

Conditions of Order for Contractor's Works and Services

This Order is subject to the following terms and conditions:

1 Terminology

- (a) Capitalised terms are defined in the Order or in these Conditions.
- (b) Where used, **Business Days** means those days so defined in the *Building and Construction Industry Security of Payment Act (1999) NSW (as amended) (SOP Act)*.

2 Contractor's Obligations

- (a) The Contractor must carry out and complete the Contractor's Work (being all of the work and services required by this Order to be carried out, or provided, by the Contractor, whether expressly set out in the Order or not, necessary to fulfil the Contractor's obligations) for the amount(s) and by the Date for Completion stated on this Order.
- (b) The Contractor shall be deemed to have carefully examined the requirements of the Order and to be satisfied as to the nature, extent and location of the Contractor's Work, the character, quantity and kind of materials and equipment needed for all conditions (including site conditions, hazards and risks and access requirements) and requirements associated with the Contractor's Work and all other matters which may affect the Contractor's Work or completion by the Date for Completion.
- (c) Where materials, plant or equipment are to be supplied by the Principal then it is the responsibility of the Contractor to inspect the items and confirm that they are suitable for use prior to taking control of the site or using the materials, which ever comes first. Where the Contractor does not notify the Principal of the unsuitability of the materials, plant or equipment then it will be assumed that the Contractor has accepted them as being suitable for use and no claims may be made regarding their suitability for use.
- (d) The Contractor must proceed diligently, in a competent manner and in accordance with any approved programme determined or varied by the Principal, and with each and every instruction given or made by the Principal.

3 What the Contractor must do

3.1 Contractor Warranties

The Contractor warrants that:

- (a) the Contractor's Work shall:
 - (i) be of a good, tradesman-like quality or good merchantable quality and acceptable to the Principal;
 - (ii) comply in every respect with all Legislative Requirements and other standards and specifications (refer to clause 10);
 - (iii) not infringe any patent, trademark, design or copyright; and
 - (iv) not cause unnecessary delays, inconveniences to the Principal or motorists, or unnecessary damage including the removal of infrastructure;
- (b) where plans or documentation are prepared as part of the Contractor's Works then ownership of the plans or documentation is transferred to Principal;
- (c) where equipment or plant is specially designed and installed on site then ownership of the patent, where one exists, shall be transferred to the Principal;
- (d) it is practicable to complete the Contractor's Work in the manner envisaged and in the time required; and
- (e) the complete works and services shall remain free from all faults and defects, and remain fit for service for a period of one year from the date of the completion certificate issued under clause 14(c) unless otherwise specified in the Order.

3.2 Supervision

The Contractor must supervise the Contractor's Work including all subcontractor's work, and is responsible for:

- (a) site control of the Contractor's Work;
- (b) protection of the Contractor's Work until completion;
- (c) co-ordination with other contractors or sub-contractors on the site;
- (d) keeping the Contractor's Work in a clean and tidy condition;
- (e) providing operating manuals, inspection and test plans, and as built drawings before the date of completion; and
- (f)
 - (i) removing all plant, equipment and materials including debris and litter;
 - (ii) leaving the Contractor's Work ready for immediate use or occupation on completion; and

- (iii) reinstating any infrastructure that was removed or damaged as a result of undertaking the works, unless otherwise required by the Principal.

If the Contractor fails to comply with this clause, the Principal may do whatever may be required for the proper compliance of this clause and the cost incurred may be deducted from any money due or becoming due to the Contractor.

4 Payment

Subject to this Order, the Principal will pay the Contractor the Price progressively on account, and when all of the Contractor's Work is completed.

4.1 Progress claims

- (a) The Contractor must make progress claims on the first day of each month for work performed during the month prior to service of a progress claim.
- (b) The Contractor is not entitled to make a progress claim earlier than the date for making that claim. Each progress claim must be given in writing to the Principal and must:
 - (i) include the value and quantity of each item complete (for the schedule of rates), the percentage of work completed (where works are lump sum) and all amounts due to the Contractor arising out of or in connection with the Order, together with evidence of the amounts due to the Contractor;
 - (ii) include such information as the Principal may require;
 - (iii) in circumstances where the Contractor is registered for GST purposes, attach an approved tax invoice;
 - (iv) all invoices must clearly state the works and services purchase order reference number. If this is not stated the invoice will be rejected for payment.
 - (v) attach a "Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration" in the form set out in Annexure A;
 - (vi) attach a written statement complying with the requirements of section 31H of the Payroll Tax Act 1971 (NSW), section 127 of the Industrial Relations Act 1996 (NSW) and section 175B of the Workers Compensation Act 1987 (NSW), in the form set out in Annexure A.

4.2 Progress Certificate

Within 10 *Business Days* after receipt of a progress claim in accordance with clause 4.1, the Principal may provide to the Contractor a progress certificate. The progress certificate must set out the calculations employed to arrive at the sum which the Principal proposes to pay and may include:

- (a) the gross value of the Contractor's Work carried out by the Contractor as at the date of the progress claim. If requested by the Principal, the Contractor shall attend a site inspection to confirm the extent of the completed works and quantities;
- (b) amounts already paid to the Contractor under the Order;
- (c) amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Order or otherwise; and
- (d) the reasons for any difference between the amount in the progress certificate and the amount claimed in the progress claim, including reasons for withholding payment.

If the Contractor does not make a progress claim in accordance with clause 4.1, the Principal may nevertheless issue a progress certificate.

4.3 Payment

The Principal shall pay the Contractor an amount not less than the amount shown in the progress certificate by the later of:

- (a) 30 days from the end of the month in which the progress certificate is received;
- (b) the date upon which the Principal receives all items set out in clauses 4.1(b)(ii) to (v); or
- (c) the date upon which the Contractor delivers to the Principal evidence satisfactory to the Principal that all insurances required under the Order have been taken out and that the policies are current in all respects.

