

TRADES PANEL WORKS ORDER



Instrument of Agreement

Date

Parties

Southern Cross University (ABN 41 995 651 524)

of Lismore Campus Military Road, Southern Cross University – Lismore Campus,
South Lismore, NSW 2480

(Principal)

#[Insert name]#

ACN #[Insert]# of #[Insert address]#

(Contractor)

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- A. The Contractor agrees to carry out their obligations in accordance with these Terms and Conditions when engaged by the Principal from time-to-time during the Term of 12 months.
- B. This Agreement and the Terms and Conditions do not guarantee any engagement by the Principal for Works.
- C. When engaged by the Principal to carry out Works, the Contract (the "Contract") will consist of:
- (a) a Works Order via Archibus;
 - (b) these signed Terms and Conditions;
 - (c) any other document agreed upon by the Parties.

EXECUTED as an agreement
on.....

Executed for and on behalf of **SOUTHERN CROSS UNIVERSITY (ABN 41 995 651 524)** by its authorised delegate in the presence of:

Signature of Witness

Signature of authorised delegate

Full name of Witness (print)

Full name of authorised delegate (print)

Signed for and on behalf of **#[INSERT CONTRACTOR]** ACN **#[INSERT]** by its authorised representative in the presence of:

Position of authorised delegate (print)

Signature of Witness

Signature of authorised representative

Full name of Witness (print)

Full name of authorised representative (print)

Position of authorised representative (print)

Conditions of Order

1. Terms defined in the instrument of agreement and the Documents have the same meaning in the Conditions of Order.
2. In these Conditions of Order:
 - (a) **Act of Prevention** means:
 - (i) an act or omission of the Principal; or
 - (ii) a suspension of the Works, except where such suspension was caused or contributed to by the Contractor; or
 - (iii) except as otherwise provided in the Contract, a Variation.
 - (b) **Business Day** means any day other than:
 - (i) a Saturday, Sunday or public holiday; or
 - (ii) 27, 28, 29, 30 or 31 December.
 - (c) **Contract** in respect of the Works is formed by the instrument of agreement, the Terms and Conditions and any Documents agreed upon by the Parties.
 - (d) **Defects** means any defect or omission in the Works including any aspect of the Works which is not in accordance with the requirements of this Contract.
 - (e) **Defects Liability Period** means:
 - (i) if the Works comprise the supply of goods, the period after the supply of goods Completion Date referred to in any Documents; and
 - (ii) if the Works comprise the carrying out of work, the period after the Completion Date referred to in any Documents.
 - (f) **Payment Claim** means claims for payment issued by the Contractor on account of the Price and any other amounts payable by the Principal to the Contractor under the Contract in accordance with any Documents.
 - (g) **Payment Schedule** has the meaning at clause 19.
 - (h) **Price** means the price specified in the Documents;
 - (i) **Site** means the site address referred to in the Documents.
 - (j) **SOP Legislation** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).
 - (k) **Statutory Requirement** means any statute, regulation, order, rule, subordinate legislation or other obligation enforceable under any statute, regulation, order, rule or subordinate legislation.
 - (l) **Variation** means unless otherwise stated in the Contract any change to the Works including any addition, increase, decrease,

omission, deletion, demolition or removal to or from the Works.

- (m) **Works** means the supply of the goods or the carrying out of works as described in the Documents.
- (n) **Principal Policies** means:
 - (i) the policies set out in the Documents; and
 - (ii) includes any other policy identified at <https://www.scu.edu.au/staff/governance/policy/> to the extent that such policy is applicable to the Works;
3. The parties agree that:
 - (a) the Contract is an offer by the Principal to the Contractor to provide the Works in accordance with the Contract whether signed on behalf of the Principal or not; and
 - (b) if the Contractor supplies the Works to the Principal, it does so on the terms of the Contract.
4. The Contractor must supply the Works to the Principal:
 - (a) if the Works comprise the supply of goods:
 - (i) in accordance with the Works Description (including the Documents, if any);
 - (ii) in the quantity;
 - (iii) at the Price; and
 - (iv) by the Completion Date (which time is of the essence),
as described in the Documents unless varied by the Principal; or
 - (b) if the Works comprise the carrying out of works:
 - (i) in accordance with the Works Description (including the Documents, if any); and
 - (ii) at the Price,
as described in the Documents unless varied by the Principal; and
 - (c) in compliance with the Principal's Policies.
5. The Contractor warrants that:
 - (a) it holds and will maintain (including ensuring all subcontractors engaged by the Contractor in relation to the Contract) for the duration of the Works, all permits and licences required to meet all Statutory Requirements to undertake the Works;
 - (b) it has the skill, competence, resources, commitment and experience available to carry out the Works and it has examined all information and conducted all investigations relevant to the risks, contingencies and other circumstances that may affect its ability to provide the Works at the Price;
 - (c) it has based the Price on its own determinations and assessment of the risks involved in carrying out the Works;

