



**The Self-employed sub-contractor in accordance with the terms as set out hereunder:**

**1. Definitions**

- 1.1 "Head-contractor" means Innovative Surface Repairs Pty Ltd T/A Konig Surface Repairs, its successors and assigns or any person acting on behalf of and with the authority of Innovative Surface Repairs Pty Ltd T/A Konig Surface Repairs.
- 1.2 "Self-employed sub-contractor" means the person/s undertaking the Works as specified in any invoice, document or order, and if there is more than one, Self-employed sub-contractor is a reference to each Self-employed sub-contractor jointly and severally.
- 1.3 "Works" means all building works or materials to be supplied by the Self-employed sub-contractor to the Head-contractor at the Head-contractor's request from time to time including but not limited to variations, remedied work and temporary works (where the context so permits the terms 'works' or 'materials' shall be interchangeable for the other).
- 1.4 "Subcontract Sum" means the price payable for the Works as agreed between the Head-contractor and the Self-employed sub-contractor in accordance with clause 5 below.
- 1.5 "Completion Date" means the date by which the Self-employed sub-contractor is to complete the Works for the Head-contractor, with such date to be provided by the Head-contractor to the Self-employed sub-contractor.
- 1.6 "Defects Liability Period" means the period of time within which the Self-employed sub-contractor is obliged to return to the site to repair defects. The defects liability period commences on the Completion Date and expires 30 days after the Completion Date.
- 1.7 "Project" is each Site/s whereby the Head-contractor engages the Self-employed sub-contractor to provide the Works now and in the future.
- 1.8 "Personal Information" means name, address and/or any registered office address, any relevant ABN, business names and/or ACN and company details, telephone number, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable).
- 1.9 "Site/s" is each parcel of land owned by an Owner on which the Head-contractor has been or is to be engaged to provide the Building Works on.
- 1.10 "Owner" means the owner of a parcel of land on which the Works are performed.

**2. Acceptance**

- 2.1 The Self-employed sub-contractor is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Self-employed sub-contractor accepts any request from the Head-contractor to provide any Works.
- 2.2 The Self-employed sub-contractor acknowledges that this Subcontract:
  - (a) creates a relationship between the parties of principal and contractor;
  - (b) does not create any relationship of agency or employment between the parties;
  - (c) does not guarantee any level of work or remuneration that will be given to the Self-employed sub-contractor

**3. Doing the Work**

- 3.1 The Self-employed sub-contractor shall start, do, deliver and finish the Works including any variations to them and including all items of work needed to complete them on or before the Completion Date, in a safe and workmanlike manner, pursuant to these terms and conditions and to the reasonable satisfaction of the Head-contractor.
- 3.2 In performing the Works, the Self-employed sub-contractor must not hold himself out as being authorised to exercise any responsibilities for or on behalf of the Head-contractor other than as provided for in this Subcontract.

**4. Programme and Variations**

- 4.1 The Head-contractor and/or its authorised representative may direct in what order, by what dates or by which times the various stages or parts of the Works shall be executed.
- 4.2 Should the Head-contractor request any alteration or additional work to be affected in connection with the Works then this will be deemed a variation and written authorisation from the Head-contractor will be provided to the Self-employed sub-contractor prior to commencing execution of the variation.
- 4.3 Upon a variation being requested in accordance with clause 4.2 by the Head-contractor, the Self-employed sub-contractor will submit a price quote to the Head-contractor for completion of the variation, with such pricing subject to approval by the Head-contractor.
- 4.4 The Head-contractor shall not be liable for any variations that are not requested in writing by the Head-contractor and will not be liable for any variations for which the quoted price of such variation(s) has not been approved in writing by the Head-contractor.

