

IM-FOR-0703-010 Supply Agreement

Publish Date	July 2014 - HT
General	<p>This Contract is to be used where Daracon procures the supply of goods.</p> <p>Check with the Contract Manager if any doubt exists as other agreements exists for more specialised goods, services or works.</p> <p>The Contract comprises the following parts:</p> <ul style="list-style-type: none"> A. Supply Agreement Schedule B. Standard Contract Terms and Conditions C. Details of Goods, Pricing and Delivery D. Other documents forming part of the Agreement E. Form of Final Claim & Subcontractors Statement
Details	<p>Details relating to the appointment of the supplier should be set out clearly in Part A.</p> <p>If additional details are required, include them in Part C, D or E as required.</p>
Standard Terms	<p>The standard terms and conditions are not to be varied in any way.</p> <p>Where the supplier has a quote or other document they want included, it should be clearly described in Part D.</p>
Payment Terms	<p>ANY CHANGE TO PAYMENT TERMS REQUIRES THE APPROVAL OF THE CFO</p>
Federally or State Funded Projects	<p>Where a project receives funding from either the Federal or State government, you should indicate so in Part A as it triggers certain requirements at law which will then be enacted in the contract.</p>
Industrial Relations	<p>The industrial relations schedule (at the end of the document) reflects the current legal requirements and provides for circumstances where the project to which the goods are being supplied is Federally funded (which require prescriptive IR obligations).</p> <p>If the supplier has any questions in relation to this schedule which you are not able to answer, please direct them to the Contracts Manager.</p>
Security	<p>Please ensure the appropriate time for release of security is selected in Part A.</p> <p><i>“Option 1”, Daracon will release 50% of the Security within 14 days from the date of completion of the <u>works under the Head Contract</u> and the remaining 50% within 14 days of expiry of the defects liability period noted in the Head Contract;</i></p> <p><i>“Option 2”, Daracon will release 50% of the Security within 14 days of <u>Goods being supplied</u> and the remaining 50% on expiry of the Defects Liability Period under this Contract;</i></p> <p><i>“Option 3”, Daracon will release <u>all the Security</u> on Completion.</i></p> <p>If unsure, contact the Group Commercial Manager.</p>
Undertaking as to payments	<p>You must, prior to issuing the contract to the supplier, review the Undertaking and finalise the appropriate Daracon entity.</p>
Signature Authority	<p>You must, prior to issuing the contract, select the appropriate signature provision based on the supplier’s structure.</p>
Final	<p>Ensure the signed agreement is processed at Wallsend to the central file system. A copy will be returned to the project.</p>

Name
Company
Address
Address

Supply of Goods

Dear *Name*

As we discussed recently, I would like to formalise our business arrangements with Daracon's standard Supply Agreement (two copies attached).

Please read the details then:

- sign and date the front page of the agreement; and
- initial all other pages, schedules and appendices.

Once signed, please return both copies to me for execution by Daracon and I will send one fully signed document back to you for your records. If Daracon requests you to supply the goods referred to in the Agreement and you supply (all or part) of those goods before returning the fully signed document to us, we will treat your agreement to supply Goods as acceptance of the Agreement.

If you need any matters explained with respect to the Agreement, you can telephone myself or Hugh Thomson on 4903 7000.

Looking forward to a successful business relationship.

[Insert Title]
Daracon Group
Date

SUPPLY AGREEMENT

Date

Parties

Daracon	Daracon Contractors Pty Limited ACN 002 344 667 17 James Street, Wallsend NSW 2287
Supplier or You	

Background

- A. Daracon wishes to engage You to provide the goods in accordance with the terms of this Contract.
- B. You agree to provide the goods on the terms of this Contract.

Agreed terms

1. Entire Contract

- (a) The Contract Documents constitute the entire agreement between the parties in respect of the Goods and the Contract supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
- (b) The Contract may be varied only by written instrument executed by both parties.
- (c) The Contract Documents are:

Part	Contract
A	Supply Agreement Schedule
B	Standard Supply Terms and Conditions
C	Details of Goods, Pricing and Delivery
D	Other Documents forming part of the Supply Agreement
E	Form of Final Claim & Subcontractors Statement

2. Warranties

Each party represents and warrants to the other party that:

- (a) it has full power and authority to enter the Contract and to perform its obligations;
- (b) the Contract has been duly executed by it; and
- (c) the obligations set out in the Contract are enforceable against it.

