1. PROJECT MANAGEMENT AGREEMENT – subcontractors warranty

The Project Manager has entered into the Contract with the Principal for the carrying out of the Works.

The Subcontractor has entered into an agreement with the Project Manager for the Subcontract Work or Products, which are a part of the Works.

In return for the Principal allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Principal against the Contractor or the Subcontractor.

Refer to clause 4.3.1 of the Project Management Agreement

Space

#### Definitions

Insert Contract Title and Contract Number.

Ensure that the Contract title and Contract number align with the tender cover page.

|  |  |
| --- | --- |
| Deed dated: | ...……………………….……………………………. |
|  | **between** |
| Subcontractor or Supplier: | ...…………………….………….……………………  ...……………………….………………….…………  ABN ...………………………………………….…… |
|  | **and** |

Insert the name of the Principal included in Contract Information item 4.

|  |  |
| --- | --- |
| The Principal: | » |
|  | **concerning** |
| The Contract: | The contract between the Principal and the Project Manager | |
| Contract title: | » |
| Contract number: | » |
| Works: | The works to be *Designed* and constructed by the Contractor, as described in the Contract. |
| The Project Manager: | ...……………………….………………….…………  ABN ...………………………………………….…… |
| Subcontract Work or Products: | ...……………………….……………………………. |
| Warranty Period: | ………..years from the *Date of Practical Completion*  of the whole of the Works. |

## Terms of Deed

### Warranty

* + 1. The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
       1. comply in all respects with the requirements of the Contract;
       2. comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any applicable Australian Standards, to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract; and
       3. be fit for the purposes for which they are required.
    2. The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract Work or Products.

### Replacement or making good

* + 1. The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which, within the Warranty Period, are found to:
       1. be of a lower standard or quality than referred to in clause 1 of this Deed; or
       2. have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
    2. Nothing in this clause 2 affects the Subcontractor’s liability until any limitation period under statute expires.
    3. The liability of the Subcontractor under this clause is reduced to the extent that deterioration is caused by:
       1. mishandling, damage before installation, or incorrect installation, in each case caused by others;
       2. normal wear and tear;
       3. incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
       4. any other cause beyond the control of the Subcontractor.

### Costs

* + 1. The Subcontractor promises to undertake and meet the reasonable cost of any work necessary:
       1. to carry out any part of the Works to enable the requirements of clause 2 of this Deed to be carried out; or
       2. restore or make good the Works after carrying out those requirements,

whichever the Principal requires.

### Indemnity

* + 1. The Subcontractor indemnifies the Principal against claims (including *Claims*, actions and loss or damage arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed).

### Notice of Defects

* + 1. The Principal may notify the Subcontractor in writing if it considers there has been any breach of any provision of this Deed.

### Time to remedy

* + 1. The Subcontractor must do everything to remedy the breaches notified to it under clause 5 of this Deed within a reasonable time after the Principal’s notice.

### Failure to remedy

* + 1. If the Subcontractor fails to carry out and complete the work specified in the Principal’s notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
    2. If the Subcontractor fails to complete the work by the date specified in clause 7.1, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

### Urgent action by Principal

* + 1. The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.
    2. The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.
    3. The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

### Assignment

* + 1. The Principal may assign the benefit of this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

### Operation of Deed

* + 1. This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

#### Executed as a deed

Signed, sealed and delivered by the Subcontractor in accordance with section 127 of the *Corporations Act 2001* (Cwlth).

|  |  |
| --- | --- |
| Signature of Director/Secretary: | ...……………………….……………………………. |
| Name of Director/Secretary: | ...……………………….……………………………. |
| Signature of Director: | ...……………………….……………………………. |
| Name of Director: | ...……………………….……………………………. |

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

|  |  |
| --- | --- |
| Signature of Authorised Person: | ...……………………….……………………………. |
| Name of Authorised Person: | ...……………………….……………………………. |
|  | **and witnessed by:** |
| Signature of witness: | ...……………………….……………………………. |
| Name of witness (in full): | ...……………………….……………………………. |

Signed, sealed and delivered on behalf of the Principal by:

|  |  |
| --- | --- |
| Signature of Authorised Person: | ...……………………….……………………………. |
| Name of Authorised Person: | ...……………………….……………………………. |
|  | **and witnessed by:** |
| Signature of witness: | ...……………………….……………………………. |
| Full name of witness: | ...……………………….……………………………. |
| Place: | ...……………………….……………………………. |