

## STANDARD TERMS AND CONDITIONS

### TERMS OF PAYMENT

Weekly progress payments for work performed on and off site and/or progress material deliveries will be claimed and are to be paid within thirty (30) days of the date of our claim and respective invoice. DGH Engineering Pty Ltd may elect to utilise the payments provisions as provided for under the Construction and Building Industry Payments Act 2011 (QLD).

### VALIDITY

This offer shall remain open for a period of thirty (30) days from the date hereof, after which it is subject to review and confirmation.

### FEES TO PUBLIC AUTHORITIES

We have made no allowance for any fees to public or local authorities such as connection fees and/or any bonds that may be applicable. Unless agreed in writing (subject to DGH standard mark-up) we would require the client to make such applications and pay all fees.

### LIQUIDATED DAMAGES AND OTHER LIABILITIES

In no event shall DGH Engineering Pty Ltd be liable under this contract/agreement for any loss of profit, loss of revenue, loss of contracts, loss of production or any indirect or consequential loss or damage.

### SITE ALLOWANCE AND WORKING HOURS

No allowance has been made for any special site allowances whether agreed between the principal and the unions or as otherwise awarded for this contract. Any allowance so agreed will be treated and charged as a variation to the contract including any award and other associated loadings.

### GENERAL CONDITIONS OF CONTRACT

DGH Engineering Pty Ltd notes that the tender documents did not include in full the general conditions of contract and as such we advise that our tender has been prepared in accordance with AS2545 (subcontract conditions for supply and install) and/or AS4303 (subcontract conditions for design, supply and install). Should our tender offer be acceptable, we would be willing to enter into a manually agreed contract.

### CONTRACT REVIEW

DGH Engineering Pty Ltd has not fully evaluated the contract conditions and reserves the right to negotiate a mutually agreed contract should we be the successful tenderer.

### BACK CHARGE AND COST OFFSETTING

Should the client claim back charges or wish to cost offset for services provided or damages caused by DGH Engineering Pty Ltd, we will require:

Notice in writing within two (2) days of the back charge or cost offset event occurring; and  
The opportunity to repair or remedy the back charge or cost offset event.

It is agreed between DGH Engineering Pty Ltd and the client that no charge can be claimed, and no monies withheld from DGH Engineering Pty Ltd unless procedures (a) and (b) are implemented by the client.

### AS BUILT DRAWINGS

We have allowed to red line client provided drawings

### PRICE BREAKDOWN

The amounts detailed in the schedule of rates/prices are primarily a breakdown of the firm lump sum price for accounting purposes and are intended to reflect the broad breakup of the scope of work into recognisable and manageable areas of work for the assessment of progress payments only and cannot be separated without cost adjustment.

### SCOPE OF WORK

DGH Engineering Pty Ltd reserves the right to re-quote the work if changes to the Scope of Work result in a change of plus or minus 10% of the contract value.

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### **VARIATIONS**

Notwithstanding any clause in the contract or elsewhere regarding valuation of variation we advise that all variations shall be valued and approved by our client prior to the expiry of four (4) weeks after receiving a quotation from DGH Engineering Pty Ltd for the varied works. No variation works will be carried out until approval in writing has been received by DGH Engineering Pty Ltd. Should a variation be required to be carried out on a day work basis we would require labour and supervision at the nominated agreed rates. Material, freight and storage costs will attract a mark-up of 10%, being 5% overhead and 5% gross profit.

### **ERRORS AND OMISSIONS**

Should any errors and omissions be discovered during the validity period we reserve the right to adjust our tender price.

### **OCCUPATIONAL HEALTH AND SAFETY**

DGH Engineering Pty Ltd is committed to providing a healthy and safe workplace for all its employees, subcontractors and visitors and we will conduct our works with DGH Engineering Pty Ltd Occupational Health and Safety standards in compliance with relevant legislation and regulations to ensure the health, safety and welfare of all employees.

### **OCCUPATIONALS HEALTH AND SAFETY COSTS**

We have made no allowance for any cost arising out of any safety/site specific procedures to be implemented by the client as we are not in receipt of site health and safety procedures at the time of tender.

### **CONFIDENTIALITY**

The technical, pricing and other information contained in the tender submission is proprietary to DGH Engineering Pty Ltd (DGH Engineering Pty Ltd which expression shall extend to include any related corporation, its contractors and agents), is confidential, trade sensitive and is submitted solely for the purposes and for the purpose of allowing the company to participate in the assessment process of the tender. Your acceptance of this submission is an acceptance of the following:

The information shall be kept strictly confidential and shall not be photocopied or reproduced in any way and otherwise shall be used solely for the purpose.