DARACON	SUPPLIER
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

PART A – SUPPLY AGREEMENT SCHEDULE

ITEM		
1 Description of Goods:	(see Part C for details)	
2 Supply Agreement documents	Part A	Supply Agreement Schedule
	Part B	Standard Supply Terms & Conditions
	Part C	Details of Goods, Pricing and Delivery
	Part D	Other Documents forming part of the agreement (attach list)
	Part E	Form of Final Claim & Subcontractors Statement
3 Place of Delivery:		
4 Access Date	(see Part C for details)	
5 Last date for delivery:	(see Part C for details)	
6 Party responsible for unloading Goods	<input checked="" type="checkbox"/> Supplier <input type="checkbox"/> Daracon	
7 Security Required (5% of the Contract Sum)	<input type="checkbox"/> Cash Security <input checked="" type="checkbox"/> Undertaking(s) acceptable to the Contractor <input type="checkbox"/> None	
8 Time at which Invoices are to be submitted:	Last Day of Month	
9 Time for payment	45 days from end of month of claim	
10 Defects Liability Period:	365 days (from practical completion of the Head Contract)	
11 Liquidated Damages:	\$ (as per Head Contract)	
12 Recipient Created Tax Invoice (RCTI) applies	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
13 Release of Security (clause 10.5)	OPTION 1 <input type="checkbox"/> OPTION 2 <input checked="" type="checkbox"/> OPTION 3 <input type="checkbox"/>	
14 Insurances Required (state "NIL" if not required)	Insurance Type	Minimum Cover
	<input checked="" type="checkbox"/> Public Liability	\$ _____ (\$20M if not stated)
	<input checked="" type="checkbox"/> Workers Compensation	\$ _____
	<input type="checkbox"/> Professional Indemnity	\$ _____
	<input checked="" type="checkbox"/> Product Liability	\$ _____ (\$10M if not stated)
	<input checked="" type="checkbox"/> Fleet (Motor Vehicle & Plant)	\$ _____ (\$20M if not stated)
	<input type="checkbox"/> Other (specify)	\$ _____
15 Does the Federal Building Code apply?(clause 22)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
16 Does the State Building Code apply? (clause 23)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	

PART B – STANDARD TERMS AND CONDITIONS

1 DEFINITIONS

In these terms, except where the context otherwise requires:

Access Date means the date specified in Item 4 of Part A as the date from which Daracon will grant access to the site for delivery of the Goods.

Alcohol and Other Drug Policy and Procedure means the alcohol and other drug policy released by Daracon from time to time.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

Completion means that point in time when the Goods have been delivered and installed (if installation is required) by You as determined by Daracon.

Confidential Information means all confidential information, non-public or proprietary information exchanged between the parties or known to a party before, on or after the date of this Contract relating to Daracon or its client or principal but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the disclosing party; or
- (b) which is acquired from a third party entitled to disclose it.

Contract means this Supply Agreement and all of the documents referred to in Item 2 of Part A.

Contract Sum means the price calculated in accordance with Part C of the Contract.

Daracon means Daracon Contractors Pty Ltd (ACN 002 344 667) and all of its Subsidiaries, related entities or assigns.

Daracon Representative means the representative appointed by Daracon from time to time.

Defects Liability Period means the period stated in Item 10 of Part A.

Dispute means a dispute arising out of or relating to this Contract including a dispute as to breach or termination of this Contract or as to any claim in tort, in equity or pursuant to any statute.

Goods means the Goods described in Item 1 of Part A and otherwise in accordance with the description of goods set out in Part C of this Contract.

GST means a tax imposed under the GST Law.

GST Law has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

Head Contract means the contract between Daracon and the principal instructing the works to which this Contract relates.

Insurance Policies means the policies referred to in Item 14 of Part A.

Invoice means an invoice issued in accordance with clause 5.

Invoice Amount means the amount stated in the invoice issued in accordance with clause 5).

Last date for delivery means the date or last day of the period of time stated in Item 5 of Part A, or as amended in writing pursuant to this Contract.

Law means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and further includes any publication from a recognised industry body.

Liquidated Damages means the daily rate set out in Item 11 of Part A.

Payment Period means day set out in Item 9 of Part A.

Personnel includes any personnel, employee, consultant, supplier, subcontractor or any other person appointed by that party.

Security means the security provided by You to Daracon as referenced in Item 7 of Part A.

Site means the site identified in Item 3 of Part A.

Subsidiary has the same meaning given to it in the *Corporations Act (Cth) 2001*.

Term means the period starting on the Access Date and continuing to Completion.

WHS means work health and safety.

2 INTERPRETATION

In these terms, unless the context indicates a contrary intention:

(documents) a reference to these terms or another document includes any document which varies, supplements, replaces, assigns or novates these terms or that other document.

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these terms.

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

(corporation) a reference to a corporation includes its successors and permitted assigns.

(including) including and **includes** are not words of limitation.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(rules of construction) neither these terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under these terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

(replacement bodies) a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(Australian currency) a reference to **dollars** or **\$** is to Australian currency.

(day) any reference to the word days is a reference to calendar days and is not limited to working days.

(month) a reference to a month is a reference to a calendar month.

(year) a reference to a year is a reference to twelve consecutive calendar months.

