

TERMS AND CONDITIONS FOR DESIGN AND CONSTRUCTION WORK

1. Preliminary

These terms and conditions apply to the letter of offer (**UCS Offer**) that refers to these terms and conditions or contains a link through which these terms and conditions may be accessed.

2. UCS Offer

The UCS Offer is an offer by the UCS Entity (**UCS**) named in the UCS Offer to the client (**Client**) named in the UCS Offer to perform for the Client the work (including the supply of any goods or materials in connection with or incorporated into the work) described in the UCS Offer (**Work**) in accordance with the UCS Offer and these terms and conditions. UCS may at any time withdraw the UCS Offer (orally or in writing) before it is accepted by the Client. The UCS Offer is only accepted when the Client:

- (a) gives to UCS written notice of acceptance of the UCS Offer; or
- (b) tells UCS orally that it accepts the UCS Offer and UCS agrees to this form of acceptance and commences the Work.

If the UCS Offer is not accepted by the Client within 30 days from the date of the UCS Offer, the quoted pricing may be reviewed and adjusted by UCS. The UCS Offer is automatically withdrawn if the Client has not accepted it within 120 days from the date of the UCS Offer. If the Client accepts the UCS Offer before it is withdrawn, a binding agreement (**Contract**) between UCS and the Client will arise for the performance of, and payment for, the Work in accordance with the UCS Offer and these terms and conditions (subject to any pricing adjustment notified at any time to the Client by UCS if the UCS Offer had not been accepted within 30 days from the date of the UCS Offer).

3. Work

If the Client accepts the UCS Offer before it is withdrawn, UCS must carry out the Work in accordance with the Contract. UCS is only required to carry out the specific items of work described in the UCS Offer. UCS may use subcontractors to carry out any part of the Work.

4. Specific exclusions

Without limiting the generality of clause 3, except to the extent stated in the UCS Offer, the parties acknowledge and agree that the UCS Offer was prepared and accepted on the basis that:

- (a) UCS is not required as part of the Work to obtain any permit or approval, arrange or undertake any traffic control (whether vehicular, pedestrian or otherwise), undertake any design work, prepare any site plan or related document, provide any artificial lighting, organise any special (out-of-hours)

circuit cut-over, handle or remove asbestos, obtain any insurance for the Work (except for UCS's own public liability, professional indemnity and any applicable workers compensation insurance relating to UCS's own employees);

- (b) all approvals, consents and permits (whether from a government body, electricity, gas, internet, telecommunications, infrastructure or utilities provider, property owner, occupier or otherwise) have been obtained by the Client, or will be obtained by the Client in a timely way, to allow the Work to be performed in accordance with this Contract without breaching any law or contract, committing any trespass or otherwise violating anyone's rights;
- (c) the Work is to be performed entirely in normal working hours i.e. 8 hours per day worked between 7:30 am and 3:30 pm (local time where the Work is to be performed) Monday to Friday (excluding public holidays and rostered days off);
- (d) if the Work includes any underground services, the underground site conditions are normal, and there is no shale, rock, other difficult soil condition, underground artificial obstacle, congested underground cabling, pipes or other facilities, flooding or contamination which would require excavation, boring, hand digging, pumping out, or other special handling or treatment;
- (e) any existing conduits (whether carrier/utility conduits or otherwise) are clear and free of blockages;
- (f) all information provided by the Client (including documents, plans, specifications, drawings, location of services and alignments and depths) is complete and accurate and, where applicable, approved by each relevant government body; and
- (g) any circumstance, fact, item, matter or work specified in the UCS Offer as an assumption or exclusion is correct and as stated;

and any additional work required to perform or complete the Work due to or in connection with any of the above not being as stated will be treated as a variation to the Work (and clause 6 will apply).

5. Client obligations

Unless specifically stated otherwise in the UCS Offer, the Client:

- (a) must provide to or for the use or benefit of UCS in a proper and workmanlike and safe manner and in accordance with all applicable laws all

services and items necessary for the performance of the Work (including those specified in clause 4) which are not the obligation of UCS;

- (b) must arrange for UCS's personnel to have full, safe and free access to the site where the Work is to be carried out at all times necessary for the performance of the Work;
- (c) warrants to UCS that it has obtained all necessary permits and approvals for the performance of the Work (and the Client must provide copies of all such permits and approvals to UCS upon request); and
- (d) must ensure that the site where the Work is to be performed constitutes a safe and healthy workplace and complies with all applicable environmental and occupational health and safety legislation, regulations, codes of practice and standards.