**5. Price and Payment**

- 5.1 At the Head-contractor's sole discretion the Subcontract Sum shall be either:
  - (a) as indicated on any request, document or purchase order provided by the Head-contractor to the Self-employed sub-contractor in respect of the Works to be performed or Materials to be supplied; or
  - (b) the Self-employed sub-contractor's hourly price of providing the Works at the date of delivery of the Works according to the Self-employed sub-contractor's current pricelist; or
  - (c) the Self-employed sub-contractor's quoted Price (subject to clause 5.2) which shall be binding upon the Head-contractor provided that the Head-contractor shall accept the Self-employed sub-contractor's quotation in writing within thirty (30) days.
- 5.2 The Head-contractor reserves the right to change the Price:
  - (a) if a variation to the materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works.
- 5.3 The Subcontract Sum will be payable by the Head-contractor on the date/s determined by the Head-contractor, which may be:
- (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with the Head-contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Head-contractor by the Self-employed sub-contractor.
- 5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Self-employed sub-contractor and the Head-contractor.
- 5.5 Unless otherwise stated the Subcontract Sum does not include GST. In addition to the Subcontract Sum the Head-contractor must pay to the Self-employed sub-contractor an amount equal to any GST the Self-employed sub-contractor must pay for any supply by the Self-employed sub-contractor under this or any other agreement for the provision of the Works.
- 5.6 The Self-employed sub-contractor acknowledges that it is not entitled to payment in respect of public holidays, annual leave, long service leave, superannuation, redundancy or any other statutory entitlement required in an employer-employee relationship.

## **6. Delivery of the Works**

- 6.1 Subject to clause 6.2 it is the Self-employed sub-contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 At the sole discretion of the Head-contractor, the Works commencement date will be put back and/or the Completion Date extended by whatever time is reasonable in the event that the Head-contractor agrees to an extension of time, (upon the Self-employed sub-contractor giving written notice) where completion is delayed by an event beyond the Self-employed sub-contractor's control.
- 6.3 At the request of the Head-contractor, the Self-employed sub-contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Subject to clause 6.2, the Head-contractor shall not be liable for any loss or damage whatsoever due to failure by the Self-employed sub-contractor to deliver the Works (or any part of them) promptly or at all.
- 6.5 If the Self-employed sub-contractor shall fail to complete the Works by the Completion Date or as extended by any extension of time granted by the Head-contractor in accordance with clause 6.2, then the Self-employed sub-contractor shall pay or allow to the Head-contractor as liquidated and ascertained damages the sum as outlined by the Head-contractor to the Self-employed sub-contractor in writing, for the period of time, from the Completion Date until the Works are completed.
- 6.6 The Defects Liability Period commences at the time the Works are completed and ends upon the expiry of the Defects Liability Period.
- 6.7 During the Defects Liability Period the Self-employed sub-contractor, shall make good as soon as practicable and at its own costs any defects found in the Works at Completion together with any defects, shrinkages or other faults which may occur and be notified to the Self-employed sub-contractor during such period provided such defects are not due to acts by others for whom the Self-employed sub-contractor is not responsible under this Agreement.

## **7. Risk / Insurance**

- 7.1 The Self-employed sub-contractor must at the expense of the Self-employed sub-contractor, obtain and maintain for the duration of these terms and conditions, or as otherwise required by the Head-contractor, the following:
- (a) All necessary statutory workers compensation insurance against any liability, loss, claim or proceeding whatsoever arising by virtue of any statute relating to workers compensation by any person employed by the Self-employed sub-contractor in respect of the Works;
  - (b) A valid and enforceable public liability insurance policy against liability to third persons or in respect of the property of third persons in an amount satisfactory to the Head-contractor;
  - (c) A valid and enforceable professional indemnity insurance policy to cover the Self-employed sub-contractor and the Self-employed sub-contractor's employees and workers for an amount not less than \$750,000.00 for each such person.
- 7.2 The Self-employed sub-contractor must immediately notify the Head-contractor in writing of any cancellation or non-renewal of the Self-employed sub-contractor's insurance.
- 7.3 The Self-employed sub-contractor will be liable for and shall indemnify the Head-contractor to the extent of:
- (a) Any liability, loss, claim or proceeding in respect of any injury, loss or damage to any property real or personal in so far as such injury loss or damage arises out of or in the course of or by reason of the execution of the Works;
  - (b) Any liability arising because it does something which could not be covered by insurance or which would breach any insurance policy, including any policy held by the Head-contractor.
- 7.4 Where the Head-contractor is to both supply and install materials then the Head-contractor shall maintain a contract works insurance policy until the Works are completed.
- 7.5 Notwithstanding the provisions of clause 7.1, the Head-contractor will not be liable for any loss or damage to the Self-employed sub-contractor's material or equipment used in the provision of the Works.

