

PURCHASE ORDER (SUB CONTRACTOR) TERMS AND CONDITIONS

Definitions

'DC' means DGC Holdings Pty Ltd as trustee for the Distinctive Unit Trust trading as Distinctive Ceilings ABN 61 442 284 863.

'Defects Liability Period' means a period of twelve months following the Works achieving Practical Completion.

'Practical Completion' means that stage of the Works is completed in accordance with Terms and Conditions, save for minor omissions and minor defects which do not prevent the Works from being reasonably capable of being used for their intended purpose.

'Purchase Order' means the purchase order issued by DC to the Subcontractor as evidenced by the documents listed in the Purchase Order Form.

'Purchase Order Form' means the section of the Purchase Order which identifies DC and the Subcontractor and includes but is not limited to a brief description of the Works and a list of the documents comprising the Purchase Order.

'Site Address' Shall be as per the Site Address shown on the Purchase Order.

'Subcontractor' means the party carrying out the Works, as identified in the Purchase Order Form.

'Works' means the scope of works as listed in the Purchase Order Form and further includes all sundry and incidental works required to be carried out in order to achieve completion of that scope.

1. General

1. Any Purchase Order provided to the Subcontractor is deemed to be provided upon these Terms and Conditions. These Terms and Conditions shall operate to the exclusion of any terms and conditions to the contrary effect expressed in any documentation and shall supersede all prior agreements.
2. The Subcontractor must carry out the Works in accordance with the Purchase Order Form, including any variations, in accordance with the Terms and Conditions at the site address.
3. In commencing the carrying out of the Works the subject of the Purchase Order, the Subcontractor agrees to be bound by the Purchase Order and these Terms and Conditions.
4. The Subcontractor must carry out the Works, including any variations:
 1. in a proper and workmanlike manner;
 2. using materials which are both new and fit for their purpose and which are free of any encumbrances or security interest;
 3. in accordance with the Purchase Order Form (including the drawings and specifications);
 4. in compliance with all legislative requirements;
 5. in accordance with any applicable Australian Standards; and
 6. within the times provided for in the Purchase Order Form.

2 Works

- 2.1 The Works to be provided by the Subcontractor are as listed in the Purchase Order Form and further includes all sundry and incidental works required to be carried out in order to achieve completion of that scope.
- 2.2 The Subcontractor represents and warrants to DC that it meets and will continue to meet for the duration of the Works, all requirements at law, including the holding of all relevant licenses, to legally execute the Works.
- 2.3 The Subcontractor shall comply with all statutory requirements, all authority requirements and any government code(s) that may apply to the Project, to the extent relevant to the Works.
- 2.4 The Subcontractor shall perform the Works as directed by DC in a safe, effective, efficient, careful and skillful manner at the times required by DC.
- 2.5 The Subcontractor must perform the Works in strict accordance with the entire terms and conditions, plan, drawings and specifications of the head contract between DC and the Builder.
- 2.6 The Subcontractor must perform, construct, erect and/or carry out the Works using the best quality materials, in a proper and tradesman-like manner, using due care and diligence expected of a reasonably competent person in the relevant field of expertise (where professional services are to be provided) and in full compliance with Builder's Workplace Health and Safety and Environmental Requirements.
- 2.7 The Subcontractor will complete the Works so that when completed the Works separately, and when interfaced with any part of any existing improvements, is fit for the purpose under the Head Contract.
- 2.8 The Subcontractor must cooperate with and coordinate its work with other subcontractors, contractors and DC.
- 2.9 Unless stated otherwise in this Contract or agreed otherwise in writing, the Subcontractor shall provide everything necessary (labour, plant, equipment and other items) to perform the Works as required by DC.
- 2.10 DC shall be entitled, as it sees fit, to award to other contractors, Works on the Project of the same or a similar nature to the Works.
- 2.11 The Subcontractor must rectify all defects in the Works up until the end of the defect's liability period, irrespective of whether or not those defects are notified to it by DC.
- 2.12 The materials and/or equipment to be supplied by DC (if any).
- 2.13 The Subcontractor will not make any claim in relation to the suitability of the site and is deemed to have carefully examined and investigated all information made available to it by DC, the site and all relevant physical conditions upon and below the surface of the site.