- (d) it has satisfied itself as to the correctness and sufficiency of the Price to cover the cost of complying with:
 - (i) the Contractor's obligations under the Contract;
 - (ii) all applicable taxes (excluding GST) arising out of or in connection with the Works;
 - (iii) any customs duty and primage applicable to imported materials, plant and equipment required for the delivery of the Works; and
- (e) it has not relied on any information provided by the Principal for the purposes of entering into the Contract (except to the extent that any such information forms part of the Contract).

The Contractor acknowledges that the Principal has entered into the Contract relying upon the Contractor's warranties in this clause 5.

6. The Contractor must:

- (a) if the Works comprise the supply of goods:
 - (i) ensure that all invoices, packing slips and other correspondence relating to the Documents show the name of the Principal, a Purchase Order Number and a Work Order Number as printed on the Documents or as otherwise notified by the Principal to the Contractor;
 - (ii) deliver the goods to the Principal at the Site; and
 - (iii) ensure that the goods:
 - (A) are properly packed for delivery;
 - (B) are fit for their intended purpose;
 - (C) comprise of new materials of merchantable quality which are fit for their purpose and consistent with the nature and character of the goods;
 - (D) comply with all Statutory Requirements and relevant Australian Standards;
 - (E) meet the requirements of the Contract;
 - (F) are free and clear of all charges, liens and encumbrances; and
 - (G) do not infringe any patent, trademark or copyright; or
- (b) if the Works comprise the carrying out of work;
 - (i) regularly and diligently progress the execution of the Works in accordance with the requirements of the Contract;
 - (ii) complete the Works by the Completion Date referred to in the Documents;

- (iii) complete the Works so that they are free from Defects; and
 - (iv) carry out and complete the Works in accordance with all Statutory Requirements, relevant Australian Standards and the Building Code of Australia.
7. The Principal may give the Contractor written notice of a variation titled "Variation Proposal." The Contractor must within 24 hours of receiving such a notice, notify the Principal:

- (a) whether the Variation can be effected; and
- (b) the Contractor's estimate of the effect on the Completion Date and the program.

The Principal may direct the Contractor to give a detailed quotation for the proposed Variation supported by measurements or other evidence of cost. The Price will not be varied for the costs of each compliance with this clause 7.

Whether or not a Variation Proposal has been sought, the Principal may direct the Contractor to carry out a Variation. If this occurs, the Price will be varied by a reasonable amount:

- (c) agreed between the parties; or
 - (d) failing agreement, as determined by the Principal.
8. The Contractor must not vary the Contract unless a direction pursuant to clause 7 has been issued by the Principal.
9. The Contractor must:
- (a) deliver the goods to the Site on the Completion Date; and/or
 - (b) complete the Works by the Completion Date.
10. The Contractor must not deliver the goods earlier than the Completion Date unless otherwise agreed by the Principal in writing.
11. If, and only if:
- (a) the Contractor is or will be delayed in completing the Works by an Act of Prevention;
 - (b) the Contractor has given a written notice to the Principal within 5 days after the cause of delay arises, providing details of the cause of delay and how that delay will delay completion of the Works;
 - (c) the Contractor has given the Principal a written claim for an extension of time stating the time claimed together with a statement of the facts which the Claim is based and any supporting documentation requested by the Principal within 10 days of the cessation of the cause of delay; and
 - (d) the Contractor reasonably satisfies the Principal in its written claim for an extension of time that

completion of the Services will be delayed by an Act of Prevention,

the Contractor will be entitled to an extension of time to the Completion Delivery Date and/or the Completion Date (as applicable).