6. Variations

If:

- (a) the Client requests any variation to or in respect of the Work; or
- (b) any variation is necessary for the continued performance or completion of the Work (whether due to unforeseen circumstances, site conditions not being as expected, other factors not being as represented to or assumed by UCS or otherwise);

UCS is not obliged to perform the variation or, if the variation is necessary for the continued performance or completion of the Work, to perform any further of the Work until the Client and UCS have agreed on all relevant terms in relation to the performance of, and payment for, the variation. Except to the extent otherwise agreed between UCS and the Client, where UCS proceeds with a variation with the consent of the Client, clause 9 will apply to the variation and the additional cost of the variation, as if the variation were a part of the Work. If UCS proceeds with a variation with the consent of the Client but an amount for the variation has not been specifically agreed, UCS is entitled to charge and be paid such additional amount for the variation (and the Work as varied) as UCS considers reasonable in the circumstances.

7. Time requirements

UCS must use its reasonable efforts to perform the Work within the time limits set out in the UCS Offer or, if not specified, within a reasonable time in all the circumstances. UCS is not liable for any loss or damage suffered by the Client or any other person due to or in connection with any delay in performing the Work arising from:

- (a) adverse weather;
- (b) act of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, pandemic, government imposed restriction, war, embargo, sabotage, riot or civil disturbance, strike or other industrial or labour dispute (whether involving UCS's employees or otherwise), expropriation, terrorist act, confiscation or requisitioning of any facility, order or temporary or permanent injunction of any court or tribunal or any other event which is beyond UCS's reasonable control;
- (c) any variation to or in respect of the Work or reaching agreement in relation to the performance of, or payment for, the variation;
- (d) any act, omission, neglect or default of the Client or any of its personnel or any other person (except UCS or its personnel); or
- (e) any supply issues in relation to materials procurement or the availability of other resources, such as subcontractors;

and the time to complete the Work will be extended by such period as UCS reasonably requires having regard to the impact of the relevant event or circumstance on the performance of the Work. Additionally, if the Client fails to pay any amount due to UCS under the Contract by the due date of payment, the time to perform and/or complete the Work will be extended by the period the Client is late in making payment, and UCS will not have any liability for any loss or damage suffered by the Client or any other person due to or in connection with the extension.

8. Completion Certificate

If requested by UCS, the Client must inspect the Work (or any part of the Work) once it has been completed (in the opinion of UCS) as soon as reasonably practicable after being requested to do so by UCS and at the time of inspection the Client must sign and give to UCS a certificate (**Completion Certificate**) stating that the Work (or part of the Work) has been completed to the Client's satisfaction subject only to any defects identified at that time. If the Client fails to inspect, or give to UCS a signed Completion Certificate for, the Work (or part of the Work) within 3 days after being requested to do so by UCS, the Work (or part of the Work) will be taken to have been completed, and the Client will be deemed to have signed a Completion Certificate for the Work (or part of the Work) at the end of that 3 day period, with no identified defects.

9. Payment

UCS is entitled to be paid by the Client for the performance of the Work, the amount (**Total Price**) for

the Work specified in the UCS Offer. The Total Price must be paid:

- (a) if progress amounts for stages of the Work are specified in the UCS Offer, in those progress amounts, with each progress amount for a stage of the Work becoming payable after that stage is completed; or
- (b) in any other case, after the Work is completed **provided that** if the Work is not completed within a month, UCS may charge every month, and is entitled to be paid by, the Client a progress amount determined by UCS for the stage or other part of the Work that is completed up to the date of UCS's invoice.

The Client must pay to UCS each invoiced amount to which UCS is entitled in respect of the Total Price within 14 days from the date of UCS's invoice or such other period as may be specified in the UCS Offer.

10. Adjustment to Total Price

If the purchase cost of any cable or other goods or materials required to be supplied in connection with or incorporated into or otherwise used for the Work increases after the date of the UCS Offer and before the relevant item is purchased by UCS for the Work, the Total Price will be increased by such amount as UCS reasonably determines to take account of that cost increase, and all references to the Total Price in these terms and conditions will be to the Total Price as so increased.