3 Representatives

- 3.1 The Subcontractor shall have a competent representative acceptable to DC authorized to receive directions and notices from DC and otherwise to carry out all the obligations of the Subcontractor to the satisfaction of DC.
- 3.2 The Subcontractor's representative shall always be in attendance on site during the performance of the Works at the site.
- 3.3 The Subcontractor shall not deal with or comply with the directions of any person other than an authorized representative of DC. DC shall not be liable to pay for Works directed by a person who is not an authorized representative of DC.

4 Subcontractor's Employees

- 4.1 The Subcontractor shall ensure that, to the satisfaction of DC, each person required to perform the Works:
 - (a) is experienced, competent and fit to perform the work and/or service he/she is required to undertake;
 - (b) holds appropriate licences and certificates;
 - (c) complies with legislative and DC's site-specific safety and environmental requirements;
 - (d) complies with legislative industrial relations requirements;
 - (e) complies with DC's local community relations requirements;
 - (f) complies with relevant Australian Standards; and
 - (g) is paid in accordance with relevant payment conditions and otherwise receives all relevant employee entitlements.
- 4.2 The requirements of clause 4.1(c) may include (without limitation) attendance at a safety induction course, supply and use of appropriate personal protective equipment and working in accordance with safe working procedures.
- 4.3 The Subcontractor shall ensure that it complies with the right of entry provisions of relevant legislation, including the Fair Work Act 2009 (Cth), in the event that any union representative approaches it to gain entry to the site. The Subcontractor shall immediately notify DC of any such approach.
- 4.4 The Subcontractor shall ensure that all its workers are working in Australia legally, under the laws and regulations of the Australian Government & Immigration Department. (*Migration Act 1958*).
- 4.5 The Subcontractor shall maintain records to record that all of its Workers are complying with the Federal and WA Governments Covid-19 Vaccination Mandate currently in force.
- 4.6 The Subcontractor undertakes to continue to comply with the Federal and WA Governments Covid-19 Vaccination Mandate currently in force including any changes (if any)



5 Time, Duration of the Works and Delay

- 5.1 The Subcontractor shall commence the Works on the Commencement Date stated in the Purchase Order or as advised by DC.
- 5.2 The Subcontractor must perform the Works in accordance with DC's program or revisions thereto and complete the Works by the date advised by DC (Completion Date).
- 5.3 If the Subcontractor is delayed in its performance of the Works by reason of any event that entitles DC to an extension of time under its contract with the Builder or any act, omission or breach of the Contract by DC, its agent or any of DC's employees, the Subcontractor will be entitled to an extension of time to the Completion Date but only if the Subcontractor notifies DC in writing of the delay and its extent within 3 days of the first occurrence of the event causing the delay.
- 5.4 The Subcontractor is liable to DC for any cost, loss or damage incurred by DC as a result of the Subcontractor failing to complete the Works in accordance with DC's program or revisions thereto or the Subcontractor causing delay or disruption to DC in respect of the work under the Head Contract and DC may deduct or recover such cost, loss or damage from the Subcontractor as a debt due and payable by the Subcontractor to DC on demand.
- 5.5 DC shall notify the Subcontractor when the Works are no longer required whereupon the Works shall be deemed terminated.
- 5.7 The Subcontractor shall remove all its resources from the site promptly upon termination of the Works at the site.

6 Plant, Equipment and Other Items

- 6.1 All plant, equipment and other items provided by the Subcontractor to perform the Works shall always remain the property of the Subcontractor.
- 6.2 The Subcontractor shall be responsible for the care of its plant, equipment and other items. DC shall accept no responsibility for any loss or damage to the Subcontractor's plant, equipment or other items.
- 6.3 The Subcontractor shall ensure that its plant, equipment and other items are properly maintained and/or repaired such that they are available to operate or use in an efficient, effective and safe manner always throughout the duration of the Works.
- 6.4 For Works to be performed at the site, the Subcontractor shall ensure that its plant, equipment and other items:
 - (a) are delivered to and collected from the site;
 - (b) unless agreed otherwise, are loaded and unloaded as necessary and otherwise transported to the required workface; and
 - (c) are registered and insured against loss or damage for their market value.

7 Site Working Hours

For Works to be performed at the site, unless DC directs or agrees otherwise in writing, the Subcontractor shall carry out the Works during the working hours and working days for the site as advised by DC.

