

Cleaning Subcontractor Terms and Conditions

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Background

Background

1. Sergi Building Group operates a building, civil and other works business.
2. Subcontractor applies to be a subcontractor of Sergi Building Group.
3. Sergi Building Group accepts that application subject to the terms of this Agreement provided that there is no guarantee that Sergi Building Group will Contract Subcontractor for any work.

Part 1 Term and Operation

1. Term

This Agreement is for the Term.

2. Superseding Agreement

This Agreement terminates immediately if the parties enter into another Subcontractor Onboarding Agreement after this Agreement.

3. No Guarantee of Work

The Parties acknowledge that the entry into this Agreement does not constitute:

- (a) any binding agreement that a Party will receive work from another Party;
- (b) any representation or warranty that a Party will use any efforts to procure work for another Party; or
- (c) any obligation, representation or warranty that a Party will consider another Party for work.

4. Request and Response

- (a) During the Term:
 - (i) Sergi Building Group may request the Subcontractor to perform work for Sergi Building Group;
 - (ii) that request may be in writing or verbal;
 - (iii) Sergi Building Group may rescind that request at any time before it is accepted.
- (b) In response to a request the Subcontractor may:
 - (i) accept that request;
 - (ii) deny that request;
 - (iii) negotiate the terms of that request (in which case both Sergi Building Group and the Subcontractor may (but is not obliged to) negotiate that request and that request is deemed accepted when the Parties agree to those terms),
that response may be verbal or in writing.
- (c) In the absence of manifest error, an email, text or memorandum sent by Sergi Building Group to the Subcontractor documenting the terms of the accepted request is prima facie evidence of the terms of the accepted request.
- (d) The terms of an accepted request may only include:
 - (i) the nature of the work to be performed;
 - (ii) the price or unit price;
 - (iii) the number of units required (if applicable); and
 - (iv) the timeframe within the work is to be performed or delivered.

5. The Subcontractor's Responsibilities

At all times during the Term, Subcontractor must:

- (a) ensure that all of the information provided in the Subcontractor Onboarding Agreement (and all attachments and Annexures) is true and correct (and, if it is not, inform Sergi Building Group of the change in writing); and
- (b) ensure that the Subcontractor complies with, or would be able to comply with, all applicable laws and regulations in relation to the Work Categories; and
- (c) ensure the Subcontractor and the Subcontractor's Representatives have a current right to work in Australia; and
- (d) ensure the Subcontractor and the Subcontractor's Representatives hold valid licences to perform any work in relation to the Work Categories; and
- (e) ensure the Subcontractor and the Subcontractor's Representatives use reasonable skill and care for all work performed under this Agreement; and
- (f) ensure the Subcontractor and the Subcontractor's Representatives follow industry best practice for all work performed under this Agreement; and
- (g) comply with all reasonable directions given by Sergi Building Group; and
- (h) comply with Sergi Building Group's code of conduct in all dealings with Sergi Building Group.

6. Application of these Terms and Conditions

- (a) Part 1, Part 2, Part 13, Part 14, Part 15, Part 1531 Part 17, Part 18, Part 19 and Part 20 always apply during the term of this Agreement.
- (b) Part 3 applies in respect of an accepted request that involves the provision of goods.
- (c) Part 4 applies in respect of an accepted request that involves the provision of services.
- (d) Part 5 applies in respect of an accepted request that involves the use of a Heavy Vehicle (as defined in that Part).
- (e) Part 6 applies if High Security Clearance is marked "Yes" or "Willing to obtain" in the Subcontractor Onboarding Agreement.
- (f) Part 613 applies if Working With Children Check is marked "Yes" or "Willing to obtain" in the Subcontractor Onboarding Agreement.
- (g) Part 8 applies if either:
 - (i) Trade Licences is marked "Attached to this Agreement" in the Subcontractor Onboarding Agreement;
 - (ii) a provision of goods or services in an accepted request requires a Trade Licence (as defined in that Part).
- (h) Part 9 applies in respect of an accepted request that requires an EPA Licence.
- (i) Part 10 applies in respect of an accepted request that requires a trade waste licence.
- (j) Part 11 applies if Modern Slavery Act Compliance is marked "Yes" in the Subcontractor Onboarding Agreement.
- (k) Part 12 applies if the Subcontractor is not a natural person.

7. Order of Precedence

The following documents take the following precedence in the event of any inconsistency:

- (a) Subcontractor Onboarding Agreement;
- (b) any annexures to the Subcontractor Onboarding Agreement;

- (c) these Subcontractor Onboarding Terms and Conditions;
- (d) Sergi Building Group's Code of Conduct;
- (e) Sergi Building Group's Workplace, Health and Safety Policy;
- (f) Sergi Building Group's Alcohol and Drug Policy.