Payment is not due and payable to the Contractor until the items listed at clauses 4.1(b)(ii) to 4.1(b)(v) above are provided.

Payment under this clause 4.3 is not evidence of the value of the Contractor's Work or an admission of liability that the Contractor's Work has been satisfactorily performed, but is payment on account only. The Principal will not be responsible for any losses suffered by the Contractor as a result of a withheld or late payment.

- 4.4 **Set off**
The Principal may deduct from any moneys due to the Contractor:
(a) any debt or other moneys due from the Contractor to the Principal; or
(b) any claim to money which the Principal may have against the Contractor whether for damages or otherwise,
whether under the Order or otherwise.
- 4.5 **Payment of Subcontractors**
If a subcontractor is entitled to suspend work (forming part of the Contractor's Work) pursuant to section 27 of the SOP Act, the Principal may at its absolute discretion pay that Subcontractor all or any part of the relevant amount owing to the Subcontractor.
Any amount paid by the Principal under this clause is recoverable from the Contractor as a debt due to the Principal.
- 5 **Price**
(a) The Price for the Work is fixed where the Order is nominated as a lump sum.
(b) Where the Order is to be undertaken as a schedule of rates then agreed unit rates shall remain fixed for the term of the works.
(c) The Contractor warrants that the Price includes everything necessary for, and incidental to, the complete and proper performance of the Contractor's Work.
(d) No prices listed on the Order are subject to escalation unless the Principal expressly agrees in writing.
(e) The Price includes all taxes, levies and fees (including goods and services tax) which are payable in relation to the Contractor's Work. The Contractor must pay any such taxes, levies and fees.
- 6 **Quantities**
(a) Where quantities are specified in this Order or in quotations by the Contractor forming part of this Order, the accuracy of these quantities shall be the responsibility of the Contractor.
(b) Any work necessary to carry out the Contractor's Work which is additional to that stated in the Order shall be supplied and installed by the Contractor at its own cost.
(c) Where the Principal has supplied the quantities, the Contractor, on finding any discrepancies in stated quantities and actual quantities, shall notify the Principal in writing. For lump sum contracts no variations will be permitted. For schedule of rates contracts, the schedule of quantities will be varied as agreed by the Principal.
(d) Where the schedule of rates quantities vary by more than 20% then the agreed rates will be adjusted by the Principal to take into account the change in the scope of works.
- 7 **Variations**
(a) The Contractor must not vary the Contractor's Work except as directed by the Principal.
(b) The Principal may, at any time, direct the Contractor to perform a variation and the Contractor must perform the variation. The direction must be in writing and must state that it is a direction for a variation.
(c) The Contractor, at any time, may request a variation from the Principal. The Contractor shall provide the Principal least 5 Business Days notice for values up to \$10,000.00 and 10 Business Days notice for values over \$10,000.00 prior to requiring a response from the Principal. Where the Principal fails to provide a response it will be assumed that the variation has been rejected by the Principal.
(d) Where the Principal has given the Contractor a direction to perform a variation which complies with clause 7(b), the value of the variation shall be agreed between the Principal and the Contractor, otherwise clause 7(e) shall apply.
(e) In the event that the Principal and the Contractor are unable to agree on the value of a variation in accordance with clause 7(d), the Principal shall pay the amount it deems reasonable for the work performed in accordance with the variation direction.
(f) Where the variation is not critical for the completion of the works or services the Principal may decide to obtain quotations from other contractors.
(g) Where provisional quantities or items are included in the Order then payment will only be made on these items once a variation has been approved for their use.
(h) No variation shall vitiate this Order.

- 8 **Insurances**
8.1 **Insurance to be effected**
The Contractor must take out and maintain, on terms and with reputable insurers approved by the Principal, for the term of the Order, the following policies of insurance for amounts not less than stated:
(a) public liability insurance in the amount stated in the Order, or, if nothing is stated in the Order, not less than \$20 million per occurrence in respect of accidental damage or loss to any property and accidental injury (including death) to any person arising out of the performance of the Contractor's Work and in respect of product liability;
(b) professional indemnity insurance for not less than the amount stated in the Order;
(c) insurance required by law;
(d) construction plant and equipment insurance in respect of the replacement value of all constructional plant, equipment, supplies, materials and services, including temporary works and materials not for incorporation in the Contractor's Work, used or to be used by the Contractor in connection with this Order; and
(e) contract works insurance in respect of the loss or destruction of or damage to the Contractor's Work in the course of construction or in performance of this Order, including all materials, supplies and equipment (other than the Contractor's constructional plant), in the amount not less than the Price, or as stated in the Order.
- 8.2 **Evidence of Insurances**
The Contractor shall supply the Principal with evidence that the insurance required under clause 8.1 has been effected and is current from time to time, as requested by the Principal.
- 8.3 **Failure to insure**
If the Contractor fails to effect and maintain the insurances required by clause 8.1, the Principal may effect insurance on behalf of the Contractor and deduct any cost so incurred from any money due to or becoming due to the Contractor.
- 8.4 **Insurance by Subcontractors**
The Contractor shall also ensure that each of its sub-contractors effects similar insurances as described in clauses 8.1(a) and 8.1(b).
- 8.5 **Contractor not to prejudice insurance cover**
The Contractor must not do anything or allow anything to be done which might cause the insurances referred to in clause 8.1 to be cancelled, avoided or otherwise prejudiced.
- 9 **Liability**
9.1 **Indemnity**
Subject to clause 9.2, the Contractor indemnifies the Principal and its officers, employees, agents and contractors against:
(a) all loss or damage to the Principal's property;
(b) any loss or damage arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, or any officer, employee, contractor or agent of the Principal;
(c) any loss or damage suffered or incurred by the Principal in respect of personal injury to or death of any person; and
(d) loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property), arising directly or indirectly out of or as a consequence of the performance or non-performance of the Contractor's Work by the Contractor, its employees, agents or subcontractors.
- 9.2 **Exclusions**
The indemnity in clause 9.1 does not apply to the extent that the loss, damage, injury, death, cost or expense is caused by a breach by the Principal of any provision of the Order or any negligent act or omission of the Principal, or any employee, contractor or agent of the Principal.
- 10 **Legislative Requirements**
10.1 **Definition**
For the purpose of this clause 10, Legislative Requirements includes:
(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state or territory in which any part of the Contractor's Work is being carried out;
(b) certificates, licenses, consents, permits, approvals and requirements of any statutory or local authority concerning the performance of all or any part of the Contractor's Work; and