8 Damage to Persons and Property

The Subcontractor shall indemnify and keep indemnified DC (and the Principal if DC acts as agent for the Principal) against all physical loss or damage to property, including loss of use or loss of data, including DC's and/or the Principal's works (other than damage which is a direct and unavoidable consequence of the performance of the Works), and all loss or damage resulting from death or personal injury arising out of or resulting from the performance of the Works or from any other act or omission of the Subcontractor. This indemnity shall be reduced to the extent that any such loss or damage was caused or contributed to by any act or omission of DC (or the Principal if DC acts as agent for the Principal).

9 Insurance

9.1 Public Liability Insurance

The Subcontractor shall affect a public liability policy of insurance to cover its liability and its subcontractors' liability to third parties for loss of or damage to property (including loss of use thereof) and the death of or injury to any person.

The insurance shall:

- (a) be for an amount not less than the sum \$20 million;
- (b) be maintained for the duration of the Works; and
- (c) include the interests of the Principal and DC as principals in respect of matters that may arise out of the performance of the Works.

9.2 Professional Indemnity Insurance

If this Contract relates to the provision of professional services, the Subcontractor shall affect and maintain a professional liability and indemnity policy of insurance.

The insurance shall:

- (a) have an indemnity limit for an amount not less than the sum \$20 million; and
- (b) be maintained to provide continuity of cover for the Subcontractor's potential liability at law for the period

stated in the Annexure 1.

9.3 Insurance of Employees

The Subcontractor shall insure against liability for death of or injury to persons employed by the Subcontractor including liability by statute and at common law.

The insurance shall be maintained for the duration of the Works.

The Subcontractor shall ensure that each of its sub- subcontractors is similarly insured.

If the Subcontractor is a sole trader, then:

- (a) the preceding provisions of this clause 9.3 shall not apply; but
- (b) the Subcontractor must have in place a personal accident and sickness policy of insurance on such terms and in such amount as is reasonably acceptable to DC.

9.4 Proof of Insurance

Each of the insurance policies required to be affected by the Subcontractor shall be effected prior to the commencement of the Works. Each policy shall be taken out with an insurer and in terms approved by DC. Whenever requested by DC, the Subcontractor shall produce evidence to the satisfaction and approval of DC that it has satisfied all its insurance obligations under this Contract and the Subcontractor shall not be entitled to payment of any progress claim until such evidence has been provided as requested. Insurance does not limit the Subcontractor's liability under this Contract or otherwise.

10 Variations

10.1 The Subcontractor must carry out any variations to the Works when and as directed in writing by DC. The amount payable for any variation will, in the absence of agreement, be determined by DC having regard to the rates described on a Purchase Order.

11 Retention

11.1 Where retention is applicable, DC may deduct retention moneys to the value of 10% of any progress claim but limited in the aggregate to a maximum of 5% of the value of the Works.

11.2 Upon practical completion of the Head Contract, DC will release half of the retention moneys. At the conclusion of the defect's liability period and payment of the final sum under the Head Contract DC will, subject to any deductions that have or may be made by DC, release all remaining retention moneys.

12 Progress Claims and Payment

12.1 Payments to be made to the Subcontractor in accordance with this clause 12 shall consider the following matters:

- (a) an amount calculated by multiplying the relevant GST exclusive rates and/or prices by the relevant quantities of the Works performed but subject to or limited to the lump sum fixed price, if applicable;
- (b) less the reasonable costs incurred by DC in remedying any default by the Subcontractor of its obligations under this Contract; and/or less
- (c) the amount of any costs, losses or damage suffered by DC if the Subcontractor does not fulfil its obligations under this Contract or otherwise;

12.2 Progress claims shall be submitted in a form acceptable to DC on or before the time for submission of claims for payment stated in the Annexure 1 or, if no time is stated, on the last business day of each month (relevant time). If the Subcontractor submits a progress claim earlier than the relevant time, the Subcontractor agrees that the progress claim shall not be taken to have been submitted until the relevant time and that the early submission of the progress claim shall not require DC to make a determination or payment in respect of the progress claim any earlier than would have been the case if the Subcontractor had submitted the progress claim at the relevant time.

12.3 Progress payments shall be made within the period for payment stated in the Annexure 1 for DC's determination of the value of the matters referred to in clause 12.1 less the amount paid in previous progress payments and any late payments will be subject to interest at the rate of 5% per annum.

DC may, at its discretion, provide a statement to the Subcontractor of its determination of the amount payable in respect of a progress claim submitted by the Subcontractor at any time prior to the time for payment of the claim. The statement may take any form.

