



Schedule of Additional Labour Hire Terms

1. APPLICATION AND INTERPRETATION

- (a) **If ticked as applicable in the Order**, the terms and conditions within this Schedule of Additional Labour Hire Terms apply additionally to the other terms and conditions in the documents comprising the Agreement between SCE and the Supplier.
- (b) Any inconsistency, discrepancy or ambiguity between the documents comprising the Agreement between SCE and the Supplier, is to be resolved and interpreted in accordance with the order of precedence set out in clause 1(a) of SCE's Standard Purchase Order Terms and Conditions unless otherwise determined by SCE.
- (c) Any capitalised terms not defined in clause 18 of this Schedule of Additional Labour Hire Terms have the meaning set out in SCE's Standard Purchase Order Terms and Conditions.

2. SUPPLY OF LABOUR

- (a) The Supplier must supply Labour in full accordance with the Agreement by the Date for Supply.
- (b) The Supplier will maintain sufficient inventory to supply Labour in accordance with the Order.
- (c) The Supplier must immediately give written notice of anything that may or does affect or delay its compliance with this Agreement (including unavailability or changes in the Supplier's Labour). Such notice will not discharge or lessen the Supplier's obligations under this Agreement.
- (d) If the Supplier notifies SCE that it cannot supply appropriately qualified Labour to perform the roles specified in the Order, or otherwise fails to supply the appropriately qualified Labour, SCE may seek to have the Order partially or fully met by other suppliers, and the Supplier will only receive payment in respect of the Order to the extent of the Labour supplied under the Order.
- (e) The Supplier must not replace any Labour without the prior written consent of SCE.
- (f) The Supplier must only supply Labour who:
 - (i) are suitably qualified and experienced to perform services to a satisfactory standard;
 - (ii) have completed any training necessary to the completion of their duties while working at SCE and any training specified in the Order;
 - (iii) have completed, at the Supplier's cost, the work health and safety induction required by SCE and the Supplier's own work health and safety induction;

- (iv) are medically and physically capable of performing the tasks that may be allocated to them by SCE and where required, have passed the medical clearance requirements set out in the Order;
- (v) have transportation to and from Site; and
- (vi) are available to perform the work required by SCE.
- (g) The Supplier is responsible for, and will remain responsible at all times and the Price is deemed to include full allowance for, the management of employment and training arrangements for Labour including:
 - (i) remuneration;
 - (ii) payroll administration and leave management;
 - (iii) annual leave and leave loading and all other leave;
 - (iv) superannuation;
 - (v) sick leave;
 - (vi) public holidays;
 - (vii) performance management and disciplinary processes;
 - (viii) management of any training requirements;
 - (ix) management of human resources and industrial relations issues relating to employment arrangements;
 - (x) management of injured workers and workers compensation issues;
 - (xi) all statutory and industrial obligations relating to employees, including work health and safety obligations, discrimination obligations and privacy obligations; and
 - (xii) compliance with relevant workplace relations legislation and any applicable award, certified agreement or other industrial instrument entitlement.
- (h) If requested by SCE, the Supplier must provide copies of the Labour's employment or engagement contracts, certifications supporting current qualifications, and details of all inductions completed by the Labour.
- (i) If the Supplier becomes aware of any potential dispute which may affect the performance of any Labour under this Agreement, the Supplier must take all reasonable steps to resolve any dispute or issue arising out of or evidenced by the communication or information without



any interruption to the performance of services under this Agreement.

- (j) The Supplier must attend meetings arranged by SCE to review the progress of, and any problems, Claims and matters related to the performance of, this Agreement.
- (k) The Supplier must ensure that the Labour works within the Hours of Work specified in the Order.

3. VARIATIONS

- (a) The Supplier shall not vary the supply of Labour under the Order except in accordance with a written Direction of SCE.
- (b) Variations will be valued in accordance with the rates and prices applying to the Order to the extent SCE determines that those rates or prices apply, failing which, SCE shall use reasonable rates.
- (c) A Direction which is not in writing and signed by SCE:
 - (i) is not valid;
 - (ii) must not be relied upon by the Supplier; and
 - (iii) will not give rise to a Claim under this Agreement or otherwise at Law by the Supplier.

4. SUSPENSION

- (a) SCE may immediately, and at any time, Direct the Supplier to suspend the supply of Labour under the Order.
- (b) The Supplier cannot claim for the suspension if it results from the Supplier's non-performance of its obligations under this Agreement. Otherwise, the Supplier may recover its reasonable extra costs incurred due to the suspension provided it mitigates and minimises its loss. This will be the Supplier's full compensation and only entitlement to claim for the suspension.
- (c) The Supplier must immediately recommence supplying the Labour if Directed.