(priority) in the event any Contract Document is inconsistent with another Contract Document, the Contract Document ranking highest in priority (with (1) being the highest and (5) being the lowest), prevails to the extent of that inconsistency:

Part	Contract Document	Priority Ranking
A	Subcontract Schedule	1
B	Standard Subcontract Terms & Conditions	3
C	Details of Goods, Pricing and Delivery	2
D	Other Documents forming part of Contract	4
E	Form of Final Claim	5

3 WARRANTIES

You warrant to Daracon:

- (a) You have read these terms (and the Contract generally) and fully understand and comprehend the Contract;
- (b) You have had opportunity to obtain independent legal advice on these terms (and the Contract generally); and
- (c) You have full power and authority to enter into this Contract.

4 SUPPLIER OBLIGATIONS

4.1 You must:

- (a) ensure the Goods are of merchantable quality and fit for purpose;

- (b) provide the Goods and any works which are ancillary to those Goods in a proper and workmanlike manner to Daracon's satisfaction and in accordance with the provisions of this Contract;
- (c) provide the Goods with a standard of care and skill to be expected of a diligent and prudent supplier and who possesses the knowledge, skill and expertise of a person qualified and experienced to act in that capacity;
- (d) where requested by Daracon, submit a program for delivery of the Goods and comply with that program which must include delivering the Goods on the Access Date and achieving Completion by the Last date for delivery;
- (e) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice required by Daracon from time to time relating to the Goods;
- (f) comply with all directions provided by Daracon, whether in writing or otherwise;
- (g) remain fully responsible for the Goods despite any review or acceptance of those Goods by Daracon;
- (h) subject to clause 4.5, where works are provided which are ancillary to the supply of Goods, appoint Personnel with appropriate qualifications, competencies and experience to carry out those works;
- (i) promptly give written notice to Daracon if and to the extent that You become aware that any document or other information provided by You is ambiguous or inaccurate or is otherwise insufficient to enable You to supply Goods;
- (j) make reasonable enquiries to ascertain Daracon's requirements regarding the Goods;
- (k) regularly consult with Daracon regarding the supply of the Goods;
- (l) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or delivery of the Goods, give written notice to Daracon detailing the matter or circumstance and its anticipated affect on delivery of the Goods;
- (m) comply with all Laws in supplying the Goods;
- (n) after reasonable prior written notice by Daracon, permit Daracon to inspect and discuss the Goods, relevant records, documents and material produced by You in supplying (including preparing for the supply) of the Goods, including at any time prior to the Access Date;
- (o) do all things necessary and necessarily incidental for the proper performance of Your obligations under the Contract;
- (p) except where expressly stated elsewhere in this Contract, obtain all permits and

pay all fees required in connection with the supply of the Goods; and

- (q) except where expressly stated elsewhere in this Contract, provide such plant and equipment necessary to deliver the Goods (and any works related to those Goods) in a safe and efficient manner, otherwise ensuring the plant and equipment is acceptable to Daracon. You are solely responsible for maintaining all plant and equipment bought onto the Site by You or Your Personnel in safe and proper working condition.

4.2 You also agree and warrant to Daracon that You have examined all documentation relating to the Goods and agree that they are suitable, appropriate and otherwise adequate for the purpose of arranging for the supply of the Goods required under this Contract.

4.3 You agree and warrant You rely on Your own investigations as to the suitability of the Goods for the purpose for which they are being used by Daracon.

4.4 On or before Completion, You must, at Your cost, collect and remove all waste, debris, plant and machinery brought onto the Site by You or Your Personnel.

4.5 You must not, without the prior written approval of Daracon, appoint any subcontractor to perform any part of the Goods.

4.6 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.

5 INVOICING AND PAYMENT

5.1 Unless otherwise agreed in writing by Daracon, the Contract Sum is firm and not subject to adjustment for rise and fall in costs or for any other cause whatsoever except by Variation in accordance with clause 10.

5.2 You must not issue an Invoice earlier than the date set out in Item 8 of Part A.

5.3 An Invoice must state the quantity of the Goods supplied and include such other information as requested by Daracon from time to time to validate the claim for payment, including the Subcontractors Statement.

5.4 Except where a variation or other claim is agreed in writing by Daracon, the Invoice Amount must not be for an amount greater than the lump sum (if any) specified in Part C.

5.5 You acknowledge that if You fail to comply with Your obligations under this Contract, Daracon is under no obligation to make any payment to You for the affected Goods.

5.6 On receipt of a correctly prepared and rendered Invoice issued in accordance with this Contract, Daracon agrees that it will pay the Invoice Amount:

- (a) within the Payment Period; and
- (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.

5.7 Payments made to You will not be evidence of the value of the services carried out or an admission of liability or evidence that the services have been

executed satisfactorily but will be on account pending final reconciliation by Daracon of money payable to You for the Goods.

5.8 Daracon may set off any amount which You owe to Daracon under this Contract as a debt due against any progress payment or the final payment.

6 TAXES

All prices quoted are exclusive of GST and any other Government charges and taxes that may be levied now or in the future unless specifically stated otherwise. Any such charges or taxes will be at Your expense.

7 PURCHASE ORDERS

7.1 From time to time, Daracon may issue You with a purchase order for the supply of additional goods, whether or not those goods are of the same description or specification as the Goods (**Purchase Order**).