11. GST

All amounts payable to UCS under the Contract (other than an amount for GST payable to UCS under this clause 11) have been calculated without regard to GST except where the UCS Offer otherwise provides. If the whole or any part of any such amount is the consideration for a taxable supply for which UCS is liable to pay GST, UCS may charge the Client, and the Client must pay UCS, concurrently with the payment of that amount, an additional amount equal to the GST payable in respect of the taxable supply calculated on the basis that the value of the taxable supply is the amount payable for the taxable supply excluding any GST. The recovery of consideration for any taxable supply made under the Contract is subject to UCS issuing to the Client a tax invoice in respect of the supply. Where UCS is entitled to reimbursement from the Client for any cost incurred by UCS in respect of the Work, UCS will only be entitled to recover the cost less the amount of any input tax credit which UCS is entitled to receive for the acquisition to which the cost relates.

12. Rectification of defects

Subject to clause 13, any defect in the workmanship of the Work which exists at completion of the Work or manifests itself within 12 months from the date of

completion solely due to goods or services actually supplied or provided by UCS itself or through its personnel, must be rectified as soon as reasonably practicable by UCS. This does not cover a defect caused by the Client, any work carried out by the Client or any other person (except UCS or any of its personnel) or fair wear and tear. In addition, where the Work includes any filling of excavations, UCS is not responsible for any defect relating to the fill or surface levels (whether due to subsidence or otherwise) not identified as a defect in the Completion Certificate for the Work.

13. Limitation of liability

The Client acknowledges and agrees that in accepting the UCS Offer or otherwise entering into the Contract, the Client does not do so on the basis of, and does not rely on, any representation, warranty, statement or promise except as expressly set out in the Contract, and all conditions, warranties and other terms which would be implied or otherwise incorporated into the Contract as binding on UCS are excluded to the fullest extent permitted by law.

None of UCS and its related bodies corporate and the officers, employees, agents, contractors and subcontractors of any of them (**UCS Group**) has any liability to any of the Client and its related bodies corporate and the officers, employees, agents, contractors and subcontractors of any of them (**Client Group**), and the Client must release, and must procure that each other member of the Client Group releases, each of the UCS Group from any liability, for:

- (a) any defect in the Work which manifests itself after 12 months from the date of completion or is not solely due to goods or services actually supplied or provided by UCS itself or through its personnel or any other defect in the Work, except for a defect which UCS is required to rectify under clause 12;
- (b) any illness, injury or death to or of any person or any loss of or damage to any property caused or contributed to by any act or omission (negligent or otherwise) of any of the UCS Group in the performance of the Work; or
- (c) any consequential or indirect loss arising under or in connection with the Contract including, without limitation, loss of profits, bonuses, anticipated income, anticipated cost savings or corruption or destruction of data.

The total liability of the UCS Group to the Client Group for a breach of the Contract or in tort (including negligence) or otherwise under or in connection with the Contract (including to rectify defects in the Work under clause 12):

(d) in the case of defective goods supplied by UCS itself or through its personnel, is limited at the option of UCS to:

- (1) replacement of the goods or supply of equivalent goods;
- (2) repair of the goods; or
- (3) payment of the cost of replacing the goods or of acquiring equivalent goods or of having the goods repaired;

(e) in the case of defective services supplied or provided by UCS itself or through its personnel, is limited at the option of UCS to:

- (1) supply of the services again; or
- (2) payment of the cost of having the services supplied again; and
- (3) in any other case, is limited to the Total Price for the Work.

The Client agrees on behalf of each other member of the Client Group to the UCS Group's limited liability under this clause 13 and agrees to ensure that each member of the Client Group observes, and is bound by, this clause 13.

The Client indemnifies the UCS Group against any loss or liability (including, without limitation, legal costs on a full indemnity basis) arising out of or as a consequence of:

- (f) any illness, injury or death to or of any individual in the Client Group or any other individual except any of UCS's personnel; or
- (g) any loss of or damage to any property of the Client or any other person except UCS;

caused or contributed to by any act or omission (negligent or otherwise) of any of the UCS Group in the performance of the Work. This indemnity does not extend to any liability of UCS under clause 12.

Even though not a party to the Contract, a member of the UCS Group will be entitled to the benefit of an indemnity or release given in its favour by the Client under the Contract, and the indemnity or release may be enforced on its behalf by UCS.

No exclusion of implied terms or disclaimer or limitation of liability contained in this clause 13 will apply to the extent that it is prohibited by law.