12. If the Contractor is entitled to an extension of time under clause 11, the Principal will give the Contractor written notice of any extension of time which is granted and the new Delivery Date and/or Completion Date (as applicable).
13. The Principal may at any time and for any reason extend the Delivery Date and/or the Completion Date in its absolute discretion. The Principal is not required to exercise its discretion under this clause 13 for the benefit of the Contractor.
14. When the Contractor is of the opinion that completion of the Works has been reached, the Contractor must request that the Principal issue a notice of completion. The Principal may inspect the Works supplied.
15. If the Works are:
 - (a) in accordance with the requirements of this Contract, the Principal will issue a notice of completion;
 - (b) not in accordance with the requirements of this Contract, the Principal may, at its discretion either:
 - (i) accept the Works;
 - (ii) issue a notice refusing to accept the Works, in which case the Contractor must at the Principal's discretion:
 - (A) collect the goods from the Principal immediately and at the Contractor's cost; or
 - (B) correct the Defect within the time specified in the notice issued by the Principal or if no time is specified within a reasonable time.
16. The parties acknowledge and agree that the Contractor must issue a Payment Claim on the dates listed in the Documents and determined in accordance with clause 14 are for the purpose of the SOP Legislation, the 'reference date'.
17. Within 10 Business Days of receiving a Payment Claim issued by the Contractor, the Principal will issue a payment schedule (**Payment Schedule**) to the Contractor which will;
 - (a) state the value of the work completed in accordance with the Contract for which payment has not previously been made;
 - (b) identifies any amounts the Principal is entitled to retain, deduct, or withhold against moneys otherwise due to the Contractor; and
 - (c) state the amount, if any, which the Principal proposes to pay the Contractor (**Scheduled**

Amount) and if the Scheduled Amount is less than the amount claimed in the Payment Claim, the reasons why this is the case and if the Principal is withholding payment because of deductions indicating the amounts deducted and giving particulars of those deductions.

18. The Principal will pay the Contractor the Scheduled Amount within the Payment Period, which is 30 days unless otherwise agreed.
19. The Principal may deduct from any moneys otherwise due to the Contractor including the Retention any money due from the Contractor to the Principal or claimed by the Principal from the Contractor under the Contract or otherwise.
20. The Price for all Works supplied under the Contract is exclusive of GST and is in Australian dollars.
21. Title in the Works will pass to the Principal when payment is made by the Principal to the Contractor for the Works or part of the Works.
22. The Contractor warrants that it will correct all Defects notified by the Principal prior to the expiration of the Defects Liability Period within the time specified in the notice or if no time is specified, within a reasonable time.
23. If the Contractor fails to correct any Defect or fails to rectify the Defect within the time required, the Principal may rectify the Defect itself or by using a third party and any costs incurred will be a debt due and immediately payable by the Contractor to the Principal.
24. The Contractor represents and warrants that all agents, staff, and sub-consultants employed by the Contractor are covered by worker's compensation insurance or similar cover (howsoever described), which provides coverage in accordance with all relevant Statutory Requirements.
25. The Contractor must have public and product liability insurance with a limit of indemnity not less than the amount of \$20 million for each claim which will be obtained from the Order Date and will be maintained until the expiration of the Defects Liability Period.
26. The Contractor bears the risk of and indemnifies the Principal against:
 - (a) any loss or damage to the Works prior to the Principal accepting the Works identified in a notice under clause 15; and
 - (b) after acceptance of the Works identified in a notice under clause 15, any loss of or damage to the Works or otherwise (including property damage) arising from non-compliance of the Works with the Contract.
27. The Contractor indemnifies the Principal against:
 - (a) any loss or damage to the property of the Principal (other than the Works); and
 - (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by or arising out of or in connection with the provision of the Works by the Contractor.