Part 2 Payment

8. Payment

- (a) Sergi Building Group will make payment in respect of any work 180 Business Days after the completion of that work.
- (b) Sergi Building Group may elect to make payment earlier in its absolute discretion.
- (c) This Clause supersedes any terms and conditions (whether implicit or explicit) or collateral contract under which the Subcontractor may perform work.

Part 3 Provision of Goods

9. Provision of Goods

In respect of all goods provided by, or through, Subcontractor, Subcontractor must:

- (a) if the goods are perishable, at the time that they are provided to Sergi Building Group, they must not have perished and must have a reasonable useful life remaining;
- (b) provide the goods to Sergi Building Group by providing them at such reasonable time and place specified by Sergi Building Group and the price includes the cost of any delivery, postage, freight or shipping;
- (c) have full and complete title to the goods at the time they are supplied to Sergi Building Group;
- (d) have the right to sell each of those goods to Sergi Building Group;
- (e) provide those goods clear from any charge, encumbrance or other form of security;
- (f) where there is a sale of goods by description, the goods must all correspond with the description;
- (g) where there is a sale of goods by sample, the goods must all correspond with the sample;
- (h) if Sergi Building Group has told Subcontractor what the goods will be used for, the goods must be fit for that purpose;
- (i) the goods must be of reasonable and merchantable quality and free from all defects;
- (j) pass full title and property to the goods to Sergi Building Group upon delivery;
- (k) ensure that the quantity provided meets that requested and Sergi Building Group is entitled to (in its absolute discretion):
 - (i) refuse to accept those goods entirely (and it is the Subcontractor's responsibility to collect those goods).;
 - (ii) refuse to accept part of those goods (and it is the Subcontractor's responsibility to collect those goods); or
 - (iii) accept those goods (and in the case of an undersupply, the Subcontractor has a continuing obligation to completely fulfil that supply);

- (l) insure the goods until all of the goods have been provided to Sergi Building Group (and the goods are at the risk of Subcontractor until all of the goods have been so provided).

Part 4 Provision of Services

10. Provision of Services

In respect of all services provided by, or through, Subcontractor, Subcontractor must:

- (a) ensure that the Subcontractor complies with all applicable laws and regulations in relation to the provision of those services; and
- (b) ensure the Subcontractor and the Subcontractor's Representatives have a current right to work in Australia; and
- (c) ensure the Subcontractor and the Subcontractor's Representatives hold valid licences to provide those services; and
- (d) ensure the Subcontractor and the Subcontractor's Representatives use reasonable skill and care for in providing those services performed under this Agreement; and
- (e) ensure the Subcontractor and the Subcontractor's Representatives follow industry best practice for all services performed under this Agreement; and
- (f) ensure the Subcontractor and the Subcontractor's Representatives provide those services to the specification provided by Sergi Building Group; and
- (g) comply with all reasonable directions given by Sergi Building Group; and
- (h) ensure the Subcontractor and the Subcontractor's Representatives submit to any alcohol and/ or drug testing which Sergi Building Group may require (in its absolute discretion); and
- (i) notify Sergi Building Group immediately if there is a valid reason why Subcontractor cannot comply with this Clause.

Part 5 Heavy Vehicles

11. Definitions

In this Part:

- (a) **Heavy Vehicle** has the same meaning as in the Heavy Vehicle National Law.
- (b) **Heavy Vehicle National Law** means *Heavy Vehicle National Law (South Australia) Act 2013* (SA), *Heavy Vehicle National Law (South Australia) (Expiation Fees) Regulations 2013* (SA) and all other regulations and statutory instruments thereunder.

12. Use of Heavy Vehicles

In respect of all work which involves the use of a Heavy Vehicle by, or through, Subcontractor, Subcontractor must:

- (a) comply with the Heavy Vehicle National Law at all times; and
- (b) ensure that all operators of Heavy Vehicles hold the appropriate licence to operate that Heavy Vehicle; and
- (c) ensure that that Heavy Vehicle has a valid and current registration; and
- (d) take out and maintain comprehensive insurance in respect of that Heavy Vehicle; and

- (e) ensure that Sergi Building Group has up to date copies of all licences, registration and insurances; and
- (f) provide to Sergi Building Group on request any licences, registration, logbooks, insurances and records.