5. RELATIONSHIP BETWEEN SCE, SUPPLIER AND LABOUR

- (a) It is SCE's and the Supplier's intention that all Labour will at all times remain the employees of the Supplier. Nothing contained in this Agreement is to be construed as constituting an arrangement of employer/employee as between SCE and any Labourer.
- (b) The Supplier must direct the Labour and ensure that the Labour agree in writing to follow the Directions and instructions of SCE in the course of performing services for SCE, except where to do so would be:
 - (i) unsuitable or unsafe in the Supplier's reasonable opinion; or
 - (ii) would be contrary to Law.

- (c) If, for any reason, any Labourer makes a request for leave to SCE, SCE will inform the Supplier of the request. SCE will not approve any such requests for leave. Such approvals must be provided by the Supplier. Before granting such leave, the Supplier must confirm with SCE whether it is convenient for leave to be granted at that time.
- (d) If the Supplier must (because of legislative or contractual requirements) grant leave to a Labourer, the Supplier will provide a replacement Labourer of commensurate skills, who is acceptable to SCE. If the request for leave is for less than 2 days, SCE may agree with the Supplier that no replacement be provided. Such a decision is in the absolute discretion of SCE. The Supplier will not be entitled to charge the Price for periods of leave in respect of a Labourer on leave.
- (e) The Supplier must advise SCE immediately if any of the following occurs:
 - (i) an employee of the Supplier or a Union makes a Claim, demand or complaint in relation to any matter concerning the provision of services under this Agreement, including in respect of wages, health and safety, terms and conditions of employment (including proposed terms and conditions) or any other industrial matter;
 - (ii) any correspondence is received from or on behalf of an officer appointed under legislation, in respect of any Labour provided under this Agreement.

6. LABOURERS

- (a) If SCE is dissatisfied with the standard of work of a Labourer, it will advise the Supplier as soon as practicable.
- (b) SCE may:
 - (i) object to any Labourer that the Supplier proposes to supply and Direct the Supplier that any such person is not permitted on Site; or
 - (ii) Direct the Supplier to promptly remove any Labourer from any Site and, if necessary, to replace any Labourer, at any time, for any reason.
- (c) If SCE Directs the removal of a Labourer in accordance with clause 6(b) (other than because of a reduction in SCE's need for the Labour provided) or objects to a Labourer, at any time, the Supplier is not entitled to payment in respect of the work performed by the Labourer on the day the objection is notified or the Direction is issued to the Supplier.

7. PAYMENT

- (a) The Supplier will pay all wages and provide all other benefits of any kind that the Supplier is required by Law



or contract to pay to the Labour under the terms of the Labour's employment with the Supplier. SCE will not make any payment to the Labour and has no obligation to make any payment to or on behalf of the Labour.

- (b) In consideration of the supply of Labour under the Agreement, SCE agrees to pay to the Supplier such charge rates as set out in the Order for the services of the Labour ("**Charge Rate**"). Charge Rates may also be agreed between authorised representatives of SCE and the Supplier and confirmed in writing by separate correspondence from time to time.
- (c) Prior to any Charge Rates for Labour being agreed, it is the Supplier's responsibility to fully and accurately assess which legislation, industrial awards, industrial agreements or practices, or any other matter that may affect the Agreement (including wages, overtime, allowances, penalties and any leave entitlements) which the Supplier is obliged to comply with in respect to the Labour.
- (d) If any legislation, awards, agreements or practices impact upon SCE's obligations under this Agreement, the Supplier must notify SCE of such obligations as and when they arise. If the Supplier does not advise SCE of such obligations, the Supplier agrees to indemnify SCE for the cost of complying with such obligations and any cost, loss or damage suffered by SCE as a result of SCE's breach of such obligations.

8. INVOICE INSTRUCTIONS

- (a) To facilitate the calculation of hours a Labourer has worked, the Supplier will provide a completed time sheet with respect to each Labourer, recording the number of hours each Labourer has worked each week.
- (b) SCE may, in writing, notify the Supplier of a dispute in relation to any timesheet it receives from the Supplier. The Supplier has 4 Business Days within which to respond to such a notice, after which time the Supplier will be deemed to have accepted the matters contained in SCE's notice.
- (c) Until any dispute is resolved, the Supplier can only issue an invoice for the items not in dispute.
- (d) By issuing an invoice, the Supplier warrants to SCE that:
 - (i) the Labour has completed the work required under the Order, for the period relevant to the timesheet; and
 - (ii) that all Labour have been paid all monies due and payable to them in respect of their employment with the Supplier, for the work the subject of the invoice.
- (e) If the Labour supplied in respect of the Order performs operations of SCE on a Site in New South Wales, the Supplier must include with each claim for payment in

respect of each such Order, a duly completed 'Subcontractor's Statement' in the form provided or advised by SCE, the provision of which is a condition precedent to the Supplier's entitlement to submit each claim for payment.