7.2 A Purchase Order may be provided in writing or electronically and may include details relating to:

- (a) the goods required and their specification;
- (b) the quantity of the goods required;
- (c) the pricing for those goods;
- (d) the Last date for delivery; and
- (e) such other details as required from time to time.

7.3 The parties agree that, to the extent a Purchase Order does not exclude elements of this Contract, this Contract applies in all material aspects to the supply of goods under the Purchase Order.

8 ACCEPTANCE, TITLE AND RISK

8.1 On or before the Last date for delivery, You must provide notice to Daracon stating that You have successfully delivered the Goods and achieved Completion (**Completion Notice**).

8.2 Within 7 days from the date on which Daracon receives the Completion Notice, Daracon will inspect the Goods and provide notice to You of its acceptance or rejection of the Goods.

8.3 Where Daracon rejects the Goods, You must ensure You rectify the defects in accordance with the procedure set out in clause 9.1.

8.4 Where Daracon accepts the Goods, title will transfer to Daracon. Until such time as Daracon accepts the Goods, all risks associated with the Goods remain the Supplier's responsibility. For the avoidance of doubt, acceptance by Daracon under this clause 8 does not in any way relieve You of Your obligations under clause 9.

9 LIABILITY FOR DEFECTS AND DAMAGE

9.1 Should any defect arise as a result of any act, default or omission by You or Your Personnel which may result in loss or damage (or likely loss or damage) being suffered by the principal, Daracon or other person, You must, within 14 days of receipt of notice in writing from Daracon, remedy that defect (and any consequential effect of that defect) at Your own cost and expense. If You fail or neglect to make good such damage within 14

days from receipt of a notice from Daracon, then Daracon may make good such damage at Your expense and as a debt due by You to Daracon.

- 9.2 At any time after Completion but before expiry of the defects liability period in the Head Contract, should any defect arise as a result of any act, default or omission by You or Your Personnel which results in loss or damage (or likely loss or damage) being suffered by the principal or Daracon, You must, within 14 days of receipt of notice in writing from Daracon, remedy that defect (and any consequential effect of that defect) at Your own cost and expense to Daracon's satisfaction. If You do not comply with Your obligations under this clause, You will be in breach and, in addition to any other remedy available to Daracon, Daracon may arrange for the defective goods, and any consequential effects of those goods, to be remedied by a third party at Your expense and as a debt due by You to Daracon.

10 SECURITY

- 10.1 You must provide the Security (as set out in Item 7 of Part A) within 2 weeks of the date of this Contract or before accessing the Site, whichever occurs first.
- 10.2 Where the Security required is an undertaking, it must be unconditional and otherwise in a form acceptable to Daracon and duly executed. The undertaking may be a bank guarantee or other form acceptable to Daracon.
- 10.3 Daracon may have recourse to the Security by giving You not less than 5 days notice in writing that there has been:
- (a) a breach by You of this Contract;
 - (b) a failure by You to adequately discharge Your duties; or
 - (c) a defect in all or part of the Goods.
- 10.4 Subject to:
- (a) You providing Daracon with a completed and duly signed final statement in accordance with Part E; and
 - (b) Daracon not being entitled to exercise the Security at any time (including after Completion of the Goods),
- Daracon will release the Security in accordance with clause 10.5.
- 10.5 Where Item 13 of Part A indicates;
- (a) "Option 1", Daracon will release 50% of the Security within 14 days from the date of completion of the works under the Head Contract and the remaining 50% within 14 days of expiry of the defects liability period noted in the Head Contract;
 - (b) "Option 2", Daracon will release 50% of the Security within 14 days of Completion and the remaining 50% within 14 days of expiry of the Defects Liability Period under this Contract;
 - (c) "Option 3", Daracon will release all the Security on Completion.

Where You elect to provide security by cash retention, that retention will be held in a nominated trust account accordingly, prior to release, You must provide Daracon with notice in a form

reasonably acceptable requesting payment of those funds.

- 10.6 Daracon may deduct any amounts which You owe to Daracon from any Security held by it.

11 VARIATIONS

- 11.1 You must vary the Goods as directed by Daracon from time to time.
- 11.2 The price for any variation will be added to, or deducted from, the Contract Sum as applicable.
- 11.3 The price for a variation will, wherever possible, be agreed in writing prior to the commencement of the Variation having regard in the first instance to any agreed rates or sums. In the absence of such agreement and subject to the provisions of clause 19, You must not suspend performance of the works and the price to be paid for a variation must be a reasonable price as determined by Daracon.
- 11.4 You will be entitled to an adjustment of the Contract Sum for a variation when:
- (a) Daracon has advised that the additional or varied Goods is a variation to the Contract;
 - (b) the goods directed are materially different from and out of character to Goods and, notwithstanding an error or omission in the supply documents, could not have been reasonably anticipated by an experienced and prudent supplier having regard to the nature of the Goods; and
 - (c) within 5 business days after becoming aware of the proposed variation, You give notice in writing to Daracon that the direction provided by Daracon is a variation and requesting acknowledgement of acceptance by Daracon of that variation notice;

Daracon must act reasonably in accepting or rejecting the variation notice provided under clause 11.4(c). Any failure to determine the request does not imply that Daracon accepts the work as a variation. In the event of a dispute, the provisions of clause 19 will apply.