Part 6 High Security Clearance

13. High Security Clearance

Subcontractor must:

- (a) provide Sergi Building Group with a copy of any high security clearance which Subcontractor and/ or Subcontractor's Representatives may have; and
- (b) provide a copy of any application for high security clearance when Subcontractor and/ or Subcontractor's Representatives apply for the same; and
- (c) provide Sergi Building Group with all information and documents which Sergi Building Group may require in connection with taking out or maintaining high security clearance for Subcontractor and/ or Subcontractor's Representatives; and
- (d) immediately advise Sergi Building Group if any information and documents change or come to light which may affect a high security clearance.

Part 7 Working with Children Check

14. Working with Children Check

Subcontractor must:

- (a) provide Sergi Building Group with a copy of any working with children check which Subcontractor and/ or Subcontractor's Representatives may have; and
- (b) provide a copy of any application for working with children check when Subcontractor and/ or Subcontractor's Representatives apply for the same; and
- (c) provide Sergi Building Group with all information and documents which Sergi Building Group may require in connection with taking out or maintaining a working with children check for Subcontractor and/ or Subcontractor's Representatives; and
- (d) immediately advise Sergi Building Group if any information and documents change or come to light which may affect a working with children check.

Part 8 Trade Licences

15. Definition

Trade Licence means any form of licence, certification or registration which may be required from an Authority.

16. Trade Licence

At all times during the Term, Subcontractor must:

- (a) take out and maintain all Trade Licences required for Subcontractor and/ or Subcontractor's Representatives to perform the Work Categories and any work performed under this Agreement; and

- (b) notify Sergi Building Group immediately if Subcontractor and/ or Subcontractor's Representatives do not hold a Trade Licence, have a Trade Licence cancelled or suspended, or have the conditions applying to a Trade Licence changed; and
- (c) provide an updated copy of all Trade Licences to Sergi Building Group.

Part 9 EPA Licences

17. Definition

EPA Licence means any form of authorisation, licence or agreement under the *Environment Protection Act 1993* (SA).

18. EPA Licence

At all times during the Term, Subcontractor must:

- (a) take out and maintain all EPA Licences required for Subcontractor and/ or Subcontractor's Representatives to perform the Work Categories and any work performed under this Agreement; and
- (b) notify Sergi Building Group immediately if Subcontractor and/ or Subcontractor's Representatives do not hold a EPA Licence, have a EPA Licence cancelled or suspended, or have the conditions applying to a EPA Licence changed; and
- (c) provide an updated copy of all EPA Licences to Sergi Building Group.

Part 10 Trade Waste Licence

19. Definition

Trade Waste Licence means any form of authorisation, licence or agreement under the *Water Industry Act 2012* (SA).

20. Trade Waste Licence

At all times during the Term, Subcontractor must:

- (a) take out and maintain all Trade Waste Licences required for Subcontractor and/ or Subcontractor's Representatives to perform the Work Categories and any work performed under this Agreement; and
- (b) notify Sergi Building Group immediately if Subcontractor and/ or Subcontractor's Representatives do not hold a Trade Waste Licence, have a Trade Waste Licence cancelled or suspended, or have the conditions applying to a Trade Waste Licence changed; and
- (c) provide an updated copy of all Trade Waste Licences to Sergi Building Group.

Part 11 Modern Slavery

21. Definition

Modern Slavery Act means *Modern Slavery Act 2018* (Cth) and all regulations and subordinate legislation thereunder.

22. Modern Slavery

Subcontractor must:

- (a) adopt and comply with Sergi Building Group's Modern Slavery Policy and ensure that all Subcontractor's Representatives comply with the same; and
- (b) voluntarily comply with the Modern Slavery Act by giving the requisite notice if required by Sergi Building Group; and
- (c) give modern slavery statements under the Modern Slavery Act (or if not required to comply with the Modern Slavery Act, to provide a similar statement to Sergi Building Group) when Sergi Building Group requires Subcontractor to do so; and
- (d) immediately advise Sergi Building Group if Subcontractor's status as a reporting entity (as defined in the Modern Slavery Act) or voluntary compliance with the Modern Slavery Act changes.

Part 12 Guarantee and Indemnity

23. Capacity

- (a) If the Subcontractor is a trustee of a trust, this Agreement binds the Subcontractor both in its own capacity and as trustee of that trust and each trustee must be named as a Responsible Individual (or if there is a corporate trustee, each director of that corporate trustee).
- (b) If the Subcontractor is a partner of a partnership, this Agreement binds each partner of that partnership as well as the partnership as a whole and each partner must be named as a Responsible Individual.
- (c) If the Subcontractor is a body corporate, the Subcontractor must appoint all directors and secretaries of the Subcontractor as Responsible Individual.