	(c) fees and charges payable in connection with the above.		(c) any other cause which is expressly stated in the Order to justify an extension of time. (Together the Allowable Causes of Delay).
10.2	Compliance with Legislative Requirements		
	(a) The Contractor must, at its own cost comply with all Legislative Requirements. If a Legislative Requirement is inconsistent with a provision of the Order or the Principal's requirements, as soon as the Contractor discovers the inconsistency, the Contractor must notify the Principal in writing specifying the inconsistency.	15.4	Entitlement The Allowable Causes of Delay will only give rise to an entitlement to an extension of time if:
	(b) The Contractor is responsible for complying fully with the requirements and regulations specified by the Principal, the Roads and Traffic Authority of NSW (RTA), Work Cover (NSW), the NSW Environment Protection Authority (EPA), and other road authorities and operators when working in, partially in or outside of the M5 South West motorway lease area.	15.5	(a) the cause was beyond the reasonable control of the Contractor; (b) the Contractor has not contributed to the cause; and (c) the Contractor has taken all reasonable steps to mitigate the effect of the delay.
11	Working Hours		Claim for extension Should the Contractor wish to make a claim for an extension of time then it must give a notice in writing to the Principal within five Business Days of the commencement of the Allowable Cause of Delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay completion, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.
	(a) The Contractor may only work during hours stated in the Order, unless the Contractor obtains written consent from the Principal in writing at least 2 Business Days prior to the change in working hours being required, which consent must not be unreasonably withheld.	15.6	Review of Claim by Principal The Principal must, within a reasonable time but in any event no later than 10 Business Days after receiving a claim for an extension of time under this clause, determine the period of the extension of time to which the Contractor is entitled (which must be reasonable) and the Date for Completion shall be extended by that period.
	(b) For works that require traffic control, or changes to the hours, dates or location that traffic control is required the Contractor must obtain the Principal's consent in principle prior to applying to the RTA to obtain its approval to occupy the road and change the speed zones through the work site. The Principal on receiving a copy of the RTA's approval must provide to the Contractor a written consent to the change in writing, which consent must not be unreasonably withheld.	15.7	Costs The Contractor shall not be entitled to any reimbursement of cost, loss, expense or damage suffered or incurred by the Contractor as a result of delay or pursuant to an extension of time.
12	Contractor's Employees & Subcontractors	16	Inspections The Contractor's Work may be subject to inspection by the Principal. Any acceptance of the Contractor's Work upon an inspection shall not relieve the Contractor of its obligations pursuant to this Order.
	The Contractor shall pay the rates and wages, and observe and perform the conditions, that are provided for in any relevant award or industrial agreement.		Following an inspection, or an instruction of the Principal given to the Contractor prior to the expiration of one year from the date of the completion certificate issued under clause 14(c), the Contractor must make good at no cost to the Principal any defects or other faults in the Contractor's Work. The Principal, in addition to any other rights and remedies, may reject any Contractor's Work that does not conform to the requirements of this Order or the Principal's satisfaction, and any of the Contractor's Work so rejected is at the Contractor's risk.
13	Assignment		The Contractor shall be liable to pay to the Principal, or the Principal may deduct from moneys due and payable, as the case may be, the cost of making good any damage, defects or other faults caused by the Contractor or those for whom he is responsible to the work of the Principal or of any other sub-contractor or Contractor.
	(a) The Contractor must not assign or subcontract a substantial portion of the Contractor's Works without the prior written consent of the Principal, which may be withheld by the Principal in its absolute discretion.	17	Default and insolvency
	(b) Any purported dealing by the Contractor in breach of this clause is of no effect.	17.1	Default by the Contractor If the Contractor commits a breach of any obligation in this Order, the Principal may give the Contractor written notice of default specifying the breach and the date by which the Contractor must rectify the breach.
	(c) The Principal may assign or deal with its interest under this Order at any time by notice in writing to the Contractor.	17.2	Rights of the Principal If the Contractor fails to rectify the default within the time specified in a notice given under clause 17.1, the Principal may, by notice in writing, do either or both of the following:
14	Completion		(a) suspend payments due or which may become due under this Order; and (b) either: (i) immediately take over the incomplete Work and at its option have the Work completed by itself or others; or (ii) terminate this Order, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Contractor had wrongfully repudiated the Order.
	(a) The Contractor shall complete the Contractor's Work by the Date for Completion set out in the Order or as instructed by the Principal and must proceed with the Contractor's Work with due expedition and without delay.	17.3	Adjustment on completion of the work taken out of the hands of the Contractor If the Principal exercises the power in clause 17.2(b)(i) then, when the Contractor's Work has been completed, the Principal must calculate the difference between:
	(b) The Contractor must, within five Business Days of commencing the Contractor's Work, deliver to the Principal a program for the performance of the Contractor's Work. The Contractor must update the program when directed to do so by the Principal.		(a) the additional cost of having the Contractor's Work completed by itself or others, and any other loss or damage suffered or incurred by reason of the Contractor's default; and (b) the amount of suspended payments and security called on by the Principal.
	(c) The Principal must issue a certificate of completion when, in the opinion of the Principal, the Contractor's Work has reached completion.		If the calculation results in a shortfall to the Principal, the Contractor must pay the amount of the shortfall to the Principal within five Business Days of a written demand for payment by the Principal.
15	Delays	17.4	Insolvency default The Principal may exercise any power under clause 17.2 (in which case clause 17.3 will also apply) if:
15.1	Notice of extension of completion		
	The Principal may, at any time, from time to time, and for any reason, by notice in writing to the Contractor, extend the Date for Completion. The Principal is under no obligation to exercise this discretion for the benefit of the Contractor.		
15.2	Entitlement to extension		
	The Contractor shall only be entitled to an extension to the Date for Completion when:		
	(a) it can demonstrate to the reasonable satisfaction of the Principal that it has been or will be delayed in reaching the Date for Completion by a cause in clause 15.3 (having regard to clauses 15.4 and 15.5);		
	(b) the Order does not provide that the Contractor has no entitlement in relation to that cause; and		
	(c) the Contractor has given all notices strictly in accordance with the requirements of clause 15.		
15.3	Allowable causes of delay		
	The causes of delay referred to in clause 15.2 are:		
	(a) a variation directed by the Principal under clause 7;		
	(b) any act or omission of the Principal or any of its employees, consultants or agents (whether or not that act or omission is a breach of this Order); and		