- 11.5 If a variation is approved by Daracon, Daracon may determine a reasonable extension of time which it will grant to You which will be an extension of the Last date for delivery.
- 11.6 Despite any other clause in this Contract, if You discover any matter or circumstance which may give rise to a variation and You do not notify Daracon of that matter or circumstance (and the details of the variation request) in writing within 5 days of the matter or circumstance arising, Daracon is under no obligation to approve the variation or adjust the Contract Sum.

12 COMPLETION AND DELAYS

- 12.1 You agree, in the absence of any agreed delays, You must supply the Goods (and provide any works ancillary to that supply) by the Last date for delivery.
- 12.2 If You do not supply the Goods (and provide any works ancillary to that supply) by the Last date for delivery, You will be charged Liquidated Damages

- at the rate specified in Item 11 of Part A for the period from the Last date for delivery until Completion occurs.
- 12.3 You must employ such resources as are necessary to supply the Goods expeditiously, in coordination with other trades and in accordance with the construction program, as amended from time to time.
- 12.4 Daracon reserves the right to adjust, by notice in writing to You, the Access Date and the Last date for delivery to ensure compliance with the Head Contract program.
- 12.5 If, in Daracon's opinion, there are insufficient resources being deployed by You for the timely supply of the Goods by the Last date for delivery, Daracon may, without prejudice to any further remedy, after giving notice to You, employ additional resources to ensure supply of the Goods by the Last date for delivery at Your expense.
- 12.6 Where:
- (a) the Goods are delayed by a cause outside of Your control or by a cause which could not have been anticipated by a skilled and experienced subcontractor and that delay gives rise to the granting of an extension in time under the Head Contract; and
- (b) You give notice in writing to Daracon within 5 days of becoming aware of the cause of delay setting out the cause and extent of the delay,
- then Daracon may grant You an extension of the Last date for delivery.
- 12.7 Where provided for in this Contract, You may apply and Daracon may grant (at its discretion), an allowance for any costs arising from the delay.
- 12.8 You agree, while You may be entitled to submit a request for an extension of time due to wet weather, despite any other clause in this Contract, in no circumstances will Daracon be liable to You for any costs, fees or charges which You may incur as a result of that wet weather.
- 13 WHS&E COMPLIANCE**
- 13.1 You and all Your Personnel must comply with all relevant Laws including obtaining any necessary certificates, licenses, consent, permits and approvals of any organisation having jurisdiction required for the supply of the Goods.
- 13.2 In addition to Your obligations under clause 13.1, You must comply with the obligations set out in the *Work Health and Safety Act 2011 (and any of its regulations)* and *The Protection of the Environment Operations Act (NSW) 1997*.
- 13.3 Before supplying the Goods, You must:
- (a) provide a Safe Work Method Statement (SWMS) or Risk Assessment for the Goods on industry acceptable terms and otherwise in a form reasonably acceptable to Daracon and implement and train all Your Personnel in the execution of that SWMS;
- (b) provide evidence of:
- (1) each of Your Personnel and any of Your subcontractor's Personnel having completed the WorkCover Accredited General Induction for Construction Work; and
- (2) a Work Activity Induction (as per the WorkCover Code of Practice for WHS Induction Training in the Construction Industry) prior to completing a Daracon site specific induction; and
- 13.4 During the term of this Contract, You must:
- (a) ensure any operator, Personnel and any other person supplying the Goods (or providing works ancillary to that supply) (**Support Personnel**) are competent and suitably skilled and trained for the assigned task and have been properly inducted for working on the Site;
- (b) ensure Support Personnel carry in their possession any relevant licence, ticket, training records and any other document required by Daracon from time to time (including Certificates of Competency where required) and present those documents to Daracon on request;
- (c) ensure it and its Support Personnel immediately report to Daracon any changes to the work conditions, the work method, condition of equipment that impact upon risk (including current SWMS);
- (d) report all incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects to Daracon and the project manager immediately during the term of this Contract. All documentation created as a result of the incident, near miss, injury, illness, equipment failure or defects are to be provided to Daracon as soon as reasonably practicable following its creation;
- (e) at all times, comply with Daracon's WHS policies, procedures, rules, guides, standards or other type of instruction as released by Daracon from time to time including those set out in Part D (if any) (copies of which Daracon must make available to You on request);
- (f) comply with any direction provided by Daracon or any of its superintendents, customers or principals;
- (g) if working on or about a mine site, comply with all requirements of the *Coal Mine Health and Safety Act (NSW) 2002* and related regulations;
- (h) report any ambiguities or inconsistencies contained in any Daracon policy relating to the supply of the Goods; and
- (i) You must maintain and provide to Daracon details of any and all hazardous substances and classified dangerous goods to be brought onto the Site in a register setting out the full name of the substance, chemical name, estimated quantities held, purpose etc.

