



Subcontractor: \_\_\_\_\_

Project: \_\_\_\_\_

Envar Job No.: \_\_\_\_\_

1. This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between:
2. Envar Engineers and Contractors Pty Ltd / Envar Service Pty Ltd **(Mechanical Contractor)**  
 (ABN 35 009 407 630) / (ABN 49 008 924 187)  
*(strike out which company does not apply above)*  
 of 47 Furnace Road Welshpool WA 6106  
 Telephone: 08 9350 5377  
 Facsimile: 08 9458 7484  
 Email: envar@envargroup.com.au

and

3. \_\_\_\_\_ **(Subcontractor)**  
 (ABN \_\_\_\_\_)  
 of \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Licence No: \_\_\_\_\_

4. The Subcontractor shall carry out the Works in accordance with these Subcontract Terms and Conditions.
5. Site: \_\_\_\_\_
6. The Works: \_\_\_\_\_  
 in accordance with Specification dated \_\_\_\_/\_\_\_\_/20\_\_\_\_, drawing numbers \_\_\_\_\_  
 program dated \_\_\_\_/\_\_\_\_/20\_\_\_\_ and the following further documents: \_\_\_\_\_  
 \_\_\_\_\_
7. Total Subcontract Sum: \$\_\_\_\_\_
8. Payment claims are to be made monthly on the \_\_\_\_\_ day of the month.
9. Retention moneys held to be \_\_\_\_\_% of the Subcontract Sum deducted at the rate of \_\_\_\_\_ % from progress payments. 50% of the retention moneys held will be released upon receipt of Practical Completion, the remaining amount will be released on expiry of the DLP.
10. Date of Commencement of Works: \_\_\_\_\_
11. Date for Completion of Works: \_\_\_\_\_
12. Defects Liability Period: \_\_\_\_\_ months.
13. Liquidated Damages: \$\_\_\_\_\_ per day.

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
 For and on behalf of the  
 Mechanical Contractor

\_\_\_\_\_  
 for and on behalf of the  
 Subcontractor

## Subcontract Terms and Conditions

### 14. Subcontractor's performance

The Subcontractor shall:

- (a) carry out and complete the Works described and in accordance with the documents in clause 6 hereof;
- (b) carry out and complete the Works with the use of appropriately qualified, trained and/or licenced personnel;
- (c) in carrying out and completing the Works, comply with all applicable legislative requirements including those relating to OH&S; and
- (d) comply with all reasonable directions of the Mechanical Contractor.

### 15. Payment claims and payment

15.1 The Mechanical Contractor shall pay the Subcontractor the Subcontract Sum stated in clause 7 (as duly adjusted) by progress payments commensurate with such part of the Works carried out in that month in accordance with the Subcontract. Payment Claims shall include details of:

- (a) the Works carried out to the end of the month of claim;
- (b) duly authorised variations complete as at the end of the month of claim;
- (c) the total amount claimed plus GST less retention moneys then due to be withheld under the Subcontract.

15.2 The Mechanical Contractor shall assess the claim and shall issue with the payment for the claim a schedule which identifies:

- (a) the value of the Works carried out during that month;
- (b) the value of variations carried out and completed that month;
- (c) any other amounts then due and payable to the Subcontractor;
- (d) the amount duly withheld by way of retention;
- (e) any extra charges or damages claimed by the Mechanical Contractor which may be deducted from payments;
- (f) any other amounts which the Mechanical Contractor is entitled pursuant to the Subcontract to withhold from payment to the Subcontractor.

15.3 The Subcontractor shall produce satisfactory evidence that all moneys incurred by the Subcontractor for wages, materials and any other expenses in connection with the Works have been paid. The Mechanical Contractor may withhold any progress payment to the extent that proof of such payment has not been produced by the Subcontractor. Payment, including final payment, shall not constitute acceptance of the Works. Progress payments shall be payment on account only. The Subcontractor's acceptance of a final payment is deemed to be a release by the Subcontractor of all claims against, and liabilities of, the Mechanical Contractor howsoever arising.

### 16. Variations

The Mechanical Contractor may, at any time, instruct the Subcontractor to carry out a variation to the subcontract works. The Subcontractor shall carry out variations to the Works only as directed and approved in writing by the Mechanical Contractor. Payment for work directed by others will be rejected.

16.1 Where the subcontractor believes the Works may constitute a variation, written notice must be provided to the Mechanical Contractor within 3 business days of the variation event becoming known.

Initial

Envar	Subcontractor
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- 16.2 Within 2 business days of written direction or approval, if the variation is to affect the subcontract price, the Subcontractor must separately detail each of the following that is applicable to the variation works:
- (a) Additional labour.
  - (b) Additional materials.
  - (c) Any materials to be made unnecessary by the proposed variation, those of which will be set-off against said variation and/or the subcontract price.
  - (d) Any labour to be made unnecessary by the proposed variation, that of which will be set-off against said variation and/or the subcontract price.
  - (e) Any on-site and off-site overheads to be made unnecessary by the proposed variation, those of which will be set-off against said variation and/or the subcontract price.
  - (f) Any delay or acceleration the Subcontractor anticipates as a result of the variation affecting the critical path.
  - (g) Any additional design and/or certification costs associated with the proposed variation
- 16.3 The Subcontractors right to claim additional payment for a variation to the original scope of Works is strictly subject to the variation having been directed and approved in writing by the mechanical contractor as set out in this clause 16.
- 16.4 The Mechanical Contractor at its sole discretion may issue a variation order for any variation instruction.