28. The Contractor:
- (a) warrants that the supply of the Works to the Principal will not infringe any patent, copyright, trade secret or other rights, whether proprietary, contractual or equitable, of any third party, in Australia or elsewhere; and
 - (b) indemnifies the Principal against any loss, damage, cost, liability or expense arising out of any breach or claimed breach of this warranty.
29. The Contractor must not, without the prior written consent of the Principal, disclose to anyone else (including by way of advertising) the existence or details of any Contract, unless that disclosure is required by law or is reasonably necessary to enable the Contractor to supply the Works to the Principal.
30. The Contractor warrants that if the Works comprise the supply of goods:
- (a) it will have full unencumbered title in the Works and will have the right to sell the Works; and
 - (b) the Principal will have title to the Works upon payment.
31. If the Contractor is in substantial breach of the Contract, the Principal may give the Contractor a written notice requiring it to remedy the breach stating:
- (a) that it is a notice under this clause 31;
 - (b) the breach relied upon; and
 - (c) that the breach must be remedied within the time stated in the notice (which time must not be less than 10 Business Days after the notice is received).
32. If the Contractor does not remedy a substantial breach of the Contract the subject of a notice under clause 31 within the time stated in the notice then the Principal may, without prejudice to any other right it may have, immediately terminate the Contract by written notice to the Contractor.
33. Without prejudice to any of the Principal's other rights or entitlements or powers under the Contract, the Principal may:
- (a) at any time for its sole convenience by written notice to the Contractor terminate the Contract from the date stated in the notice; and
 - (b) thereafter either itself or by third parties complete the incomplete part of the Works.
34. If the Principal terminates the Contract pursuant to clause 33, 5 days after the date of termination the Contractor:
- (a) will be entitled to submit a Payment Claim for payment of the following amounts:
 - (i) for Works carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a Payment Claim for Works carried out to the date of termination;
 - (ii) where the Works comprise the carrying out of works:
 - (A) the costs of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay, provided that:
 - (1) the value of the goods or materials is not included in the amount payable under clause 34(a)(i); and
 - (2) title in the goods or materials will vest in the Principal upon payment; and
 - (B) the reasonable cost of removing from the Site all labour, construction plant and other things used in connection with the Works; and
 - (b) must take all reasonable steps to mitigate the costs referred to in clause 34(a)(ii);
 - (c) acknowledges and agrees that:
 - (i) the amount to which the Contractor is entitled under this clause 34 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, termination of the Contract under this clause 34 and the Contractor may not make any claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 34; and
 - (ii) after the Contractor has satisfied its obligations under this clause 34, the Principal shall release any remaining Retention (if any) still held by the Principal.
35. If a dispute or difference between the Principal and the Contractor arises in connection with the Contract (hereafter called a '**Dispute**'), before proceedings are instituted by either party, representatives of the Principal and the Contractor with authority to resolve the Dispute will attend a without prejudice meeting to attempt to resolve the Dispute in good faith.
36. Any notice to be given or served in relation to this Contract must be in writing and delivered by hand or sent by prepaid post or email address to the relevant postal address (deemed received 4 Business Days after posting) or email address sending (deemed to have been received once sent unless the sender receives notice that the email transmission has been unsuccessful or could not be delivered or an out of office notice indicates that the recipient is unavailable. Any email sent on a day which is not a Business Day will be deemed not to have been received until the next Business Day) stated in the Documents or last

notified in writing to the party giving the notice for the party to whom or upon which the notice is to be given or served.

37. The parties agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.
38. No rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part of it.
39. The Contractor agrees that this Contract constitutes the entire agreement between the parties. In the event of any conflict between any Documents and the Conditions of Order, the Conditions of Order will prevail.
40. The Contract is governed by the laws of the state identified in the Documents.
41. This Contract may be executed in counterparts, each of which when taken together will constitute one instrument.
42. The parties acknowledge and agree that:
 - (a) this Contract may be executed electronically by any party;
 - (b) any electronic signature of any signatory on behalf of that party is conclusive evidence of the party's and the signatory's intention that the party be bound by this Contract and that the signatory holds the position indicated at their electronic signature; and
 - (c) this Contract (and a party's executed counterpart) shall not be challenged or denied any legal effect, validity and/or enforceability solely on the ground that is in the form of an electronic record.
43. The Contractor:
 - (a) acknowledges that modern slavery practices are violations of human rights and are serious breaches of Statutory Requirements;
 - (b) commits to supporting ethical supplier practices, including by taking reasonable steps to ensure that there are no human rights abuses, trafficking, slavery or slavery-like practices in any part of the Contractor's business;
 - (c) warrants that neither:
 - (i) the Contractor's; nor
 - (ii) to the best of the Consultant's knowledge and belief (other than as disclosed in writing to the Principal) any of the Contractor's officers, employees, subcontractors, suppliers, or consultants (of any tier) have been convicted of any offence involving human rights abuses,

trafficking, slavery or slavery like practices,

and the Contractor repeats this warranty at the beginning of every month until completion of the Works;

- (d) must:
 - (i) without limiting any other clause of the Contract, provide all documents reasonably required for the Principal to comply with its reporting obligations, if any, under:
 - (A) the *Modern Slavery Act 2018* (NSW); and
 - (B) the *Modern Slavery Act 2018* (Cth), and their respective regulations (as applicable); and
 - (ii) notify the Principal as soon as it becomes aware of any actual or suspected human rights abuses, trafficking, slavery or slavery-like practices in its supply chain which has a connection with the Works; and
- (e) indemnifies the Principal in respect of any claim, loss or damage incurred by the Principal arising out of or in connection with any breach of the Contractor's obligations and warranties as set out in this clause.