	(a)	the Contractor is or states that it is unable to pay its debts as and when they become due and payable;		(b)	A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
	(b)	the Contractor is taken or must be presumed to be insolvent under any applicable legislation;	21	Principal's rights to order the Contractor to vacate the site or to stop work.	
	(c)	an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Contractor;		(a)	The Principal may at any time request the Contractor to vacate the site or stop the Contractor's Works. On receipt of such request from the Principal the Contractor shall immediately comply with request while making the site safe after seeking directions from the Principal. All costs and any loss of time in complying with the request may be claimed as a variation to the Contract.
	(d)	an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Contractor, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within five Business Days;		(b)	The Principal may request the Contractor to immediately remove a person or subcontractor from site where the Principal believes that the person or subcontractor is not acting in accordance with any relevant legislation, the Principal's requirements, or for any other reason, at no additional cost or extension of time to the Principal.
	(e)	a receiver or receiver and manager is appointed in respect of any property of the Contractor;	22	Prestart site inspection and site inductions.	
	(f)	the Contractor is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;		(a)	A prestart site inspection and meeting shall be undertaken by the Principal and the Contractor. The Principal will be responsible for taking minutes of the meeting, which will form part of the Order.
	(g)	a distress, attachment or execution is levied or becomes enforceable against any property of the Contractor;		(b)	The Contractor is responsible for familiarising itself with the work site, all site conditions and work requirements including the associated hazards and risks, and has included allowances for these conditions in the tendered or quoted amount prior to taking possession of the site.
	(h)	the Contractor enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the Contractor's creditors or members or a moratorium involving any of them;		(c)	Upon a request by the Principal, the Contractor must undertake a site induction held by the Principal prior to commencing works and ensure that all of its employees, subcontractors and visitors undertake a site induction (carried out by the Contractor in accordance with the Principal's requirements). The Contractor shall ensure that all persons entering the site have attended the relevant site induction, hold a current "Green Card" and obtain appropriate licences to access the works and perform the duties the person is undertaking on site.
	(i)	a petition for the making of a sequestration order against the estate of the Contractor is presented and the petition is not stayed, withdrawn or dismissed within five Business Days or the Contractor presents a petition against itself;	23	Materials and Equipment that are on site.	
	(j)	the Contractor presents a declaration of intention under section 54A of the Bankruptcy Act 1966; or		(a)	The Contractor is responsible for all existing materials, equipment, plant and road furniture located on site.
	(k)	anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Contractor.		(b)	All existing materials, equipment, plant and road furniture made redundant as a result of the Contractor's Works shall remain the property of the Principal. The Contractor shall obtain instructions from the Principal on how to dispose of these items. Where these items are to be re-used or returned to the Principal for future use then the Contractor shall relocate and store the items in such a manner so as to prevent any unnecessary damage. The Principal may claim up to the replacement value including overheads against the Contractor for any lost or damaged materials, equipment, plant or road furniture.
18		Dispute Resolution		(c)	The Contractor is responsible for the disposal of all debris, materials, plant and equipment at approved EPA sites and all tipping documentation shall be provided to the Principal. Disposal of debris, materials, plant and equipment will only be permitted on site with written approval from the Principal.
18.1		Notice of Dispute If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of the Order, then either party shall, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute, the parties shall, subject to clause 17.2 and clause 18.4, continue to perform their obligations under this Order.		24	Confidentiality All documentation and communications between the Principal and the Contractor shall remain confidential. The Contractor shall not provide any information to the media or public unless otherwise directed by the Principal.
18.2		Conference 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 of resolution. All aspects of every such conference except the fact of its occurrence shall be privileged. If the dispute has not been resolved within 28 days of service of the notice of dispute then, unless clause 18.4 applies, that dispute shall be and is hereby referred to expert determination.		25	Entire Agreement The parties acknowledge that the Order constitutes the entire agreement between the parties and that no prior or subsequent representations or agreements whether verbal or in writing by the Principal or the Contractor or any employee or agent thereof shall bind the parties unless set out in or subsequently endorsed by the parties.
18.3		Expert Determination If within 28 days of service of a notice of dispute the dispute has not been resolved, the dispute shall be referred to Expert Determination. If within a further 14 days of the dispute being referred to Expert Determination the parties have not agreed upon an Expert, the Expert shall be nominated by the President of the Institute of Arbitrators and Mediators, Australia (IAMA). The Expert Determination shall be conducted in accordance with the IAMA's rules for expert determination. Except where the parties otherwise agree in writing or the rules otherwise provide:			
	(a)	each party shall bear its own costs and pay one half of the Expert's fees and expenses;			
	(b)	the Expert shall not act as an arbitrator; and			
	(c)	the determination of the Expert shall be final and binding on the parties.			
18.4		Summary Relief Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Order or to seek injunctive or urgent declaratory relief.			
19		Governing Law The law of New South Wales shall govern this Order.			
20		Waiver			
	(a)	A single or partial exercise or waiver by a party of a right relating to this Order does not prevent any other exercise of that right or the exercise of any other right.			