14. Termination and/or suspension

If:

- (a) the Client fails to pay any amount due to UCS under the Contract within 14 days from the due date of payment;

(b) the Client commits any other breach of the Contract which in UCS's opinion is capable of remedy, and fails to remedy the breach within 7 days from receipt of a written notice of default from UCS (and the parties agree that failure to perform an obligation by a particular time is a breach capable of remedy);

(c) the Client commits a material breach of the Contract which in UCS's opinion is not capable of remedy;

(d) the parties cannot agree on terms in relation to the performance of, and payment for, a variation to or in respect of the Work;

(e) the Client is dissolved, wound up or placed into bankruptcy or an order is made by a court or an application is made to a court for an order or a resolution is passed or the Client gives notice of its intention that the Client be dissolved, wound up or placed into bankruptcy;

(f) a liquidator, provisional liquidator or trustee in bankruptcy is appointed in respect of the Client or any property of the Client or an application is made to a court for an order that a liquidator, provisional liquidator or trustee in bankruptcy be appointed in respect of the Client or any property of the Client;

(g) a controller or administrator is appointed in respect of the Client or any property of the Client or takes possession or gains control of any property of the Client;

(h) except to reconstruct or amalgamate while solvent, the Client enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(i) the Client is (or states that it is) insolvent or an insolvent under administration (each as defined in the Corporations Act);

(j) as a result of the operation of section 459F(1) of the Corporations Act, the Client is taken to have failed to comply with a statutory demand;

(k) execution or other process issued on a judgment, decree or order of a court (whether an Australian Court or not) in favour of a creditor against the Client, or another person authorised to be sued as nominal defendant on behalf of the Client, is returned wholly or partly unsatisfied, or the Client makes a statement from which it may be reasonably deduced that such an event has occurred;

- (l) the Client takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or
- (m) in the opinion of UCS, there is a change in control of the Client;

UCS may, in its absolute discretion, elect to:

- (n) suspend further performance of the Work until the matter is remedied to its satisfaction; or
- (o) terminate the Contract at any time, including following an election to suspend further performance of the Work;

by giving to the Client written notice of its election. Where UCS elects to terminate, termination will be effective at the date of termination stated in the notice or, if no date is stated, on the date the termination notice is given to the Client. Where UCS elects to suspend further performance of the Work, UCS will not have any liability for any loss or damage suffered by the Client or any other person due to or in connection with any delay in performing the Work arising from the suspension, and the time to complete the Work will be extended by such period as UCS reasonably requires having regard to the impact of the suspension on the performance of the Work.

15. Termination by Client

If UCS commits a material breach of the Contract and (where the breach is capable of remedy) fails to remedy the breach within 14 days from receipt of a written notice of default from the Client (and the parties agree that failure to perform an obligation by a particular time is a breach capable of remedy), the Contract may be terminated by the Client giving a written notice of termination to UCS. The Client acknowledges and agrees that it is not entitled to terminate the Contract except in accordance with this clause 15.

16. Consequences of termination

Where the Contract is terminated for any reason, the Client must pay UCS for:

- (a) the Work performed up to the date of termination such amount which would have been payable for that Work if the Contract had not been terminated and UCS had invoiced the Client for payment;
- (b) the cost of goods and materials reasonably on order by UCS for the Work at the date of termination; and
- (c) the cost of dismantling, packing up, loading and/or removing UCS's machinery, equipment and other movables, and UCS otherwise vacating and/or demobilizing, from the site where the Work is performed;

and clause 9 will apply so far as it is capable of application (and with all necessary changes) to the determination and payment of the aggregate of these amounts on the basis it is a final payment and a reference to completion of the Work in that clause is taken to be a reference to the termination of the Contract. In addition, termination of the Contract will not prejudice or otherwise affect any rights and obligations of the parties expressed in the Contract or intended to survive termination of the Contract, nor will it prejudice or otherwise affect any right or remedy 1 party has against another party in respect of any breach of the Contract before termination, but will terminate all other rights and obligations of the parties under the Contract. This clause 16 and clauses 9, 11, 13, and 18 to 28 survive termination of the Contract.

17. Further assurances

Each party must, at its own expense, do everything reasonably necessary to give effect to the Contract and the transactions contemplated by it, including without limitation the execution of documents.

18. Governing law and jurisdiction

The Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

19. Amendment

The parties may only amend the Contract if each party signs the written amendment.