The information shall not be disclosed, either directly or indirectly, to any third party without the prior consent of DGH Engineering Pty Ltd, including to any competitor of DGH Engineering Pty Ltd and in particular any competitor involved in the assessment process provided that, subject to paragraph 3, the information may be released to relevant consultants/principals on a need-to-know basis.

Where, with DGH Engineering Pty Ltd consent, the information is disclosed to a third party for the purpose reasonably connected with the tendering assessment, it will be a condition of that consent (whether stated or not) that such third party accept and acknowledge to be bound by these confidentiality obligations.

Any damages, claims, expenses, and attorneys' fees incurred or suffered by Owner as a result of a breach of this Agreement Recipient and its Representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in permitted and required disclosures of this Agreement and shall hold and maintain the Confidential Information in strictest confidence. Recipient hereby agrees to indemnify Owner against any and all losses, by Recipient or its Representatives.

### **PERMITTED DISCLOSURES**

Recipient may disclose Owner's Confidential Information to Recipient's responsible Representatives with a bona fide need to know such Confidential Information, but only to the extent necessary to evaluate or carry out a proposed transaction or relationship with Owner and only if such employees are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.

### **REQUIRED DISCLOSURES**

Recipient may disclose Owner's Confidential Information if and to the extent that such disclosure is required by court order, provided that Recipient provides Owner a reasonable opportunity to review the disclosure before It is made and to interpose its own objection to the disclosure.

**USE**

Recipient and Its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with Owner and shall not in any way use the Confidential Information to the detriment of Owner.

**CONFIDENTIAL INFORMATION**

Owner proposes to disclose certain of its confidential and proprietary information (the Confidential Information) to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Owner to disclose any of its information.

For purposes of this Agreement, the term "Recipient" shall include Recipient, the company he or she represents, and all affiliates, subsidiaries, and related companies of Recipient. For purposes of this Agreement, the term "Representative" shall include Recipient's directors, officers, employees, agents, and financial, legal, and other advisors.

**EXCLUSIONS**

Confidential Information does not include information that Recipient can demonstrate: (a) was in Recipient's possession prior to its being furnished to Recipient under the terms of this Agreement, provided the source of that information was not known by Recipient to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to Owner; (b) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known to the public; (c) is rightfully obtained by Recipient from a third party, without breach of any obligation to Owner; or (d) is independently developed by Recipient without use of or reference to the Confidential Information.

**RECIPIENTS OBLIGATIONS**

Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish, or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.

**TERM**

The obligations of Recipient herein shall be effective [NON-DISCLOSURE PERIOD] from the date Owner last discloses any Confidential Information to Recipient pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment, or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between Owner and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing under local law.

**NO LICENSE**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Recipient agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

**OTHER INFORMATION**

Recipient shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Recipient; is rightfully received by Recipient without obligations of confidentiality; or is developed by Recipient without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until [NUMBER] days after written notice of intent to disclose is given to Owner along with the asserted grounds for disclosure.

**RETURN OF DOCUMENTS**

If Recipient does not proceed with the possible transaction with Owner, Recipient shall notify Owner of that decision and shall, at that time or at any time upon the request of Owner for any reason, return to Owner any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information immediately on the written

request of Owner. The returning of materials shall not relieve Recipient from compliance with other terms and conditions of this Agreement.

#### **NO ADDITIONAL AGREEMENTS**

Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of Owner to enter into any other agreement with Recipient or prohibit Owner from providing the same or similar information to other parties and entering into agreements with other parties. Owner reserves the right, in its sole discretion, to reject any and all proposals made by Recipient or its Representatives with regard to a transaction between Recipient and Owner and to terminate discussions and negotiations with Recipient at any time. Additional agreements of the parties, if any, shall be in writing signed by Owner and Recipient.

#### **IRREPARABLE HARM**

Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Owner irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Owner shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Owner shall deem appropriate. Such right of Owner is to be in addition to the remedies otherwise available to Owner at law or in equity.

#### **ATTORNEYS FEES**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs Incurred.

#### **FORCE MAJEURE**

A party will not be liable to the other if performance of its obligations to the other party is delayed, impeded, or prevented by any act or event beyond the control of a party, whether foreseen or not, which delays, interrupts or prevents such party from performing its obligations under this agreement (Force Majeure).

If delay in the performance of this agreement due to Force Majeure continues for more than one (1) month, a party may terminate this agreement by notice to the other.

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