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- (a) The Contractor must carry out and complete the Contractor's Work (being all of the work and services required by this Order to be carried out, or provided, by the Contractor, whether expressly set out in the Order or not, necessary to fulfil the Contractor's obligations) for the amount(s) and by the Date for Completion stated on this Order.
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 - (iii) not infringe any patent, trademark, design or copyright; and
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If the Contractor fails to comply with this clause, the Principal may do whatever may be required for the proper compliance of this clause and the cost incurred may be deducted from any money due or becoming due to the Contractor.

4 Payment

Subject to this Order, the Principal will pay the Contractor the Price progressively on account, and when all of the Contractor's Work is completed.

4.1 Progress claims

- (a) The Contractor must make progress claims on the first day of each month for work performed during the month prior to service of a progress claim.
- (b) The Contractor is not entitled to make a progress claim earlier than the date for making that claim. Each progress claim must be given in writing to the Principal and must:
 - (i) include the value and quantity of each item complete (for the schedule of rates), the percentage of work completed (where works are lump sum) and all amounts due to the Contractor arising out of or in connection with the Order, together with evidence of the amounts due to the Contractor;
 - (ii) include such information as the Principal may require;
 - (iii) in circumstances where the Contractor is registered for GST purposes, attach an approved tax invoice;
 - (iv) all invoices must clearly state the works and services purchase order reference number. If this is not stated the invoice will be rejected for payment.
 - (v) attach a "Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration" in the form set out in Annexure A;
 - (vi) attach a written statement complying with the requirements of section 31H of the Payroll Tax Act 1971 (NSW), section 127 of the Industrial Relations Act 1996 (NSW) and section 175B of the Workers Compensation Act 1987 (NSW), in the form set out in Annexure A.

4.2 Progress Certificate

Within 10 *Business Days* after receipt of a progress claim in accordance with clause 4.1, the Principal may provide to the Contractor a progress certificate. The progress certificate must set out the calculations employed to arrive at the sum which the Principal proposes to pay and may include:

- (a) the gross value of the Contractor's Work carried out by the Contractor as at the date of the progress claim. If requested by the Principal, the Contractor shall attend a site inspection to confirm the extent of the completed works and quantities;
- (b) amounts already paid to the Contractor under the Order;
- (c) amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Order or otherwise; and
- (d) the reasons for any difference between the amount in the progress certificate and the amount claimed in the progress claim, including reasons for withholding payment.

If the Contractor does not make a progress claim in accordance with clause 4.1, the Principal may nevertheless issue a progress certificate.

4.3 Payment

The Principal shall pay the Contractor an amount not less than the amount shown in the progress certificate by the later of:

- (a) 30 days from the end of the month in which the progress certificate is received;
- (b) the date upon which the Principal receives all items set out in clauses 4.1(b)(ii) to (v); or
- (c) the date upon which the Contractor delivers to the Principal evidence satisfactory to the Principal that all insurances required under the Order have been taken out and that the policies are current in all respects.

Payment is not due and payable to the Contractor until the items listed at clauses 4.1(b)(ii) to 4.1(b)(v) above are provided.

Payment under this clause 4.3 is not evidence of the value of the Contractor's Work or an admission of liability that the Contractor's Work has been satisfactorily performed, but is payment on account only. The Principal will not be responsible for any losses suffered by the Contractor as a result of a withheld or late payment.

- 4.4 Set off**
The Principal may deduct from any moneys due to the Contractor:
(a) any debt or other moneys due from the Contractor to the Principal; or
(b) any claim to money which the Principal may have against the Contractor whether for damages or otherwise,
whether under the Order or otherwise.
- 4.5 Payment of Subcontractors**
If a subcontractor is entitled to suspend work (forming part of the Contractor's Work) pursuant to section 27 of the SOP Act, the Principal may at its absolute discretion pay that Subcontractor all or any part of the relevant amount owing to the Subcontractor.
Any amount paid by the Principal under this clause is recoverable from the Contractor as a debt due to the Principal.
- 5 Price**
(a) The Price for the Work is fixed where the Order is nominated as a lump sum.
(b) Where the Order is to be undertaken as a schedule of rates then agreed unit rates shall remain fixed for the term of the works.
(c) The Contractor warrants that the Price includes everything necessary for, and incidental to, the complete and proper performance of the Contractor's Work.
(d) No prices listed on the Order are subject to escalation unless the Principal expressly agrees in writing.
(e) The Price includes all taxes, levies and fees (including goods and services tax) which are payable in relation to the Contractor's Work. The Contractor must pay any such taxes, levies and fees.
- 6 Quantities**
(a) Where quantities are specified in this Order or in quotations by the Contractor forming part of this Order, the accuracy of these quantities shall be the responsibility of the Contractor.
(b) Any work necessary to carry out the Contractor's Work which is additional to that stated in the Order shall be supplied and installed by the Contractor at its own cost.
(c) Where the Principal has supplied the quantities, the Contractor, on finding any discrepancies in stated quantities and actual quantities, shall notify the Principal in writing. For lump sum contracts no variations will be permitted. For schedule of rates contracts, the schedule of quantities will be varied as agreed by the Principal.
(d) Where the schedule of rates quantities vary by more than 20% then the agreed rates will be adjusted by the Principal to take into account the change in the scope of works.
- 7 Variations**
(a) The Contractor must not vary the Contractor's Work except as directed by the Principal.
(b) The Principal may, at any time, direct the Contractor to perform a variation and the Contractor must perform the variation. The direction must be in writing and must state that it is a direction for a variation.
(c) The Contractor, at any time, may request a variation from the Principal. The Contractor shall provide the Principal least 5 Business Days notice for values up to \$10,000.00 and 10 Business Days notice for values over \$10,000.00 prior to requiring a response from the Principal. Where the Principal fails to provide a response it will be assumed that the variation has been rejected by the Principal.
(d) Where the Principal has given the Contractor a direction to perform a variation which complies with clause 7(b), the value of the variation shall be agreed between the Principal and the Contractor, otherwise clause 7(e) shall apply.
(e) In the event that the Principal and the Contractor are unable to agree on the value of a variation in accordance with clause 7(d), the Principal shall pay the amount it deems reasonable for the work performed in accordance with the variation direction.
(f) Where the variation is not critical for the completion of the works or services the Principal may decide to obtain quotations from other contractors.
(g) Where provisional quantities or items are included in the Order then payment will only be made on these items once a variation has been approved for their use.
(h) No variation shall vitiate this Order.

