date practical completion is achieved by us under the Head Contract.

- (f) **Delay Event** means:
- (i) any act of prevention or breach of the Contract by us;
 - (ii) a physical subsurface condition discovered or encountered at the Site after the date of the Contract that differs materially from the physical subsurface conditions which should reasonably have been anticipated by you having applied Good Industry Practices and complied with the warranties under clauses 2.3(d) and 2.3(e);
 - (iii) a catastrophic natural event at the Site such as earthquake, flood, cyclone or fire that you, applying Good Industry Practices, could not have anticipated at the date of the Contract;
 - (iv) an act of war, terrorism, riot or civil unrest; or
 - (v) a nation, state or industry-wide industrial action;
- (g) **Good Industry Practice** means a degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced professional contractor, engaged in the same type of work (including as to scope and complexity) as the Work, under the same or similar circumstances;
- (h) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (i) **Head Contract** means the construction contract between the principal and us for the Project at the Site.
- (j) **Intellectual Property** means all intellectual and industrial property rights, including trademarks, copyright, moral rights, inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights;
- (k) **Laws** means all applicable laws, industrial awards, regulations, rules, codes, Australian Standards and the requirements of any authority and any licences, permits or approvals issued by any authority;
- (l) **Plans** means drawings, specifications, plans, scope, project requirements and other documents and information;
- (m) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (n) **Practical Completion** means the date determined by us when:
- (i) the Works are complete except for minor Defects which do not prevent the Works from being reasonably capable of being used for their stated or reasonably inferred purpose and we have agreed in writing may be rectified after that date; and
 - (ii) you have provided to us all documents and other information (including as required by any Laws), all notices, permits, approvals and certificates required to be obtained from relevant authorities required under the Contract or which in our reasonable opinion are essential for the acceptance, use, operation and maintenance of the Works;
- (o) **Project** means the work to be completed by us including, if applicable, as main contractor under a Head Contract;
- (p) **Site** means the site identified in the Subcontract Order;
- (q) **Subcontract Order** means any purchase order and/or engagement letter issued by us to you for the Works;
- (r) **Variation** means an omission, addition, variation, increase or decrease in the Works, directed or approved by us in writing;
- (s) **Works** includes all works and services expressed in, necessarily implied from or contemplated by the Contract and includes Variations and remedial work;
- (t) any reference to a 'person' includes a natural person, partnership, company, association, authority, agency or other entity;
- (u) references to 'include' or 'including' mean 'including but not limited to';
- (v) a rule of construction does not apply to the disadvantage of the preparing party; and
- (w) if a party comprises more than one person, the terms and conditions of the Contract bind them jointly and severally.