**17. Time**

If the Mechanical Contractor or the Client delays the Subcontractor, the Date for Completion shall be adjusted commensurate with the length to which such delay affects the Date for Completion of the Works. If the Subcontractor does not complete the Works by the Date for Completion of the Works (as duly adjusted), the Subcontractor shall pay to the Mechanical Contractor Liquidated Damages at the rate specified in clause 13 for every day that the date of completion is or will be later than the Date for Completion as adjusted.

**18. Program**

The Subcontractor shall carry out the Works in accordance with the program identified in clause 8. The Subcontractor acknowledges that the program may alter from time to time. Failure by the Subcontractor to comply with such program shall be to its cost and it shall indemnify the Mechanical Contractor in respect to any costs incurred by the Main Contractor by reason of the failure of the Subcontractor to comply with the program. Such costs incurred by the Mechanical Contractor shall be a debt due from the Subcontractor to the Mechanical Contractor.

**19. Defects**

The Subcontractor before the end of the Defects Liability Period shall make good all defects in its work at its own cost. If the Subcontractor does not comply with the Mechanical Contractor’s direction to make good defects in the Subcontractor’s work, the Mechanical Contractor may have the work carried out by others and the cost thereby incurred by the Mechanical Contractor shall be a debt due from the Subcontractor to the Mechanical Contractor. The defects liability period in respect of any defects made good hereunder shall be extended for the period stated in clause 12 commencing on the date the defect is duly rectified.

**20. Damage and cleaning**

- 20.1 The Subcontractor is responsible for:
- (a) any damage to the Works and the property of others caused by the Subcontractor or by the Subcontractor’s employees, subcontractors or agents;
  - (b) security of its tools, plant and equipment;
  - (c) keeping the work areas clean and tidy and regularly removing rubbish and debris resulting from the Subcontractor’s work.
- 20.2 The Mechanical Contractor, after giving reasonable written notice, may rectify any breach by the Subcontractor of this clause and the cost thereof shall be a debt due from the Subcontractor to the Mechanical Contractor.

**21. Materials, plant and equipment on Site**

- 21.1 All materials, plant and equipment intended to be incorporated into the Works and delivered to site by the Subcontractor shall:
- (a) be free of any lien or security interest;
  - (b) be at the sole risk of the Subcontractor until incorporation into the Works; and
  - (c) not be removed from the Site without the written consent of the Mechanical Contractor.
- 21.2 The Subcontractor’s equipment, plant and vehicles shall, whilst on site, be at the sole risk of the Subcontractor.

**22. Indemnity**

The Subcontractor bears the risk of loss of and damage to the Works until final acceptance of the Works by the Mechanical Contractor. The Subcontractor shall indemnify the Mechanical Contractor, the head contractor (if any) and the client and their respective officers, employees and agents against any injury, death, suit, claim or other loss arising out of or in connection with the subject matter of the Subcontract whether wholly or partly caused by the acts or omissions of the Subcontractor, its servants, agents or sub-subcontractors and to the extent that such injury, death, suit, claim or other loss has been contributed to by the Mechanical Contractor, its head contractor (if any), the client or the officers, servants or agents of any of them, the Subcontractor’s liability shall be proportionately reduced.

**23. Insurance**

- 23.1 The Subcontractor shall take out and maintain during the Subcontract period:
- (a) workers compensation and employer’s indemnity insurance in the relevant State including a principal’s indemnity extension for statutory benefits and at common law in Western Australia, including a waiver of subrogation. It shall ensure its sub-subcontractors similarly insure;
  - (b) comprehensive motor vehicle liability insurance to a minimum of \$10 million;
  - (c) public and products liability insurance to a minimum of \$20 million extended to include the interests of the Mechanical Contractor, the head contractor (if any) and the Client together with cross-liability and waiver of subrogation provisions.
- 23.2 The Subcontractor shall not be entitled to make a claim for payment until the Subcontractor has provided proof of the relevant insurance coverage.

**24. Default by the Subcontractor**

- The Subcontractor is in default if the Subcontractor:
- (a) commits an act of insolvency as described in subclause 39.11 of AS4000-1997; or
  - (b) commits a substantial breach of this Subcontract including:
    - (i) failing to comply with these Subcontract conditions;

- (ii) failing to comply with any safety policy forming part of the tender documents;
- (iii) failing to comply with any applicable legislation including that relating to OH&S; and
- (iv) failing to use the materials or standards of work required by the Subcontract.

**25. Termination**

If the Subcontractor is in default then without prejudice to any other rights or remedies, if the default is not remedied within 7 days of receipt of a written notice by the Mechanical Contractor to rectify the default, the Mechanical Contractor may terminate the Subcontract.

**26. Disputes**

If a dispute arises in connection with the Works, either party may give a notice of dispute referring the dispute to a meeting of the parties to be held within 14 days of the date of the notice. Should such dispute remain unresolved then either party may submit the dispute to arbitration. The Master Builders Association of Western Australia shall appoint the arbitrator. Rules 5 to 18 of The Institute of Arbitrators & Mediators Australia shall apply to such arbitration. Each party shall continue to perform the Subcontract notwithstanding any dispute.

**27. General**

This works order supersedes all prior communications and agreements and contains the entire agreement of the parties. No assignment, variation or waiver shall have any effect unless acknowledged in writing by each party and accepted by the other party.

**28. Proper law**

The laws of Western Australia shall be the proper law of the Subcontract.

**29. Subcontractor’s Obligations**

The Subcontractor must:

- (a) immediately commence performance of its obligations under this Subcontract and with respect for all inclusions and allowances noted in Schedule A, where applicable; and
- (b) subject to normal conditions of site access:
  - (i) commence construction of the Works on the Site by no later than the date specified in clause 10 of this contract;
  - (ii) take all reasonable steps to expedite the performance of the Works; and
  - (iii) unless otherwise stated, do everything it is required to do under the Subcontract at its own cost.