- 8 Insurances**
- 8.1 Insurance to be effected**
The Contractor must take out and maintain, on terms and with reputable insurers approved by the Principal, for the term of the Order, the following policies of insurance for amounts not less than stated:
(a) public liability insurance in the amount stated in the Order, or, if nothing is stated in the Order, not less than \$20 million per occurrence in respect of accidental damage or loss to any property and accidental injury (including death) to any person arising out of the performance of the Contractor's Work and in respect of product liability;
(b) professional indemnity insurance for not less than the amount stated in the Order;
(c) insurance required by law;
(d) construction plant and equipment insurance in respect of the replacement value of all constructional plant, equipment, supplies, materials and services, including temporary works and materials not for incorporation in the Contractor's Work, used or to be used by the Contractor in connection with this Order; and
(e) contract works insurance in respect of the loss or destruction of or damage to the Contractor's Work in the course of construction or in performance of this Order, including all materials, supplies and equipment (other than the Contractor's constructional plant), in the amount not less than the Price, or as stated in the Order.
- 8.2 Evidence of Insurances**
The Contractor shall supply the Principal with evidence that the insurance required under clause 8.1 has been effected and is current from time to time, as requested by the Principal.
- 8.3 Failure to insure**
If the Contractor fails to effect and maintain the insurances required by clause 8.1, the Principal may effect insurance on behalf of the Contractor and deduct any cost so incurred from any money due to or becoming due to the Contractor.
- 8.4 Insurance by Subcontractors**
The Contractor shall also ensure that each of its sub-contractors effects similar insurances as described in clauses 8.1(a) and 8.1(b).
- 8.5 Contractor not to prejudice insurance cover**
The Contractor must not do anything or allow anything to be done which might cause the insurances referred to in clause 8.1 to be cancelled, avoided or otherwise prejudiced.
- 9 Liability**
- 9.1 Indemnity**
Subject to clause 9.2, the Contractor indemnifies the Principal and its officers, employees, agents and contractors against:
(a) all loss or damage to the Principal's property;
(b) any loss or damage arising from any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal, or any officer, employee, contractor or agent of the Principal;
(c) any loss or damage suffered or incurred by the Principal in respect of personal injury to or death of any person; and
(d) loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property), arising directly or indirectly out of or as a consequence of the performance or non-performance of the Contractor's Work by the Contractor, its employees, agents or subcontractors.
- 9.2 Exclusions**
The indemnity in clause 9.1 does not apply to the extent that the loss, damage, injury, death, cost or expense is caused by a breach by the Principal of any provision of the Order or any negligent act or omission of the Principal, or any employee, contractor or agent of the Principal.
- 10 Legislative Requirements**
- 10.1 Definition**
For the purpose of this clause 10, Legislative Requirements includes:
(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the state or territory in which any part of the Contractor's Work is being carried out;
(b) certificates, licenses, consents, permits, approvals and requirements of any statutory or local authority concerning the performance of all or any part of the Contractor's Work; and