9. INDUSTRIAL HARMONY

- (a) Labour will be obliged to perform work as Directed and not join protected action entered into legally by another group or Union, if not legally entitled to do so.
- (b) SCE will ensure that Labour are treated fairly, regardless of Union affiliation.
- (c) In the event of industrial action or a dispute that involves or affects Labour, SCE agrees to assist the Supplier and do all things reasonably required to resolve the industrial action or dispute. This includes allowing the Supplier's representatives access to Labour staff on Site and to SCE staff where they may be relevant to the resolution of a dispute or complaint. Without limiting SCE's entitlements, if Labour is withdrawn or otherwise unavailable, SCE may temporarily or otherwise engage another supplier to supply replacement Labour without being in breach of this Agreement.

10. WORK HEALTH AND SAFETY

The Supplier undertakes to provide work health and safety induction and ongoing training for each Labourer. The Supplier is responsible for inspecting the workplace to ensure the safety of its employees prior to the commencement of and during the term of the Agreement.

11. LIABILITIES AND INSURANCES

- (a) The Supplier agrees to indemnify SCE, its employees and related bodies corporate against all Claims and losses arising out of or in connection with any Labour or services provided under this Agreement (including Claims arising out of injury to or death of a Labourer).
- (b) The indemnity in clause 11(a) will be reduced by an amount which reflects the extent to which SCE, its employees and related bodies corporate (as the case may be) negligently caused the damage the subject of the Claim.
- (c) In addition to the other insurance requirements of the Agreement, the Supplier agrees to effect and maintain at its own expense for the period of this Agreement, the following insurances:
 - (i) Workers' compensation insurance as required by Law. The policy must, where permitted by Law, contain a principal's indemnity section in favour of SCE and SCE's client at the Site where the Labour is working ("Principal"); and



- (ii) Public liability insurance covering legal liability in respect of injury to people and damage to property arising out of the Supplier's business with a sum insured of not less than the amount stated in the Order (or if no amount is stated, not less than \$20,000,000) in respect of any one occurrence and an excess of no greater than \$10,000. This insurance policy must name SCE, the Principal and the Supplier as insureds and cover each of them for their respective rights, interests and liabilities in relation to the activities of the Labour provided by the Supplier, including their liability to third parties.
- (d) SCE's sole liability to the Supplier in connection with this Agreement is to pay the Price, if any, outstanding and not otherwise in dispute under the Agreement.

12. CLAIMS IN RESPECT OF INJURIES SUSTAINED

Regardless of the Supplier's obligations to effect insurance pursuant to clause 11, and without limiting any other clause in the Agreement and to the extent permitted under the Personal Injuries Act, the Supplier indemnifies, and must keep indemnified, SCE against all Claims, damages, demands, proceedings, liabilities, costs, charges and expenses of any kind made against or incurred by SCE arising out of or in connection with:

- (a) a recovery action by WorkCover against SCE;
- (b) a common law action against SCE; or
- (c) proceedings commenced under any Personal Injuries Act,

pertaining to an injury sustained by Labour or an employee of the Supplier during the performance of the Supplier's supply under this Agreement.

13. PROPORTIONATE LIABILITY LEGISLATION

- (a) To the maximum extent permitted by Law:
 - (i) the Parties agree that the Proportionate Liability Act will not have any application to the Agreement, the performance of the work under the Agreement, or any of the obligations of the Supplier under the Agreement or at Law; and
 - (ii) despite the provisions of the Proportionate Liability Act, the Supplier acknowledges that the Supplier is solely responsible for and indemnifies SCE in respect of any loss, damage, cost, Claim, expense or proceeding SCE suffers or incurs arising out of or in connection with any wrongful or negligent act or omission on the part of the Supplier, its officers, employees, agents and contractors, in performance of the Agreement or on the part of any of its subcontractors in performance of a relevant subcontract; and

- (iii) the Parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Act did not apply.
- (b) If, despite the previous subclause 13(a)), one or more of the Proportionate Liability Act does apply, then the Supplier acknowledges and agrees that, for the purposes of the Proportionate Liability Act, the Supplier is entirely and solely responsible for any failure to take reasonable care on the part of any of its officers, employees, agents and subcontractors.

14. TERMINATION

In addition to any other terms or conditions of the Agreement in respect of termination, if the Agreement is terminated for any reason, the Supplier is not entitled to any payment from SCE for the costs incurred by the Supplier in demobilising the Labour from any of SCE's Sites.