24. Responsible Individual

- (a) The Responsible Individual has requested Sergi Building Group to enter into this Agreement with the Subcontractor, and Sergi Building Group has agreed to the same on the condition that the Responsible Individual agrees to this Part.
- (b) The Responsible Individual acknowledges that it is to their benefit that Sergi Building Group enters into this Agreement with the Subcontractor.
- (c) The Responsible Individual must comply with each obligation of the Subcontractor in this Agreement as if every instance of the Subcontractor (except in this Part) was a reference to the Subcontractor and the Responsible Individual jointly and severally.
- (d) Subcontractor must procure that the Responsible Individual complies with its obligations under this Agreement.

25. Changes in Responsible Individual

If there is a change in:

- (a) the trustees of the trust comprising the Subcontractor (or the directors of a corporate trustee); or
 - (b) the partners of the partnership comprising the Subcontractor; or
 - (c) the officers of the body corporate comprising the Subcontractor,
- the Subcontractor and the Responsible Individual jointly and severally must:
- (d) notify Sergi Building Group within 1 business day of that change; and

- (e) must procure that any new trustee, partner or officer sign such deed that is required by Subcontractor (in its absolute discretion) so that that new trustee, partner or officer becomes a Responsible Individual together with the existing Responsible Individual.

26. Guarantee

In consideration of Sergi Building Group entering into this Agreement at the request of Responsible Individual, Responsible Individual:

- (a) hereby guarantees to Sergi Building Group:
 - (i) the due and punctual performance by the Subcontractor of the Subcontractor's obligations under this Agreement; and
 - (ii) the due and punctual payment by the Subcontractor of all amounts payable by the Subcontractor whether under this Agreement or on any account whatsoever; and
- (b) in addition to Clause 26(a), indemnifies, and must hold harmless, Sergi Building Group from and against any default by the Subcontractor of:
 - (i) the due and punctual performance by the Subcontractor of the Subcontractor's obligations under this Agreement; and
 - (ii) the due and punctual payment by the Subcontractor of all amounts payable by the Subcontractor whether under this Agreement or on any account whatsoever; and
- (c) if the guarantee or indemnity under this Clause 26 is discharged at any time in part or in whole by reason of the receipt by Sergi Building Group from any person whatsoever of money or other consideration in satisfaction in part or in whole of that guarantee or indemnity and if Sergi Building Group shall subsequently be called upon to refund any money so paid or to return any consideration so given to the Subcontractor whether by reason of such payment or consideration being a preference under the laws for the time being relating to bankruptcy or insolvency or being avoided by any other statutory provision or for any other reason whatsoever then notwithstanding that that guarantee or indemnity may have been wholly or partially cancelled or given up to be wholly or partially cancelled that guarantee or indemnity shall remain in full force and effect to the same extent as if the same had never been wholly or partially discharged as aforesaid and the parties shall be deemed to have been restored to the rights which each respectively would have had if such payment or consideration had not been made or given;
- (d) hereby agrees that the guarantee or indemnity under this Clause 26 shall be a continuing guarantee and shall not be affected by:
 - (i) any legal disability on the part of the Subcontractor;
 - (ii) the granting of any time or indulgence by Sergi Building Group;
 - (iii) the waiver by Sergi Building Group of any default by the Subcontractor;
 - (iv) any other person firm or company joining in that guarantee or indemnity;
 - (v) the fact that the Subcontractor may be discharged from liability to pay any amount payable by the Subcontractor pursuant to this Agreement for any reason other than that payment of the amounts payable thereunder have been made to the Subcontractor and to such extent as it may be necessary to give effect to this clause that guarantee or indemnity shall be treated and construed as an indemnity and Responsible Individual hereby indemnifies Sergi Building Group in respect of any failure by the Subcontractor to pay the any amounts due pursuant to this Agreement or on any account; and

- (vi) any payment made to Sergi Building Group which may be later avoided by any statutory provision or which is later refunded by Sergi Building Group shall not discharge Responsible Individual's liability in respect of such payment;
- (e) hereby agrees that the guarantee or indemnity under this Clause 26 shall remain in full force and effect:
 - (i) throughout the Term and any extended or renewed terms of the Agreement; and
 - (ii) whether this Agreement shall be assigned or transferred in the initial or any extended or renewed terms;
- (f) hereby agrees that:
 - (i) all amounts guaranteed or indemnified and owing hereunder shall be paid to Sergi Building Group on demand and without any set-off, counterclaim or condition and without any deduction or withholding for any tax or any other reason;
 - (ii) Sergi Building Group is entitled to set-off and apply any amount owed by it to Responsible Individual on any account in and towards satisfaction of monies owing to it under this Agreement or on any account;
 - (iii) this guarantee shall remain effective until Sergi Building Group shall have received 100¢ in the dollar on the amount of all payments due to Sergi Building Group from the Subcontractor pursuant to the terms of this Agreement or on any account;
- (g) Responsible Individual has read and understood this Agreement prior to entering into it; and
- (h) it is to the advantage of Responsible Individual that this Agreement subsist;
- (i) hereby agrees that in the construction of the guarantee or indemnity under this Clause 26:
 - (i) where any party hereto is a natural person the same and the obligations thereon hereunder shall extend to and encompass the heirs executors, administrators and assigns thereof and if a body corporate the successors and assigns thereof or each of the same; and
 - (ii) where more than one person or body corporate is named herein as Responsible Individual hereto, this guarantee and indemnity shall bind each of them jointly and severally.