	(c) fees and charges payable in connection with the above.		(c) any other cause which is expressly stated in the Order to justify an extension of time. (Together the Allowable Causes of Delay).
10.2	Compliance with Legislative Requirements		
	(a) The Contractor must, at its own cost comply with all Legislative Requirements. If a Legislative Requirement is inconsistent with a provision of the Order or the Principal's requirements, as soon as the Contractor discovers the inconsistency, the Contractor must notify the Principal in writing specifying the inconsistency.	15.4	Entitlement The Allowable Causes of Delay will only give rise to an entitlement to an extension of time if:
	(b) The Contractor is responsible for complying fully with the requirements and regulations specified by the Principal, the Roads and Traffic Authority of NSW (RTA), Work Cover (NSW), the NSW Environment Protection Authority (EPA), and other road authorities and operators when working in, partially in or outside of the M5 South West motorway lease area.		(a) the cause was beyond the reasonable control of the Contractor;
11	Working Hours		(b) the Contractor has not contributed to the cause; and
	(a) The Contractor may only work during hours stated in the Order, unless the Contractor obtains written consent from the Principal in writing at least 2 Business Days prior to the change in working hours being required, which consent must not be unreasonably withheld.	15.5	(c) the Contractor has taken all reasonable steps to mitigate the effect of the delay.
	(b) For works that require traffic control, or changes to the hours, dates or location that traffic control is required the Contractor must obtain the Principal's consent in principle prior to applying to the RTA to obtain its approval to occupy the road and change the speed zones through the work site. The Principal on receiving a copy of the RTA's approval must provide to the Contractor a written consent to the change in writing, which consent must not be unreasonably withheld.		Claim for extension Should the Contractor wish to make a claim for an extension of time then it must give a notice in writing to the Principal within five Business Days of the commencement of the Allowable Cause of Delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay completion, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.
12	Contractor's Employees & Subcontractors The Contractor shall pay the rates and wages, and observe and perform the conditions, that are provided for in any relevant award or industrial agreement.	15.6	Review of Claim by Principal The Principal must, within a reasonable time but in any event no later than 10 Business Days after receiving a claim for an extension of time under this clause, determine the period of the extension of time to which the Contractor is entitled (which must be reasonable) and the Date for Completion shall be extended by that period.
13	Assignment	15.7	Costs The Contractor shall not be entitled to any reimbursement of cost, loss, expense or damage suffered or incurred by the Contractor as a result of delay or pursuant to an extension of time.
	(a) The Contractor must not assign or subcontract a substantial portion of the Contractor's Works without the prior written consent of the Principal, which may be withheld by the Principal in its absolute discretion.	16	Inspections The Contractor's Work may be subject to inspection by the Principal. Any acceptance of the Contractor's Work upon an inspection shall not relieve the Contractor of its obligations pursuant to this Order.
	(b) Any purported dealing by the Contractor in breach of this clause is of no effect.		Following an inspection, or an instruction of the Principal given to the Contractor prior to the expiration of one year from the date of the completion certificate issued under clause 14(c), the Contractor must make good at no cost to the Principal any defects or other faults in the Contractor's Work. The Principal, in addition to any other rights and remedies, may reject any Contractor's Work that does not conform to the requirements of this Order or the Principal's satisfaction, and any of the Contractor's Work so rejected is at the Contractor's risk.
	(c) The Principal may assign or deal with its interest under this Order at any time by notice in writing to the Contractor.		The Contractor shall be liable to pay to the Principal, or the Principal may deduct from moneys due and payable, as the case may be, the cost of making good any damage, defects or other faults caused by the Contractor or those for whom he is responsible to the work of the Principal or of any other sub-contractor or Contractor.
14	Completion	17	Default and insolvency
	(a) The Contractor shall complete the Contractor's Work by the Date for Completion set out in the Order or as instructed by the Principal and must proceed with the Contractor's Work with due expedition and without delay.	17.1	Default by the Contractor If the Contractor commits a breach of any obligation in this Order, the Principal may give the Contractor written notice of default specifying the breach and the date by which the Contractor must rectify the breach.
	(b) The Contractor must, within five Business Days of commencing the Contractor's Work, deliver to the Principal a program for the performance of the Contractor's Work. The Contractor must update the program when directed to do so by the Principal.	17.2	Rights of the Principal If the Contractor fails to rectify the default within the time specified in a notice given under clause 17.1, the Principal may, by notice in writing, do either or both of the following:
	(c) The Principal must issue a certificate of completion when, in the opinion of the Principal, the Contractor's Work has reached completion.		(a) suspend payments due or which may become due under this Order; and
15	Delays		(b) either:
15.1	Notice of extension of completion The Principal may, at any time, from time to time, and for any reason, by notice in writing to the Contractor, extend the Date for Completion. The Principal is under no obligation to exercise this discretion for the benefit of the Contractor.		(i) immediately take over the incomplete Work and at its option have the Work completed by itself or others; or
15.2	Entitlement to extension The Contractor shall only be entitled to an extension to the Date for Completion when:		(ii) the amount of suspended payments and security called on by the Principal will be the same as they would be at common law if the Contractor had wrongfully repudiated the Order.
	(a) it can demonstrate to the reasonable satisfaction of the Principal that it has been or will be delayed in reaching the Date for Completion by a cause in clause 15.3 (having regard to clauses 15.4 and 15.5);	17.3	Adjustment on completion of the work taken out of the hands of the Contractor If the Principal exercises the power in clause 17.2(b)(i) then, when the Contractor's Work has been completed, the Principal must calculate the difference between:
	(b) the Order does not provide that the Contractor has no entitlement in relation to that cause; and		(a) the additional cost of having the Contractor's Work completed by itself or others, and any other loss or damage suffered or incurred by reason of the Contractor's default; and
	(c) the Contractor has given all notices strictly in accordance with the requirements of clause 15.		(b) the amount of suspended payments and security called on by the Principal.
15.3	Allowable causes of delay The causes of delay referred to in clause 15.2 are:		If the calculation results in a shortfall to the Principal, the Contractor must pay the amount of the shortfall to the Principal within five Business Days of a written demand for payment by the Principal.
	(a) a variation directed by the Principal under clause 7;	17.4	Insolvency default The Principal may exercise any power under clause 17.2 (in which case clause 17.3 will also apply) if:
	(b) any act or omission of the Principal or any of its employees, consultants or agents (whether or not that act or omission is a breach of this Order); and		

- (a) the Contractor is or states that it is unable to pay its debts as and when they become due and payable;
- (b) the Contractor is taken or must be presumed to be insolvent under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Contractor;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Contractor, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within five Business Days;
- (e) a receiver or receiver and manager is appointed in respect of any property of the Contractor;
- (f) the Contractor is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of the Contractor;
- (h) the Contractor enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the Contractor's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of the Contractor is presented and the petition is not stayed, withdrawn or dismissed within five Business Days or the Contractor presents a petition against itself;
- (j) the Contractor presents a declaration of intention under section 54A of the Bankruptcy Act 1966; or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Contractor.

18 **Dispute Resolution**

18.1 **Notice of Dispute**

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Order, then either party shall, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute, the parties shall, subject to clause 17.2 and clause 18.4, continue to perform their obligations under this Order.

18.2 **Conference**

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 of resolution. All aspects of every such conference except the fact of its occurrence shall be privileged. If the dispute has not been resolved within 28 days of service of the notice of dispute then, unless clause 18.4 applies, that dispute shall be and is hereby referred to expert determination.