15. DISPUTE RESOLUTION

- (a) A Party claiming that a dispute has arisen shall notify the other Party in writing. Such notice shall be within 5 Business Days of the cause of the alleged dispute.
- (b) If the amount in dispute is less than \$400,000 and the dispute cannot be resolved by negotiation, then, to the extent permitted by Law, the dispute shall be settled by the final and binding decision of an arbitrator appointed:
 - (i) by agreement between the Parties; or
 - (ii) if agreement is not reached within 10 Business Days after a notice of dispute, an arbitrator nominated by the President of the Resolution Institute.
- (c) The arbitration shall be conducted in accordance with the Resolution Institute Arbitration Rules. Unless otherwise agreed, the costs of the arbitration will be borne by both Parties equally.
- (d) Notwithstanding this clause 15, SCE may give written notice to the Supplier requiring any dispute which affects a Head Contract dispute to be resolved as part of the Head Contract dispute.

16. SERVICE OF NOTICES

- (a) Except as otherwise stated in this Agreement, any notice required pursuant to this Agreement or the Order must be:
 - (i) in writing; and
 - (ii) either sent by email, certified mail or delivered by hand.
- (b) A notice to either of the Parties must be addressed to that Party at the address in the Order or such other



address as may be notified by the other for that Party at any time for the purposes of the Order.

- (c) A notice (and other documents) shall be deemed to have been given and received:
- (i) if sent by email: at the time of departure from the sender's mail server unless the sender receives an automated message generated by the recipient's mail server (Failure Message) that the email has not been delivered within two hours.

For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message;
 - (ii) if delivered by hand: that day, if delivered by 5.00pm on a Business Day or the next Business Day, in any other case; or
 - (iii) 7 Business Days after posting.

17. NOTIFICATION OF CLAIMS

Subject to any other clause of this Agreement which specifies a pre-condition to the Supplier making a Claim, SCE will not be liable upon any Claim and is deemed released by the Supplier in respect of any matter arising under or in connection with the Agreement unless the Claim, together with full particulars of the Claim, is lodged in writing with SCE not later than 10 Business Days after the date of occurrence of events or circumstances on which the Claim is based.

18. DEFINITIONS AND INTERPRETATION

Any capitalised terms not defined in clause 18 of this Schedule of Additional Labour Hire Terms have the meaning set out in SCE's Standard Purchase Order Terms and Conditions.

Agreement has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Business Day has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with this Agreement, whether at law (including breach of contract) or in equity (including restitution), by statute or in tort (including negligence).

Date for Supply is the date expressed to be the date for the Labour's commencement at the Site in an Order.

Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Head Contract means any contract between the Principal and SCE identified in the Order or as is otherwise advised by SCE as applicable..

Hours of Work means the Hours of Work specified in the Order or otherwise advised by SCE.

Labour means the persons employed by the Supplier and supplied to SCE pursuant to the Order for the performance of certain operations of SCE.

Labourer means an individual person forming part of Labour.

Law has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Order has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Party or Parties has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Personal Injuries Act means the *Personal Injuries Proceedings Act 2002* (Qld) and the *Civil Liability Act 2003* (Qld), the *Civil Law (Wrongs) Act 2002* (ACT), *Personal Injuries (Civil Claims) Act 2007* (NT) and the *Personal Injuries (Liabilities and Damages) Act 2003* (NT), *Civil Liability Act 1936* (SA), *The Civil Liability Act 2002* (NSW), *Civil Liability Act 2002* (WA), *Civil Liability Act 2002* (Tas) and *The Wrongs Act 1958* (Vic), as amended from time to time and as applies in the relevant jurisdiction applying to the Agreement.

Principal is the person named as principal in any Head Contract relating to the Order.

Price has the meaning in SCE's Standard Purchase Order Terms and Conditions.

Proportionate Liability Act means the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT), the *Civil Liability Act 2002* (NSW), the *Proportionate Liability Act 2005* (NT) and the *Building Act 1993* (NT), the *Civil Liability Act 2003* (Qld), the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA), the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas), the *Wrongs Act 1958* (Vic) and the *Civil Liability Act 2002* (WA), as amended from time to time and as applies in the relevant jurisdiction applying to the Agreement.

SCE means Shamrock Civil Engineering Pty. Ltd. ABN 68 066 655 856 ACN 066 655 856.

Schedule of Additional Labour Hire Terms means this document forming part of the Agreement.

Site means each of the locations or places at which Labour supplied by the Supplier pursuant to the Agreement undertakes certain operations of SCE.

Standard Purchase Order Terms and Conditions means SCE's Standard Purchase Order Terms and Conditions applying to the Order.

Supplier has the meaning in SCE's Standard Purchase Order Terms and Conditions.



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**SCHEDULE OF ADDITIONAL LABOUR
TERMS –**
APPLYING TO SCE'S STANDARD PURCHASE
ORDER TERMS AND CONDITIONS

Union means a trade union or other like body of which employees may be members.