## **8. Maintenance and Responsibility**

- 8.1 From the commencement of these terms and conditions until the Completion Date, the Self-employed sub-contractor shall be responsible for the care of all the Works under this Agreement without limit. It will perform its duties under this Agreement correctly and in accordance with this Agreement.
- 8.2 Until the Completion Date, the Self-employed sub-contractor shall be responsible for the protection, care, up-keep and maintenance of the Works.
- 8.3 The Self-employed sub-contractor at its own cost and to the satisfaction of the Head-contractor:
- (a) Until Completion Date or as reasonably directed by the Head-contractor must clean up and properly remove all rubbish and surplus material from any site where Works are undertaken;

- (b) On the Completion Date, remove all items, temporary works, constructional plant and equipment that may have been constructed or brought onto any site where Works are undertaken for the purpose of carrying out the Works;
- (c) On the Completion Date, leave the site where any Works are undertaken in a condition suitable for handing over to the Head-contractor and/or as required by following trades.

## 9. Defects / Warranties

- 9.1 The Self-employed sub-contractor warrants to the Head-contractor, that it has:
  - (a) Examined all relevant information made available to it, for any purpose, by the Head-contractor;
  - (b) Examined any site or surroundings where the Works are to be completed;
  - (c) Informed itself as far as practicable of the nature of the Works and the materials necessary for completing the Works;
  - (d) Informed itself as far as practicable of the availability of labour and materials necessary for execution of the Works.
- 9.2 In no circumstances whatsoever does the Head-contractor take responsibility for nor make any representation with respect to the accuracy or adequacy of information or data provided to the Self-employed sub-contractor; nor shall the Head-contractor be liable for any reason; nor does the Head-contractor assume any duty of care to the Sub-contractor with respect to information pertaining to the Works or the failure to provide such information.
- 9.3 The Self-employed sub-contractor shall comply with everything which it ought to comply, including occupational health and safety best practises, any direction from a local authority or other body having jurisdiction over the carrying out of the Works.
- 9.4 These terms and conditions are subject to the provisions of any legislation applicable regarding the security of payments for the provision of the Works.
- 9.5 The Self-employed sub-contractor warrants that it holds and will retain all licenses required by any authority to carry out the Works.
- 9.6 The Self-employed sub-contractor shall do and procure all things properly required by any relevant authority, or necessary for the protection of the Works, or of other property, or for the safety and convenience of all persons employed in or around the site where the Works are completed and also members of the public.
- 9.7 The Self-employed sub-contractor shall avoid obstruction, interference or damage to property on or adjacent to the site and to the assets of any utility provider or any authority which owns public assets.
- 9.8 In the event that the Self-employed sub-contractor doesn't reinstate any damage it causes, the Head-contractor shall have the right to fix it and to deduct the costs thereof from any monies due or thereafter to become due to the Self-employed sub-contractor by the Head-contractor and to recover any difference as a debt due to it by the Self-employed sub-contractor.
- 9.9 Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010, certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 9.10 The Self-employed sub-contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

## 10. Intellectual Property

- 10.1 Where the Head-contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Self-employed sub-contractor, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Head-contractor, and shall only be used by the Self-employed sub-contractor at the Head-contractor's discretion.