12.4 At DC's discretion, payment shall be made by electronic funds transfer or by cheque. The date of payment shall be regarded as the date on which the funds are cleared by DC for payment, the funds being available to the Subcontractor within 2 business days thereafter.

12.5 The Subcontractor shall not submit a claim for payment to DC unless:

- (a) its employees and subcontractors have been paid all amounts due and payable to them;
- (b) it has paid all workers compensation insurance premiums due and payable by the Subcontractor in connection with the Works;
- (c) it has paid all payroll tax due and payable in respect of wages paid or payable to employees engaged in connection with the Works; and
- (d) it has complied with all statutory obligations in connection with the Works.

12.6 DC may, at any time and as a condition precedent to payment, require the Subcontractor to provide it with a signed statutory declaration (refer to Annexure 1 attached) or other evidence to DC's satisfaction of the Subcontractor's compliance with clause 4 and 9.

12.7 Payment Terms

- (a) Time for submission of claims for payment by Subcontractor: Weekly by COB Friday
- (b) Period for Payment: Subcontractor invoices will be paid fortnightly after they are submitted, claims not submitted on time shall default to the next pay period.

13 Agreement of Times

Where the Works are to be paid for on a time charge basis, the Subcontractor shall record and submit details of the resources deployed on the Works daily to DC for DC's approval.

14 Goods and Services Tax (GST)

14.1 Terms used in these terms and conditions which are defined in the GST Act have the same meaning in this clause 14. The GST Act means A New Tax System (Goods & Services) Act 1999 (Cth).

14.2 Each party acknowledges and agrees that:

- (a) at the time of entering into this Contract, it is registered for GST;
- (b) it shall promptly provide written evidence of its GST registration if so, requested by the other party;
- (c) it shall indemnify the other party against any loss that may arise from it not being registered for GST; and
- (d) it shall promptly notify the other party in writing if it ceases to be registered for GST.

14.3 For each supply made by a party (Supplier) under or in connection with this Contract on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this Contract but for the application of this clause (GST exclusive consideration) shall be increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to a valid tax invoice (Tax Invoice) being provided in respect of the GST exclusive consideration.

14.4 A Tax Invoice shall be provided by, the Supplier providing the Recipient with a Tax Invoice prior to the due date for payment of the supply.

14.5 If, and to the extent an adjustment event arises in respect of a supply made under or in connection with this Contract, then:

- (a) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier shall refund the difference to the Recipient;
- (b) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient shall pay the difference to the Supplier; and
- (c) the Supplier shall issue an adjustment note to the Recipient (unless clause 14.5(a) above applies, in which case DC will issue an adjustment note to the Subcontractor).

15 Default

Without limiting DC's rights under clause 16, if the Subcontractor fails:

- (a) to promptly and properly make good any damage or loss for which the Subcontractor is responsible;
- (b) to provide resources necessary to perform the Works as directed by DC; to remove rubbish or other items belonging to the Subcontractor;
- (c) to remove rubbish or other items belonging to the Subcontractor;
- (d) to keep up with DC's program or revisions thereto;
- (e) to properly maintain and/or repair plant, equipment and other items provided by the Subcontractor; and/or
- (f) to comply with any other obligation, it has under this Contract,

then:

- (a) DC may, at its sole discretion and without obligation, remedy that failure and the cost of doing so shall be valued under clause 12.1(b); and
- (b) any cost, loss and/or damage that DC has incurred or is likely to incur as a result of the Subcontractor's default shall be valued under clause 12.1(c).

16 Termination

16.1 In the event that:

- (a) the Subcontractor fails to comply with its obligations under this Contract (including, without limitation, failure to comply with its obligations in a timely manner);
 - (b) the Subcontractor is insolvent or bankrupt within the meaning set out in clause 44.11(a) to (l) of Subcontract Conditions AS2545-1987; and/or
 - (c) the Subcontractor dies,
- then DC may, at its sole discretion, terminate this Contract.

16.2 Upon termination under clause 16.1:

- (a) DC shall be liable only for those amounts which would have been payable if this Contract had not been terminated as at the date of termination; and
- (b) any cost, loss and/or damage that DC has incurred or is likely to incur as a result of the Subcontractor's default shall be valued under clause 12.1(c).