Part 13 Worker's Lien/ Caveat

27. Worker's Lien/ Caveat

Subcontractor must not, and must procure that Subcontractor's Representatives must not:

- (a) lodge or register, or attempt to lodge or register, a worker's lien in respect of any work performed under this Agreement; and
- (b) lodge or register, or attempt to lodge or register, a caveat in respect of any work performed under this Agreement.

28. Power of Attorney

Subcontractor:

- (a) grants to Sergi Building Group (and each of its officers) a power of attorney to sign any document and do any thing reasonably required to rectify a breach of this Part; and

- (b) waives, releases and discharges any claim Subcontractor may have for *ultra vires* except in the case of a wilful breach.

Part 14 Labour Hire

29. Definitions

Labour Hire Act means *Labour Hire Licensing Act 2017* (SA) and all regulations and subordinate legislation thereunder.

Labour Hire Licence means a licence under the Labour Hire Act.

Labour Hire Services has the meaning given to that term in the Labour Hire Act.

30. Labour Hire

Subcontractor must:

- (a) comply with the Labour Hire Act at all times; and
- (b) notify Sergi Building Group if:
 - (i) any of the work provided by Subcontractor would comprise Labour Hire Services;
 - (ii) Subcontractor applies for a licence under the Labour Hire Act or is granted such a licence;
 - (iii) Subcontractor's Labour Hire Licence (if any) is suspended, cancelled or surrendered or if the conditions of that licence change.

Part 15 Sergi Building Group Policies

31. Sergi Building Group Policies

Subcontractor must comply with all of Sergi Building Group's policies from time to time (as long as they are not inconsistent with this Agreement).

Part 16 Registration and PPSA

32. PPSA

- (a) In this Clause 32:
 - (i) PPSA means *Personal Property Securities Act 2009* (Cth); and
 - (ii) any words that are defined in PPSA have the meaning given to that word in the PPSA.
- (b) This Agreement (or a part of it) is a security interest and:
 - (i) Sergi Building Group may register that security interest on the Personal Property Securities Register but that registration must be limited to the greatest extent possible so that it is only in respect of this Agreement and the work provided under it; and
 - (ii) Sergi Building Group must ensure that any such registration is maintained and updated and incorporates any changes to the Vehicle; and
 - (iii) at termination or the end of the Lease Term, Sergi Building Group must immediately discharge that security interest.

- (c) Subcontract must not register any security interest that may arise due to the work performed under this Agreement.
- (d) Each Party waives the right to receive any notice under the PPSA (including, a verification statement or a financing statements) unless the notice is required by the PPSA and cannot be excluded.
- (e) For the purposes of s275 of the PPSA, the Parties agree that this Agreement and its contents are confidential and that no Party is required to respond to a request made under s275 of the PPSA.

Part 17 End of Agreement

33. Termination

- (a) Sergi Building Group may terminate this Agreement at any time:
 - (i) if the Subcontractor fails to comply with any of the terms of this Agreement; or
 - (ii) if the Subcontractor suffers a Default Event; or
 - (iii) by giving 30 days' notice to the Subcontractor.
- (b) The Subcontractor may terminate this Agreement by giving 30 days' notice to Sergi Building Group.

Part 18 Confidentiality

34. Confidential Information

- (a) Subcontractor acknowledges that it will during the Term, come into possession or become aware of the other Sergi Building Group's Confidential Information.
- (b) Subcontractor must in respect of the other Sergi Building Group's Confidential Information:
 - (i) maintain the confidential nature of that Confidential Information; and
 - (ii) only use that Confidential Information for the limited purpose of this Agreement and any works under it; and
 - (iii) not disclose that Confidential Information except:
 - (1) where that disclosure is required for the purposes of this Agreement or any works under it provided that any such disclosee is obliged to maintain confidence in the Confidential Information; or
 - (2) to that Party's accountants, tax advisers, lawyers and professional advisers provided that any such disclosee is obliged to maintain confidence in the Confidential Information; or
 - (3) where that disclosure is required by law or an Authority; and
 - (iv) enact and maintain reasonable access control protocols and passwords in order to prevent unauthorised access to that Confidential Information.
- (c) Sergi Building Group may retain Subcontractor's Confidential Information after the Term and use it for any permitted purpose (including to respond to any request for information by an Authority – even if that disclosure is not required by law).

