



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 (**Envar**)
 (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 _____
 programme 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
 Envar

 for and on behalf of the
 Subcontractor

Subcontract Terms and Conditions

14. Order of Precedence

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Subcontract the following order of precedence will apply:

- (a) these Subcontract Terms and Conditions;
- (b) the Specification, whether by Envar or on behalf of our Client;
- (c) the Drawings, whether by Envar or on behalf of our Client;
- (d) the Works Description as detailed in the engagement process.

Any and all terms and conditions issued by the Subcontractor to Envar, whether before or after this Subcontract (or a Purchase Order with the Subcontract referenced) was received, shall be superseded by this Subcontract document.

15. 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) ensure it has completed Envar's online contractor management system (Beakon) and received a compliant status, failure to do so may result in payments being withheld;
- (d) in carrying out and completing the Works, comply with all applicable legislative requirements including those relating to OH&S; and
- (e) comply with all reasonable directions of Envar.

16. Payment claims and payment

16.1 Envar 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.

- 16.2 Envar 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 Envar which may be deducted from payments;
 - (f) any other amounts which Envar is entitled pursuant to the Subcontract to withhold from payment to the Subcontractor.
- 16.3 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. Envar 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, Envar howsoever arising.

17. Variations

Envar 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 Envar. Payment for work directed by others will be rejected.

- 17.1 Where the subcontractor believes the Works may constitute a variation, written notice must be provided to Envar within 3 business days of the variation event becoming known.
- 17.2 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.

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- (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

17.3 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 Envar as set out in this clause 16.

17.4 Envar at its sole discretion may issue a variation order for any variation instruction.

18. Time

If Envar or the Client delays the Subcontractor, the Subcontractor must apply for an Extension of Time (EOT), in writing, within 48 hours after becoming aware of the delay event. 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 Envar 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.

- 18.1 The Subcontractor will only be granted an EOT if, and only if:
- (a) The Subcontractor has been able to substantiate that the critical path of work is affected beyond any ability of remedial action, such as acceleration, resulting in mitigation of the delay event; i.e. the delay is not disruption and is a true delay to the programmes critical path, and
 - (b) Afore mentioned 48 hour time bar of written notice is complied with

The discretion to grant the Subcontractor an EOT remains solely that of Envar. Nothing in this clause shall oblige Envar to approve any claim put forth by the Subcontractor.

Non-compliance with this clause will default the Subcontractors right to an EOT.

19. Programme

The Subcontractor shall carry out the Works in accordance with the programme identified in clause 6. The Subcontractor acknowledges that the programme may alter from time to time. Failure by the Subcontractor to comply with such programme shall be to its cost and it shall indemnify Envar in respect to any costs incurred by the Main Contractor by reason of the failure of the Subcontractor to comply with the programme. Such costs incurred by Envar shall be a debt due from the Subcontractor to Envar.

20. 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 Envar’s direction to make good defects in the Subcontractor’s work, Envar may have the work carried out by others and the cost thereby incurred by Envar shall be a debt due from the Subcontractor to Envar. 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.

21. Damage and cleaning

21.1 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.

21.2 Envar, 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 Envar.

22. Materials, plant and equipment on Site

22.1 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 Envar.

22.2 The Subcontractor’s equipment, plant and vehicles shall, whilst on site, be at the sole risk of the Subcontractor.

23. Indemnity

The Subcontractor is liable for and indemnifies:

- (a) Envar (and its officers, employees, agents and contractors) against:
 - (i) any Loss or Damage or Claim as a result or arising out of, or in connection with, any act, omission or breach by the Subcontractor of any provision of or warranty in this Subcontract; and
 - (ii) all legal costs, without reference to any scale of costs, reasonably incurred by Envar in resisting any Claim, or discrete part of a Claim, made by the Subcontractor on which the Subcontractor wholly fails;
- (b) Envar against any Loss or Damage or Claim which may be taken or made against Envar for:
 - (i) personal injury to or the death of any person arising out of or in connection with the Works, the work under this Subcontract, or this Subcontract generally;
 - (ii) damage to or loss of any property real or personal arising out of or in connection with the Works, the work under this Subcontract, or this

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Subcontract generally; and any infringement of any Intellectual Property Right in respect of anything used or supplied by the Subcontractor or its Personnel in relation to this Subcontract, except to the extent that the negligence of Envar contributed to the Loss or Damage or Claim, in which case, the Subcontractor's liability to indemnify will be reduced in proportion to that contribution; and

- (c) notwithstanding clause 24.1 and, if applicable, that the Subcontractor may not be required to effect and maintain contract works insurance, the Subcontractor is liable for and indemnifies Envar (and its officers, employees, agents and contractors) against any Loss or Damage or Claim which may be incurred, taken or made against the Envar, whether arising from accident or otherwise, in relation to any unfixed materials or goods for use in, or used in respect of, the work under this Subcontract, regardless of where such unfixed materials and goods are located when the Loss or Damage, or circumstances giving rise to the Claim, occurs. The Subcontractor must claim against any insurance held by the Subcontractor in respect of this loss or damage before any claim is made under any contract works insurance held by the Principal or Envar.

24. Insurance

24.1 The Subcontractor shall take out and maintain during the Subcontract period the insurances detailed :

- (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 \$20 million;
- (c) public liability insurance to a minimum of \$20 million extended to include the interests of Envar, the head contractor (if any) and the Client together with cross-liability and waiver of subrogation provisions.
- (d) products liability insurance to a minimum of \$20 million extended to include the interests of Envar, the head contractor (if any) and the Client together with cross-liability and waiver of subrogation provisions.

24.2 The Subcontractor shall not be entitled to make a claim for payment until the Subcontractor has provided proof of the relevant insurance coverage.

24.3 The Subcontractors insurances must be free from any and all limitations of liability.

24.4 All secondary Subcontractors engaged by the Subcontractor must take out and maintain the same insurances detailed under this clause 24.

24.5 Proof of insurance must be provided to Envar by way of copies of insurance policies or certificates of currency detailing the requirements of this clause 24.

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25. 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.

26. 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 Envar to rectify the default, Envar may terminate the Subcontract.

27. 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.

28. 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.

29. Proper law

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

30. 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;
- (b) comply with the relevant Building Code and Standards as noted in Schedule A, where applicable;

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- (c) Notwithstanding any other provision of this Subcontract, the Subcontractor must comply with the Privacy Act 1988 (Cth) and any other relevant privacy legislation, including without limitation in relation to any Personal Information collected by or disclosed or reasonably accessible to the Subcontractor under this Subcontract; and
- (d) 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 (including where remedy to delay would dictate said expedition, whether at fault of Envar or any third parties to the Works Under Contract) at the Subcontractors cost; and
 - (iii) unless otherwise stated, do everything it is required to do under the Subcontract at its own cost.

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