17 Assignment and Sub-contracting

17.1 The Subcontractor shall not:

- (a) assign, novate, mortgage or encumber the whole or any part of this Contract nor any payment, right or interest thereunder; or
- (b) sub-subcontract any of the Works without DC's prior written approval of the Subcontractor's proposed sub-subcontractor and that part of the Works proposed to be sub- subcontracted. Approval to sub-subcontract shall:
 - (i) be at the discretion of DC and may be conditional; and
 - (ii) shall not relieve the Subcontractor from any liability or obligation under this Contract.

17.2 Any sub-subcontractor engaged by the Subcontractor in contravention of clause 17.1(b) shall not be permitted to enter the site and DC shall not be liable to pay for any Works performed by that sub-subcontractor.

Subcontractor Declaration

Annexure 1

**Statutory Declaration
Western Australia**

Date: _____

Full Name I _____

Residence of _____

Occupation _____ do hereby confirm that and sincerely declare and affirm that:

- Company
1. I am a representative of _____, the Subcontractor, for works carried for the previous fortnight for DGC Holdings Pty Ltd as trustee for the Distinctive Unit Trust trading as Distinctive Ceilings and I am authorised to make this Declaration.
 2. All employees and/or subcontract workers who are, or at any time have been, engaged for the above period by the Subcontractor have been paid in full all amounts which have become due and are owing to them by virtue of their employment on the Projects as wages and allowances of every kind required to be paid by, or under, any statute, ordinance or subordinate legislation, or by any relevant awards, determination, judgment or order of any competent court, board, commission or other industrial tribunal or by a relevant industrial agreement that is in force in Western Australia and to the latest date at which such wages and allowances are payable.
 3. All insurances required under the Subcontract Agreement are current and all premiums have been paid on the date of the drawdown.
 4. All Workers Compensation Insurance premiums and Public Liability Insurance premiums payable by the Subcontractor in respect of or in connection with the work under the Subcontract Agreement have been paid.
 5. All our Workers are working in Australia legally, under the laws and regulations of the Australian Government & Immigration Department. (*Migration Act 1958*).
 6. My records indicate that all our Workers are complying with the Federal and WA Governments Covid-19 Vaccination Mandate currently in force.
 7. My business undertakes to continue to comply with the Federal and WA Governments Covid-19 Vaccination Mandate currently in force including any changes (if any)

This declaration is true, and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005 (WA).

At:

On / / .

in the presence of -

Signed:

{Signature of person making the declaration}

Name:

.....(Insert Name of Signatory)

.....

Authorised Witnessed *

{Signature of authorised witness}

Name of Authorised Witness.....

(Insert Name of Witness)

Qualification as such a witness}

Subcontractor Declaration

*Important This Declaration must be made before any of the following persons: -

| | |
|--|--|
| Academic (post-secondary institution) | Local government councillor |
| Accountant | Loss adjuster |
| Architect | Marriage Celebrant |
| Australian Consular Officer | Member of Parliament |
| Australian Diplomatic Officer | Minister of religion |
| Bailiff | Nurse |
| Bank Manager | Optometrist |
| Chartered secretary | Patent Attorney |
| Chemist | Physiotherapist |
| Chiropractor | Podiatrist |
| Company auditor or liquidator | Police officer |
| Court officer (magistrate, registrar or clerk) | Post Office manager |
| Defence Force officer | Psychologist |
| Dentist | Public Notary, |
| Doctor | Public Servant (State or Commonwealth) |
| Electorate Officer (State – WA only) | Real Estate agent |
| Engineer | Settlement agent |
| Industrial organisation secretary | Sheriff or deputy Sheriff |
| Insurance broker | Surveyor |
| Justice of the Peace (any State) | Teacher |
| Lawyer | Tribunal officer |
| Local government CEO or deputy CEO | Veterinary surgeon |

Or

any person before whom, under the Statutory Declarations Act 1959 of the Commonwealth, a Statutory Declaration may be made.

Full descriptions of these professions are available at;

http://www.courts.dotag.wa.gov.au/_files/Professions_witness_statutory_declarations.pdf

Any authorised witness for the State of Western Australia may also witness a Commonwealth Statutory Declaration, as long as they are in Western Australia at the time of witnessing {Schedule 2, item 231 of the Commonwealth Statutory Declarations Regulations 1993}.

Further information on witnessing documents is available at www.dotag.wa.gov.au