35. End of Term

At the end of the Term, Subcontractor must:

- (a) return Sergi Building Group's Confidential Information; and
- (b) if the Sergi Building Group's Confidential Information is incapable of being returned, destroy, delete or erase that Confidential Information,

provided that, this Clause 35 does not apply where that Party is obliged to keep copies by law, in which case, the confidentiality obligations under Clause 34 continue to apply to the same until it is returned, destroyed, deleted or erased.

36. Breach

The Parties acknowledge that damages is not a sufficient remedy for a breach of this Part 18 and acknowledge that an injunction or mandatory order may be sought to stop or prevent that breach.

37. Maintenance of Records

Subcontractor must keep and maintain all records, correspondence and documents for the longer of:

- (a) as required by the law; or
- (b) for 7 years after the creation of that record, correspondence or document.

Part 19 Disputes, End of Term and Termination

38. Dispute Resolution

- (a) A Party must not commence any court proceedings (except proceedings seeking urgent relief) in respect of a dispute (**Dispute**) regarding this Agreement unless that Party has first complied with this Clause 38.
- (b) A Party claiming that a Dispute has arisen must give notice to the other Party giving details of the Dispute (**Dispute Notice**).
- (c) The Parties must use reasonable endeavours to resolve the Dispute within 5 Business Days of the Dispute Notice.
- (d) If the Parties do not resolve the Dispute under Clause 38(c), the Parties must:
 - (i) refer to the Dispute to mediation in accordance with the "Guidelines for Legal Practitioners acting as Mediators or acting as Advisors to Parties in Mediation" published by the Law Society of South Australia; and
 - (ii) request the President of the Law Society of South Australia to appoint a mediator (and if more than one mediator is named, the first one such mediator shall be appointed by the Parties); and
- (e) If the Parties do not resolve the Dispute within 15 Business Days after mediation commences under Clause 38(d), the Parties may commence court proceedings in respect of the Dispute.
- (f) If, in relation to a Dispute, a Disputant does not comply with this Clause 38, the other Party is not obliged to comply with this Clause 38 in relation to that Dispute.

39. Indemnity

Subcontractor indemnifies Sergi Building Group against any Claims which Sergi Building Group may suffer or incur arising out of a breach of this Agreement by Subcontractor except to the

extent that Sergi Building Group or Sergi Building Group's Representatives contribute to the same.

40. Force Majeure

- (a) The obligations of a Party, other than the obligation to pay money, shall be suspended during the time and to the extent that the Party is prevented from or delayed in complying with that obligation by a Force Majeure.
- (b) A Party affected by a Force Majeure shall:
 - (i) as soon as possible after being affected give to the other Party full particulars of the Force Majeure and the manner in which its performance is thereby prevented or delayed; and
 - (ii) promptly and diligently take appropriate action to remove or mitigate any Force Majeure at the earliest possible time to enable it to perform the obligations prevented or delayed by the Force Majeure except that the Party is not obliged to settle a strike, lockout or other industrial action on terms which in its opinion are not satisfactory.
- (c) This Clause supersedes the operation of the *Frustrated Contracts Act 1988* (SA) and any similar act and any provision of those acts is excluded to the extent they are inconsistent with this Agreement.

Part 20 Mechanical Terms and Interpretation

41. Integrity Warranties

- (a) Each Party warrants, undertakes and represents that it has the necessary power and authority to execute, deliver and perform this Agreement and to become bound by it.
- (b) Each Party that is a body corporate warrants, undertakes and represents that:
 - (i) it has undertaken all actions and sought all approvals (including in any constitution) required for that Party to execute and be bound by this Agreement; and
 - (ii) it is validly incorporated and it has maintained corporate existence.
- (c) Each Party that executes this Agreement as trustee of a trust warrants, undertakes and represents that:
 - (i) that Party is the only current trustee of that trust; and
 - (ii) that trust has not vested in possession; and
 - (iii) that Party's right of indemnity from that trust is unqualified.
- (d) Nothing in this Agreement is intended or will be construed as constituting a partnership, agency, association or trust between the Parties. Neither Party will represent itself or hold itself out as being the partner, agent, principal, associate, trustee or beneficiary of the other Party.
- (e) To the greatest extent allowed by law, any warranty, representation, or implied term is excluded.