18.3 **Expert Determination**

If within 28 days of service of a notice of dispute the dispute has not been resolved, the dispute shall be referred to Expert Determination. If within a further 14 days of the dispute being referred to Expert Determination the parties have not agreed upon an Expert, the Expert shall be nominated by the President of the Institute of Arbitrators and Mediators, Australia (IAMA). The Expert Determination shall be conducted in accordance with the IAMA's rules for expert determination.

Except where the parties otherwise agree in writing or the rules otherwise provide:

- (a) each party shall bear its own costs and pay one half of the Expert's fees and expenses;
- (b) the Expert shall not act as an arbitrator; and
- (c) the determination of the Expert shall be final and binding on the parties.

18.4 **Summary Relief**

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Order or to seek injunctive or urgent declaratory relief.

19 **Governing Law**

The law of New South Wales shall govern this Order.

20 **Waiver**

- (a) A single or partial exercise or waiver by a party of a right relating to this Order does not prevent any other exercise of that right or the exercise of any other right.

- (b) A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

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Principal's rights to order the Contractor to vacate the site or to stop work.

- (a) The Principal may at any time request the Contractor to vacate the site or stop the Contractor's Works. On receipt of such request from the Principal the Contractor shall immediately comply with request while making the site safe after seeking directions from the Principal. All costs and any loss of time in complying with the request may be claimed as a variation to the Contract.
- (b) The Principal may request the Contractor to immediately remove a person or subcontractor from site where the Principal believes that the person or subcontractor is not acting in accordance with any relevant legislation, the Principal's requirements, or for any other reason, at no additional cost or extension of time to the Principal.

22

Prestart site inspection and site inductions.

- (a) A prestart site inspection and meeting shall be undertaken by the Principal and the Contractor. The Principal will be responsible for taking minutes of the meeting, which will form part of the Order.
- (b) The Contractor is responsible for familiarising itself with the work site, all site conditions and work requirements including the associated hazards and risks, and has included allowances for these conditions in the tendered or quoted amount prior to taking possession of the site.
- (c) Upon a request by the Principal, the Contractor must undertake a site induction held by the Principal prior to commencing works and ensure that all of its employees, subcontractors and visitors undertake a site induction (carried out by the Contractor in accordance with the Principal's requirements). The Contractor shall ensure that all persons entering the site have attended the relevant site induction, hold a current "Green Card" and obtain appropriate licences to access the works and perform the duties the person is undertaking on site.

23

Materials and Equipment that are on site.

- (a) The Contractor is responsible for all existing materials, equipment, plant and road furniture located on site.
- (b) All existing materials, equipment, plant and road furniture made redundant as a result of the Contractor's Works shall remain the property of the Principal. The Contractor shall obtain instructions from the Principal on how to dispose of these items. Where these items are to be re-used or returned to the Principal for future use then the Contractor shall relocate and store the items in such a manner so as to prevent any unnecessary damage. The Principal may claim up to the replacement value including overheads against the Contractor for any lost or damaged materials, equipment, plant or road furniture.
- (c) The Contractor is responsible for the disposal of all debris, materials, plant and equipment at approved EPA sites and all lipping documentation shall be provided to the Principal. Disposal of debris, materials, plant and equipment will only be permitted on site with written approval from the Principal.

24

Confidentiality

All documentation and communications between the Principal and the Contractor shall remain confidential. The Contractor shall not provide any information to the media or public unless otherwise directed by the Principal.

25

Entire Agreement

The parties acknowledge that the Order constitutes the entire agreement between the parties and that no prior or subsequent representations or agreements whether verbal or in writing by the Principal or the Contractor or any employee or agent thereof shall bind the parties unless set out in or subsequently endorsed by the parties.

Annexure A

SUBCONTRACTOR'S STATEMENT REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION (Note 1)

Workers Compensation
s175B Workers Compensation Act 1987

Pay-roll tax
Part 5B s31G-31J Pay-roll Tax Act 1971

Remuneration
ss127, 127A Industrial Relations Act 1996

Sub Contractor: _____ ABN: _____

(Business name)

of _____
(Address of subcontractor)

has entered into a contract with **Interlink Roads Pty Ltd**, ABN: **53 003 845 430** (Note 2)

(Business name of principal contractor)

For work between: ____/____/____ and ____/____/____ (Note 3)
(Date) (Date)

and/or Payment Claim Details: _____ (Note 4)

Nature of contract work: _____ (Note 5)

DECLARATION

I, _____ a **Director of / a person authorised by** the subcontractor on whose behalf this
(delete as appropriate)

declaration is made, hereby state that the abovementioned subcontractor:

Is either:

A sole trader or partnership without workers or subcontractors (Note 6).

OR

Has and will maintain in force valid workers compensation insurance, policy _____ held
with _____ as indicated on the attached Certificate of
(Insurance Company) (Policy Number)

Currency dated _____, in respect of work done in connection with the contract, during any period of the
contract and has paid all workers compensation insurance premiums payable in connection with the contract. (Note 7)

Is Is not Iso a principal contractor in connection with the work under contract. (Note 8)

Has Has not been given a written statement by subcontractors in connection with the work.

Is Is not required to be registered as an employer under the *Pay-roll Tax Act 1971* _____ (Pay-roll tax client No.)

Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as required at the
date of this statement. (Note 9)

Has paid all remuneration payable to relevant employees, for work done under the contract at the date of this
statement. (Note 10)

Additional requirement of Interlink Roads Pty Limited.

*all subcontractors, suppliers and consultants to the Contractor have been paid all moneys due and payable to them for the
performance of work or the supply of services or materials for the purposes of the Order.*

Signature _____ **Full Name** _____
(please print)
Position/Title _____ **Dated** _____

WARNING

- Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).
- This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers*

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates.

Section 127(6) *Industrial Relations Act 1996* defines remuneration as ‘remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’

Section 127(11) of the *Industrial Relations Act 1996* states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.
It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996*.
11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.ost.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Pay-roll Tax Act 1971* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.