A risk assessment and SWMS must be completed on the safe use of the substances, together with training of personnel in a current safety data sheet (SDS) (less than 5 years from publication). SDS must conform in format and detail to the National Code of Practice for the Preparation of SDS (NOHSC 2011:2003).

All substances must be stored safely and securely and in accordance with the relevant Australian Standards.

No substance declared as established, probable or suspected carcinogen is permitted to be used on Site.

13.5 All communication for the purpose of this clause 13 must be:

- (a) immediately communicated verbally by the You to Daracon; and
- (b) confirmed in writing by You to Daracon within 12 hours of the occurrence of the event giving rise to the notice obligation.

13.6 You must, on request by Daracon, conduct a weekly toolbox talk and provide opportunity for Your Personnel to raise any WHS issues and allow Your Personnel to raise and resolve WHS related matters. You may, as agreed, seek to combine WHS consultation processes by holding joint toolbox talks with Daracon.

You must participate in Daracon's WHS consultation arrangements when required to do so by Daracon. You are required to demonstrate daily communication (on the work and any safety directions) with work teams (referred to by Daracon as Daily Pre-start Meetings) to ensure that communication and consultation takes place regularly.

13.7 You acknowledge You have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agrees You and Your Support Personnel must:

- (a) comply with the terms of that policy, including the right for Daracon to conduct random and "show cause" testing from time to time; and
- (b) be "fit for work" at all times when performing the Services.

13.8 If You are in breach of Your obligations under clause 13.7, Daracon may require You to take such remedial or corrective action as it considers reasonably necessary and You must do so at Your expense. Failure by You to comply with Your obligations under this clause will entitle Daracon to terminate this Contract in accordance with clause 15.

14 INSURANCES

14.1 Prior to supplying the Goods, You must obtain and maintain the Insurance Policies referred to in Item 14 of Part A:

- (a) where the policy is on a claims incurred basis, for duration of the Term; and
- (b) where the policy is on a claims made basis, for the duration of the Term and for an additional period of 5 years after Completion.

14.2 Where required by Daracon, You must ensure Daracon and the principal are nominated as interested parties on each public liability, products liability and works insurance relevant to the agreement.

14.3 You must produce evidence of the currency of each policy to Daracon immediately prior to the Access Date and within 7 days of any subsequent request by Daracon.

14.4 If You do not comply with Your obligations under this clause, You agree Daracon may obtain the Insurance Policies on Your behalf and treat any costs associated with such Insurance Policies as a debt due by You to Daracon and exercise its rights of set off.

15 TERM AND TERMINATION

15.1 This Contract commences on the date of this Contract and will, subject to this clause 15, expire on Completion.

15.2 A party may immediately terminate this Contract if:

- (a) the other party defaults in the performance of a term of this Contract and that default is capable of remedy and the default is not remedied within 14 days after written notice specifying the default and the acts required to rectify the default has been given to the other party;
- (b) the other party defaults in the performance of a term of this Contract and that default is not capable of remedy;
- (c) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
- (d) the other party ceases or threatens to cease to carry on its business;
- (e) the other party is unable to pay its debts as and when they fall due; or
- (f) the other party has a receiver and/or manager or official manager or provisional liquidator appointed or a secured creditor takes possession of the whole or a substantial part of its assets or undertaking; or convenes a meeting for the purpose of, or enters or proposes to enter into, any arrangement or composition with its creditors.

15.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time. Upon termination under this clause 15.3, You will be entitled to payment for:

- (a) that part of the Goods supplied as at the time of termination; and
- (b) the cost of materials or goods properly ordered for the Goods, which You have paid for or are legally bound to pay, subject to title transferring to Daracon on payment.

15.4 If for any reason a purported termination under this Contract or at general law by Daracon is held to be ineffective, the purported termination is not a breach or repudiation of this Contract and must be treated as having been effected under clause 15.3.

16 SUSPENSION

16.1 Daracon may direct You to suspend supply or delivery of the whole or part of the Goods for such time as Daracon considers appropriate.

16.2 At Daracon's discretion, as soon as the cause for suspension no longer exists, Daracon may direct You to recommence the supply or delivery and You must comply with that direction as soon as reasonably practicable.

16.3 Daracon will not be liable for any costs incurred by You as a result of suspension under this clause.

17 INDEMNITY AND RISK

17.1 You indemnify Daracon and the principal to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon or the principal (including third party claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:

- (a) breach of Your obligations under this Contract;
- (b) injury, total and permanent disability or death caused by You or Your Personnel;
- (c) damage to property (whether owned by Daracon or not) caused by You or Your Personnel; and
- (d) negligent act or omission by You or Your Personnel.

17.2 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 17.1 may be reduced proportionately to the extent that the act or omission of Daracon or its Personnel (excluding You and Your Personnel), have contributed to the loss or damage.