20. Remedies cumulative

The rights and remedies provided in the Contract are cumulative with and not exclusive of the rights and remedies provided by law independently of the Contract.

21. Continuing indemnities

Each indemnity in the Contract is:

- (a) a continuing obligation despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full;
- (b) is additional, separate and independent from the other obligations of the parties; and
- (c) survives termination of the Contract.

It is not necessary for a person to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

22. Assignment

The Contract is for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by the Contract. The Client may only assign its rights under the Contract after it obtains the written consent of UCS. UCS may assign

its rights under the Contract to any person without the Client's consent.

23. Severance

If any provision of the Contract is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

24. Entire agreement

The terms of the Contract entirely comprise the terms set out in the UCS Offer and these terms and conditions, and they constitute the entire agreement of the parties in respect of the subject matter of the Contract and supersede, replace and override all other discussions, undertakings, terms and agreements. Without limiting the generality of the foregoing, no additional term set out in the Client's acceptance of the UCS Offer will apply or have any effect unless expressly agreed to in writing by UCS.

25. Relationship

Nothing in the Contract constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably except as expressly stated in the Contract.

26. Notices

A party may send a notice in connection with the Contract by hand delivery, pre-paid post or email to another party at the address details set out in the UCS Offer or in such other way as the recipient party may have last notified each other party in writing. A notice is deemed to be received:

- (a) if sent by hand delivery, at the time of delivery if on a business day at or before 5:30 pm, otherwise on the next business day;
- (b) if sent by pre-paid post, on the second business day after the date of posting; or
- (c) if sent by email, at the time of sending if on a business day at or before 5:30 pm, otherwise on the next business day, **provided that** the sender does not receive a subsequent 'Out of Office' reply or similar response or a system administrator message stating that the email did not reach its intended recipient.

27. Warranties of authority

Each party warrants and represents to each other party (at the date of the Client's acceptance of the UCS Offer) that:

- (a) it has the power to enter into and perform the Contract, and enters into the Contract in its own capacity as not as trustee;
- (b) the Contract is valid and binding on it and enforceable against it in accordance with its terms subject to any necessary stamping, the availability of any equitable remedies and to laws affecting creditors' rights generally;
- (c) it benefits by entering into the Contract; and
- (d) it is able to pay its debts as and when they fall due, and no action has been taken towards winding it up or placing it in bankruptcy.

28. Interpretation

In the UCS Offer and these terms and conditions headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:

- (a) a reference to a word includes the singular and the plural of the word and vice versa and a reference to a gender includes any gender;
- (b) a term which refers to a person includes a company, a partnership, an association, a corporation, a body corporate, a joint venture, a sovereign state, a government or a government department or agency;
- (c) no provision of these terms and conditions will be construed adversely to a party solely on the ground that the party was responsible for their preparation;
- (d) an agreement, obligation or indemnity on the part of 2 or more persons binds them jointly and severally;
- (e) a reference to the personnel of UCS is a reference to:
 - (1) employees of a UCS Entity;
 - (2) individuals engaged by a UCS Entity as subcontractors; and
 - (3) individuals employed or engaged by subcontractors of a UCS Entity;
 who perform or assist with any of the Work;
- (f) a reference to the Work includes any variation to or in respect of the Work agreed to by UCS and the Client or the Work as so varied.
- (g) a reference to carry out or perform in relation to Work involving the supply of any goods or

materials includes a reference to the supply of the goods or materials;

- (h) a reference to a UCS Entity is a reference to:
- (1) UCS Group Pty Ltd ABN 73 607 613 936;
 - (2) Underground Cable Systems Pty Ltd ABN 63 069 485 990;
 - (3) UCS Telecommunications Pty Ltd ABN 23 626 277 316;
 - (4) UCS Sustainability Pty Ltd ABN 52 632 997 230;
 - (5) UCS Sustainable Energy Solutions Pty Ltd ABN 54 626 277 450;
 - (6) UCS Infrastructure Pty Ltd ABN 88 630 697 826;
 - (7) URD Products Pty Ltd ABN 78 628 780 085;
 - (8) UCS Overhead Services Pty Ltd ABN 81 647 350 963; or
 - (9) UCS Signals Pty Ltd ABN 56 007 417 101;
- (i) a word or term defined in the Corporations Act 2001 (Cth) has the same meaning in these terms and conditions;
- (j) a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning where used in connection with the GST imposed under that Act.