42. Time is of the Essence

Any stipulation of time in this Agreement is essential unless the context requires otherwise.

43. Notices

- (a) All notices under this Agreement must be in writing and addressed to the relevant Party using the details set out on the Parties and Background page.
- (b) A Party may change its contact details for the purposes of this Agreement by notice to the other Parties.
- (c) A notice, if validly given under this Agreement, is taken to have been received:
 - (i) if posted, 2 Business Days after posting;
 - (ii) if sent by email, on the next Business Day; and
 - (iii) if sent by fax, on the next Business Day.

44. Entire Agreement

- (a) This Agreement forms the entire agreement between the Parties as to its subject matter.
- (b) All prior representations, statements, warranties and guarantees are expressly waived unless incorporated into this Agreement.
- (c) This Agreement may only be amended in writing.

45. Counterparts

This Agreement may be executed in counterparts. All executed counterparts together constitute one document.

46. Severance/ Reading Down

- (a) A term or part of a term of this Agreement that is void, illegal or unenforceable must be read down to avoid that result.
- (b) If that term or part of a term cannot be read down to avoid that consequence, then that term or part of a term may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

47. Rights/ Obligations Personal

This Agreement is personal to the Parties and cannot be Transferred except with the prior written consent of the other parties.

48. No Waiver

No failure by a Party to enforce that Party's rights under this Agreement nor any forbearance delay or indulgence granted by that Party to any other Party shall be construed as a waiver of that Party's rights under this Agreement.

49. Other Acts

Each Party must:

- (a) use their best efforts to promptly do all things reasonably necessary to give full effect to this Agreement; and
- (b) maintain all consents, approvals and authorities necessary for any party to perform its obligations under this Agreement.

50. GST

- (a) In this Agreement, unless the context otherwise permits, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, but for the operation of this Clause, exclusive of GST.

- (b) If a Party (the **supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this Agreement, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (**GST gross-up**).
- (c) If a GST gross-up is payable, then the supplier must give the recipient a Tax Invoice for the supply before making a demand for the GST gross-up.
- (d) Provided a Tax Invoice has been given, the GST gross-up must be paid by the recipient:
 - (i) if any monetary consideration is payable for the supply, at the same time and in the same manner as such monetary consideration;
 - (ii) if no monetary consideration is payable for the supply within 10 Business Days after the day on which the Tax Invoice is given.
- (e) If any payment to be made to a Party under or in connection with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that Party, then the amount of the payment must be reduced by the amount of any input tax credit to which that Party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with Clause 50(a).
- (f) If an adjustment event has occurred in respect of a supply made under or in connection with this Agreement, any Party that becomes aware of the occurrence of that adjustment event must notify the other Party as soon as practicable, and the Parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST (or part thereof), is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.
- (g) Terms used in this Clause 50 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act and, in addition, GST includes a reference to any sales tax, turnover tax, duty, value added tax or other tax or duty in the nature of GST.
- (h) In this Clause 50, a reference to a payment includes any payment of money and any form of consideration other than payment of money.

51. No Set-off/ Deduction

Payments by the Customer under this Agreement must be made without set-off or deduction (except as authorised by the law or this Agreement).

52. Costs

- (a) The Customer must bear the costs in relation to the negotiation, preparation, execution and performance of this Agreement.
- (b) The Customer must pay all stamp duty, registration fees and other government duties payable in respect of this Agreement and any document required by this Agreement.

53. Governing Law/ Jurisdiction

- (a) This Agreement is governed by the laws of the State.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of the State and the Courts of the Commonwealth of Australia (in the registry in the capital of the State) and any Courts which may hear appeals from those Courts.
- (c) The Parties agree not to object to the jurisdiction of those Courts on the basis of *forums non conveniens*, under the *Service and Execution Of Process Act 1992* (Cth) or any other basis.

54. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) reference to:
 - (i) a gender includes all genders as is appropriate in the context;
 - (ii) the singular include the plural and vice versa;
- (b) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (c) headings and the contents (if any) are for convenience only and do not affect interpretation;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a party to this document includes that party's executors, administrators, successors and permitted assigns;
- (f) the word (**including**) is not to be treated as a word of limitation;
- (g) where a party to this Agreement is more than one person each person is bound individually and jointly;
- (h) reference to a statute includes its amendments and replacements and any regulations under it;
- (i) unless stated otherwise, one word or provision does not limit the effect of another;
- (j) references to the whole includes any part;
- (k) all obligations are taken to be required to be performed properly and on time;
- (l) reference to any person, body or authority which has ceased to exist will be to its successor in title and where none then to the person, body or authority as then serves substantially the same objects as that person, body or authority;
- (m) reference to the president of a body or authority, will in the absence of a president, be read as a reference to the senior officer or other person fulfilling the duties of president;
- (n) reference to an **Annexure**, **Clause** or **Schedule** is to a clause or schedule (as the case may be) of or to this Agreement;
- (o) a reference to this Agreement is a reference to this Agreement as amended, varied, novated, supplemented or replaced from time to time;
- (p) a provision of this Agreement must not be construed to the disadvantage of a party because that party was responsible for the preparation of the Agreement;
- (q) the Schedules and Annexures (if any) to this Agreement form part of this Agreement and have effect as if set out in full in this Agreement;
- (r) the Parties acknowledge that the facts set out in the Background are correct and the Background forms part of this Agreement and has effect as if set out in this Agreement except to the extent of any inconsistency with this Agreement;
- (s) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act may be done, or the limit or period will expire, on the following Business Day;
- (t) this Agreement is written in plain English as far as possible. Its terms are to be interpreted so as to give efficacy to the Parties' agreement;

- (u) the specific provisions of this Agreement will not limit the interpretation of general provisions;
- (v) a reference to a period of time means in the case of a day, the period of time commencing at midnight and ending 24 hours later, in the case of a month, a calendar month, and that period of time is calculated exclusive of the day on which any event occurs or on which the thing relates to;
- (w) references to \$, currency and money means Australian dollars;
- (x) references to payment in **available funds** means any form of payment which is capable of being cleared in the bank account of the payee on the same day the payment is made;
- (y) in the case of something to be done on any given day, that thing must be done by 5:00pm in the State on that day on a Business Day.

55. Definitions

In this Agreement, unless the context otherwise requires, terms defined in the Subcontractor Onboarding Agreement have the meaning given there and:

Term	Definition
Agreement	<ul style="list-style-type: none"> (a) The Subcontractor Onboarding Agreement; (b) These Subcontractor Onboarding Terms and Conditions; and (c) Any annexures to the Subcontractor Onboarding Agreement (if any).
Alcohol and Drug Policy	Sergi Building Group's Alcohol and Drug Policy (as amended from time to time) and published on Sergi Building Group's website
Authority	<ul style="list-style-type: none"> (a) Any government agency, body corporate, department, minister or instrumentality; or (b) any Approved Stock Exchange within the meaning of the <i>Income Tax Assessment Act 1997</i> (Cth); or (c) any other regulatory body
Business Day	Any day except Saturdays, Sundays and declared public holidays in the State
Code of Conduct	Sergi Building Group's Code of Conduct (as amended from time to time) and published on Sergi Building Group's website
Contract	Includes to contract or subcontract for any works or to assign or novate any contract for any works
Default Event	Any of: <ul style="list-style-type: none"> (a) the Subcontractor is Insolvent; or (b) the Subcontractor loses legal capacity; or (c) the Subcontractor is charged with any offence the maximum penalty for which is imprisonment for a period of 1 year or more.

Term	Definition
Insolvent	<p>In respect of a person, includes:</p> <ul style="list-style-type: none"> (a) that person being unable to pay its debts as and when they fall due; and (b) any of the presumptions in s 459C(2) Corporations Act apply to that person; and (c) an external administrator being appointed in respect of that person including an administrator, deed administrator, controller, official trustee, trustee in bankruptcy, receiver, receiver and manager, or liquidator; and (d) that person entering administration, being wound up, entering into a compromise or arrangement with that person's creditors, or entering into a deed of company arrangement; and (e) an act of bankruptcy occurring in respect of that person under the <i>Bankruptcy Act 1966</i> (Cth); and (f) that person entering into a debt agreement or personal insolvency agreement under the <i>Bankruptcy Act 1966</i> (Cth); and (g) any similar or analogous event occurring in respect of that person under the laws of another State.
Party	A party to this Agreement
Representatives	Includes an employee, officer, agent, contractor, consultant or partner
Subcontractor Onboarding Agreement	The subcontractor onboarding agreement accompanying these Cleaning Subcontractor Terms and Conditions
Cleaning Subcontractor Terms and Conditions	This document
State	South Australia
Term	Commences on the date the Subcontractor Onboarding Agreement is signed by the Parties and ends on the date this Agreement is terminated.
We, us, our or Sergi Building Group	Sergi Building Group Pty Ltd ABN 72 684 637 296 as named and described in the Subcontractor Onboarding Agreement.
Workplace, Health and Safety Policy	Sergi Building Group's Workplace, Health and Safety Policy (as amended from time to time) and published on Sergi Building Group's website
You, your or the Subcontractor	The subcontractor named and described in the Subcontractor Onboarding Agreement.