17.3 With respect to You only, the operation of Part 4 of the *Civil Liability Act (NSW) 2002* (**the Act**) is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

17.4 You specifically agree and undertake that in the event of any proceedings to which the Act are applicable, You will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.

17.5 You agree, under no circumstances will Daracon be liable for consequential losses including loss of profit, or any other indirect loss.

18 CONFIDENTIALITY

18.1 You acknowledge that You and Your Personnel may be given access to Confidential Information in the course of supplying the Goods.

18.2 Except as otherwise required by Law, You must, and You must ensure Your Personnel:

- (a) keep strictly secret and confidential the Confidential Information; and
- (b) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, contractors and agents directly involved in the performance of this Contract and only to the extent that such disclosure is required for the performance of this Contract.

18.3 On demand by Daracon, You must immediately return to Daracon all Confidential Information and other information obtained during the course of providing the Goods to Daracon.

19 DISPUTE RESOLUTION

19.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 19 except where the party seeks urgent interlocutory relief.

19.2 A party claiming that a Dispute has arisen under or in relation to this agreement must give written notice to the other party to this contract specifying the nature of the Dispute within 5 days of the cause of the dispute arising.

19.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

19.4 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 19 for any purpose other than in an attempt to settle the Dispute concerned.

19.5 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.

20 INDUSTRIAL REQUIREMENTS

20.1 Prior to commencing any work on the Site, You must make yourself aware of all requirements for the supply of the Goods to the Site including:

- (a) working hours;
- (b) industrial Matters;
- (c) occupational health and safety Matters; and
- (d) environmental Matters.

20.2 You must ensure that You and any of Your Personnel comply with all Laws relating to industrial matters (including all relevant legislation, awards, enterprise agreements, industrial

- instruments, codes of practice and implementation guidelines) during the supply of the Goods.
- 20.3 You agree this clause is a material term of this Contract and any failure by You to comply with Your obligations under this clause is a material breach of this Contract.
- 20.4 For the purposes of clause 20.1, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably be applied to the matter.
- 21 BRIBERY, KICKBACKS & CONFLICT**
- 21.1 You acknowledge and accept that Daracon prohibits the offering and receiving of bribery or kickbacks.
- 21.2 You must ensure none of your directors, employees, agents or other personnel:
- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
 - (b) enters into any business agreement with, any of Daracon's employees, contractors, consultants or other personnel other than in the ordinary and proper course of business.
- 21.3 You must not undertake any activity that may constitute a breach of any legislation, convention or best practice principles relating to bribery, kickbacks, corruption or related matters.
- 21.4 You represent that, at the date of this agreement or the date on which You first perform the Works (whichever is earlier), Your obligations under this Contract do not give rise to a conflict of interest.
- 21.5 You must immediately notify Daracon upon becoming aware that You have a conflict of interest or that such a conflict may arise. You must take reasonable steps to avoid or overcome any conflict of interest without in any way adversely affecting Your continued supply of the Goods.
- 22 FEDERAL CODE 2013**
- 22.1 This clause applies where Item 15 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 22.2 You must comply with the Code and the Guidelines. Copies of the Code are available at www.deewr.gov.au/BuildingCode.
- 22.3 Compliance with the Code shall not relieve You from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code.
- 22.4 Where a change in the Contract is proposed and that change would affect compliance with the Code, You must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code will be affected.
- 22.5 You must maintain adequate records of the compliance with the Code by:
- (a) You;
 - (b) Your Subcontractors;
 - (c) consultants; and
 - (d) its Related Entities.
- 22.6 If You do not comply with the requirements of the Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by You or a related entity in respect of work funded by the Commonwealth or its agencies.
- 22.7 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, You may give preference to subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 22.8 You must not appoint a subcontractor or consultant in relation to the Project where:
- (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (b) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the tenderer has not fully complied, or is not fully complying, with the order.
- 22.9 You agree to require that You and Your subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project the subject of this Contract; and
 - (c) interview any person as is necessary to demonstrate its compliance with the Code.
- 22.10 Additionally, You agrees that You and Your related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- 22.11 You must ensure that all subcontracts impose obligations on sub contractors equivalent to the obligations under these Contract clauses.
- 23 NSW STATE CODE**

- 23.1 This clause applies where Item 16 in Part A indicates “Yes” or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 23.2 In addition to terms defined in this document, terms used in this clause 23 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- 23.3 You must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- 23.4 You must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 23.5 Where You engage a subcontractor or consultant, You must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that You must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- 23.6 You must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- 23.7 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- 23.8 You must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the contractor, including but not limited to the project site;
 - (b) inspect any work, material, machinery, appliance, article or facility;
 - (c) access information and documents;
 - (d) inspect and copy any record relevant to the project;
 - (e) have access to personnel; and
 - (f) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by You and Your subcontractors, consultants, and related entities.
- 23.9 You, and your related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- 23.10 You warrant that at the time of entering into this contract, neither You, nor any of Your related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded You from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 23.11 If You does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against You in connection with the NSW Code or NSW Guidelines.
- 23.12 Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (1) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (2) take them into account in the evaluation of future procurement processes and responses that may be submitted by You, or Your related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

- 23.13 You bear the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. You are not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.