## 11. Default and Termination

- 11.1 Time shall be of the essence of all of each party's obligations hereunder and waiver by the other of any default shall not be deemed to be a waiver of any continuing or recurring default.
- 11.2 If a party breaches or repudiates this Subcontract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.
- 11.3 The Head-contractor may send to the Self-employed sub-contractor by Registered mail a detailed notice stating the intention of the Head-contractor to terminate this Subcontract, unless it shows cause, if the Self-employed sub-contractor defaults in any one or more of the following:
  - (a) if it suspends work or fails to proceed with the Works competently, regularly and diligently prior to achieving practical completion and/or this results in non-payment by the Owner;
  - (b) if it refuses or persistently neglects to comply with written notice from the Head-contractor requiring him to rectify poor quality workmanship, defective work or improper Materials or goods, or remove incompetent persons, persons who exhibit abusive and/or aggressive behaviour, persons who are under the influence of drugs and/or alcohol; or
  - (c) if it fails to provide evidence of insurance;
  - (d) if it undertakes work directly for the Owner without the Head-contractor's knowledge and/or consent;
  - (e) if with the view to obtaining a financial advantage or any payment from the Head-contractor it knowingly provides documentary evidence containing an untrue statement;
  - (f) if it is guilty of breach of reasonable safety standards;
  - (g) if otherwise it is guilty of a substantial breach of the provisions of this Subcontract;
  - (h) if it suffers a material adverse financial change which in the reasonable opinion of the Head-contractor puts it at serious risks of insolvency within the meaning of section 95A *Corporations Act 2001*.
- 11.4 The Self-employed sub-contractor shall be liable to the Head-contractor for damages suffered by the Head-contractor by reason of the Self-employed sub-contractor's conduct including a breach, default, negligence, or the omission of any act required to be undertaken by the Self-employed sub-contractor.
- 11.5 If the Head-contractor commits a substantial breach of this Subcontract, the Self-employed sub-contractor may give the Head-contractor a written notice to show cause.
- 11.6 Substantial breaches include, but are not limited to:
  - (a) failing unreasonably to rectify inadequate possession of the Site by the Self-employed sub-contractor;
  - (b) failing to make a payment due and payable pursuant to this Subcontract; and
  - (c) unreasonably failing to give a certificate of practical completion; or
  - (d) if it suffers a material adverse financial change which in the reasonable opinion of the Head-contractor puts it at serious risk of

insolvency within the meaning of section 95A *Corporations Act 2001*

- 11.7 The Self-employed sub-contractor shall remove the suspension if the Head-contractor remedies the breach.
- 11.8 The Self-employed sub-contractor may, by written notice to the Head-contractor, terminate this Subcontract, if within 28 days of the date of suspension pursuant to this clause, the Head-contractor fails to remedy the breach; or if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Self-employed sub-contractor.
- 11.9 If this Subcontract is terminated pursuant to this clause the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this Subcontract had the defaulting party repudiated this Subcontract and the other party elected to treat this Subcontract as at an end and recover damages.

## **12. Cancellation**

- 12.1 The Head-contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Self-employed sub-contractor. On giving such notice the Head-contractor shall repay to the Self-employed sub-contractor any sums paid in respect of the Subcontract Sum, less any amounts owing by the Self-employed sub-contractor to the Head-contractor. The Head-contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Self-employed sub-contractor cancels the delivery of Works the Self-employed sub-contractor shall be liable for any and all loss incurred (whether direct or indirect) by the Head-contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for products made to the Self-employed sub-contractor's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **13. General**

- 13.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state.
- 13.3 Subject to clause 9 the Head-contractor shall be under no liability whatsoever to the Self-employed sub-contractor for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Self-employed sub-contractor arising out of a breach by the Head-contractor of these terms and conditions (alternatively the Head-contractor's liability shall be limited to damages which under no circumstances shall exceed the Subcontract Sum).
- 13.4 These terms and conditions can only be amended in writing. These changes shall be deemed to take effect from the date on which the Self-employed sub-contractor accepts such changes, or otherwise at such time as the Self-employed sub-contractor makes a further request for the Head-contractor to provide any Works to the Self-employed sub-contractor.
- 13.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 13.6 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.