24 GENERAL

- 24.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.
- 24.2 A provision of this Contract can only be varied by a later written document executed by all parties.
- 24.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 24.4 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.
- 24.5 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.
- 24.6 Nothing in this Contract constitutes a partnership between the parties or, except as expressly provided, makes a party an agent of another party for any purpose.
- 24.7 A party cannot in any way or for any purpose bind another party or contract in the name of another party.
- 24.8 The contents of this Contract constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties

regarding the subject matter of this Contract, whether orally or in writing.

- 24.9 A word or provision must be read down if:
- (a) this Contract is void, voidable, or unenforceable if it is not read down;
 - (b) this Contract will not be void, voidable or unenforceable if it is read down; and
 - (c) the provision is capable of being read down.
- 24.10 A word or provision must be severed if:
- (a) the provision is void, voidable or unenforceable if it is not severed; and
 - (b) the contract will be void, voidable or unenforceable if it is not severed.
- 24.11 The remainder of this Contract has full effect even if clause 24.10(a) or 24.10(b) applies.
- 24.12 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.
- 24.13 Where Daracon allows You to use any scaffolding, hoisting plant, other facility or storage area belonging to or provided by Daracon (**Daracon Facilities**), such use will be on the express condition that no warranty or other liability on the part of Daracon or its Personnel will be created or implied in regard to the fitness condition, or suitability of the Daracon Facilities.
- 24.14 You must inspect all Daracon Facilities prior to use and satisfy Yourself of its condition and suitability.
- 24.15 Nothing in this Contract is to be read or applied so as to exclude, restrict or modify the application of the *Consumer and Competition Act 2010* (and any subsequent edition of it) to the supply under this Contract.
- 24.16 Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 24.17 Clauses 3, 13, 14, 17, 18, 19 and any clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.
- 24.18 The Laws applicable in New South Wales govern this Contract.
- 24.19 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

PART C – DETAILS OF GOODS, PRICING & DELIVERY

1. Details of Goods

Unit (per metre/per tonne etc)	Description of Goods	Specifications (if any) (include any obligations relating to ancillary works here)

2. Pricing

Contract basis (delete if not required):

- a) Lump Sum: \$ _____ (exclusive of GST)
- b) Schedule of Rates:

Goods	Unit (per metre/per tonne etc)	Rate

3. Access Date, Last Date for Delivery and other timing issues

(Delete if not applicable)

4. Special Conditions

(Delete if not applicable)

PART D – OTHER DOCUMENTS FORMING PART OF CONTRACT
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Schedule Number	Topic	Applicable
Schedule 1	Supplier's Quotation	Y / N

**PART E- FORM OF FINAL CLAIM &
SUBCONTRACTORS STATEMENT**

FORM OF FINAL CLAIM

To be printed on Subcontractor letterhead and forwarded with the Subcontractor's Final Claim for payment

###/##:##
Date

Daracon Contractors Pty Limited
Attention: The Chief Financial Officer
PO Box 299
Wallsend NSW 2287

Dear Sir

RE: Final Statement
<Subcontract Description>
Project No.: <insert number> Project Name: <name>

I, <insert name>, as the authorised representative for <insert company name> of <company address> in respect of the above subcontract declare as follows:

The following has been agreed to our mutual satisfaction and allowed for in the final Subcontract Sum amount of \$###,###.00 EXCL GST.

- (a) all adjustments to the Subcontract Sum;
- (b) all claims under the Subcontract;
- (c) all extensions of time to the Date for Substantial Completion;
- (d) all other entitlements or claims arising out of or in connection with the Subcontract Goods; and
- (e) the Date of Practical Completion being <insert date of practical completion>.

Additionally, I declare that:

- (a) all remuneration and other entitlements payable to or on behalf of our employees and all amounts to our subcontractors and suppliers in respect of the Goods; and
- (b) all relevant taxes, duties, statutory fees, charges and other amounts in respect of the Goods;

which are due and owing by <Subcontractor company name> have been paid.

I acknowledge that representations made in this statement are being relied upon by Daracon and that if this statement contains any error, Daracon may suffer loss for which I will be liable.

Signature: _____

Witness: _____

Print Name: _____

Print Name: _____

Date: _____



**SUBCONTRACTOR'S STATEMENT
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: _____ ABN: _____
(Business name)

of _____
(Address of subcontractor)

has entered into a contract with _____ ABN: _____
(Business name of principal contractor) **(Note 2)**

Contract number/identifier _____ **(Note 3)**

This Statement applies for work between: ___ / ___ / ___ And ___ / ___ / ___ inclusive **(Note 4)**

subject of the payment claim dated: ___ / ___ / ___ **(Note 5)**

I, _____ ~~a Director or~~ a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ___/___/___ **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature _____ Full name _____

(g) Position/Title _____ Date ___/___/___.

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's 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 contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. 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. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *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.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance 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. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. 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 the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.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 *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.