

# IM-FOR-0703-011 Labour Hire Agreement

Publish Date	July 2014 - HT
General	<p>This Contract should be entered with all regular labour hire service providers.</p> <p>The Contract comprises the following parts:</p> <ul style="list-style-type: none"> <li>A. Subcontract Schedule</li> <li>B. Standard Contract Terms and Conditions</li> <li>C. Labour Requisition</li> <li>D. Other documents forming part of the Subcontract</li> <li>E. Relevant Forms</li> </ul> <p>Throughout this Contract, the Recruitment Agency is referred to as the Subcontractor.</p>
Individual Details	<p>Details relating to the work should be set out clearly in a Request and then clearly articulated in a formal Labour Requisition including any special conditions.</p> <p>This Contract only contains legal terms for all Labour Requisitions and does not relate to any single person. Details of works, including terms, must be set out in a Labour Requisition.</p>
Standard Terms	<p>The standard terms and conditions are not to be varied in any way.</p> <p>Where the Labour Hire provider has a quote or other document they want included, it should be clearly described in Part D.</p>
Industrial Relations	<p>The industrial relations schedule (at the end of the document) reflects the current legal requirements and provides for circumstances where the project is Federally funded (which require prescriptive IR obligations).</p> <p>If the Subcontractor has any questions in relation to this schedule, please direct them to the Contracts Manager.</p>
Undertaking as to payments	<p>The former “Statutory Declaration” has been removed as a requirement to lodgement of Invoices.</p> <p>You must, prior to issuing the contract to the subcontractor, review the Undertaking and finalise the appropriate Daracon entity.</p>
Signature Authority	<p>You must, prior to issuing the contract, select the appropriate signature provision based on the subcontractor’s structure.</p>
Final	<p>Ensure the signed agreement is processed at Wallsend to the central file system. A copy will be returned to the project.</p>

# LABOUR HIRE AGREEMENT

**Date**

**Parties**

<b>Daracon</b>	DARACON ENGINEERING PTY LIMITED ATF THE DARACON UNIT TRUST ABN 75 529 095 602 17 James Street, Wallsend NSW 2287
<b>Subcontractor or You</b>	

## Background

- A. Daracon wishes to engage You to provide the goods and services in accordance with the terms of this Contract.
- B. You agree to provide the goods and services on the terms of this Contract.

## Agreed terms

### 1. Entire Contract

- (a) The Contract Documents constitute the entire agreement between the parties in respect of the services and the Contract supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
- (b) The Contract may be varied only by written instrument executed by both parties.
- (c) The Contract Documents are:

Part	Contract
A	Subcontract Schedule
B	Standard Subcontract Terms and Conditions
C	Labour Requisition
D	Other Documents forming part of the Subcontract
E	Relevant Forms

### 2. Warranties

Each party represents and warrants to the other party that:

- (a) it has full power and authority to enter the Contract and to perform its obligations;
- (b) the Contract has been duly executed by it; and
- (c) the obligations set out in the Contract are enforceable against it.

DARACON	LABOUR HIRE PROVIDER
Director: _____	Director: _____
Print Name: _____	Print Name: _____
Witness: _____	Director/Sec: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

## PART A – LABOUR HIRE AGREEMENT SCHEDULE

ITEM		
1 Description of works:	Provision of contract labour hire (insert general description of works)	
2 Subcontract Documents	Part A Part B Part C Part D Part E	Subcontract Schedule Standard Subcontract Terms & Conditions Labour Requisition Other Documents forming part of the Subcontract (attach list) Relevant Forms
3 Term Commencement Date:		
4 Term Expiry Date:	12 months after the Term Commencement Date	
5 Time at which Invoices are to be submitted:	Weekly by 1pm on each Monday of for the prior week	
6 Time for payment	<b>45 days from end of month of claim</b>	
7 Recipient Created Tax Invoice (RCTI) applies	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
8 Head Contract compliance required (clause 16)	<b>See Labour Requisition</b>	
9 Insurances Required (state "NIL" if not required)	Insurance Type	Minimum Cover
	<input checked="" type="checkbox"/> Public Liability <input checked="" type="checkbox"/> Workers Compensation <input type="checkbox"/> Professional Indemnity <input type="checkbox"/> Other - Motor Vehicle Insurance	\$ _____ (\$20M if not stated) As required under applicable law \$ _____ \$ _____ (\$20M if not stated)
10 Does the Federal Building Code apply?(clause 18)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
11 Does the State Building Code apply? (clause 19)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	

## 1 DEFINITIONS

In these terms, except where the context otherwise requires:

**Alcohol and Other Drug Policy and Procedure** means the alcohol and other drug policy released by Daracon from time to time.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

**Confidential Information** means all confidential information, non-public or proprietary information exchanged between the parties or known to a party before, on or after the date of this Contract relating to Daracon or its client or principal but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this Contract or an obligation of confidence owed to the disclosing party; or
- (b) which is acquired from a third party entitled to disclose it.

**Contract** means the Labour Hire Agreement and all of the documents referred to in Item 2 of Part A.

**Contract Sum** means the price as noted in the Part C relating to Services.

**Daracon** means Daracon Engineering Pty Ltd (ABN 75 529 095 602) and all of its Subsidiaries, related entities or assigns.

**Dispute** means a dispute arising out of or relating to this Contract including a dispute as to breach or termination of this Contract or as to any claim in tort, in equity or pursuant to any statute.

**GST** means a tax imposed under the GST Law.

**GST Law** has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

**Head Contract** means the contract between Daracon and the principal instructing the Services to which a Labour Requisition relates.

**Insurance Policies** means the policies referred to in Item 8 of Part A.

**Invoice** means a claim submitted by You in a form acceptable to Daracon for Services completed prior to the Invoice Lodgement Date.

**Invoice Amount** means the amount stated in the invoice issued in accordance with clause 7.6 (as the case may be).

**Invoice Lodgement Date** means the date specified in Item 5 of Part A.

**Law** means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and further includes any publication from a recognised industry body.

**Labour Requisition** means a Labour Requisition issued in accordance with clause 6.2 and generally in the form set out in Part C.

**Payment Period** means day set out in Item 6 of Part A.

**Personnel** includes any personnel, employee, consultant, supplier, subcontractor or any other person provided to Daracon by You.

**Services** means the provision of Personnel and such other services as required by Daracon from time to time, to perform the tasks and responsibilities required by Daracon and those tasks and responsibilities ordinarily expected of someone experienced in the provision of similar services.

**Services Commencement Date** means the date on which the Services must commence as identified in a Labour Requisition.

**Services End Date** means the date on which the Services must achieve Completion as identified in a Labour Requisition as the estimated length of time required and otherwise as extended in accordance with this Contract.

**Subsidiary** has the same meaning given to it in the *Corporations Act (Cth) 2001*.

**Talent** means any Personnel proposed by You and accepted by Daracon in accordance with clause 6.2.

**Term** means the period starting on the Term Commencement Date and continuing to the Term Expiry Date.

**Term Commencement Date** means the date specified in Item 3 of Part A.

**Term Expiry Date** means the date or last day of the period of time stated in Item 4 of Part A, or as amended in writing pursuant to this Contract.

**Undertaking** means the Undertaking as to payment obligations set out in Part G.

**Works** means the tasks, responsibilities and works undertaken by Talent provided by You to Daracon.

**WHS** means work health and safety.

## 2 INTERPRETATION

In these terms, unless the context indicates a contrary intention:

**(documents)** a reference to these terms or another document includes any document which varies, supplements, replaces, assigns or novates these terms or that other document.

**(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these terms.

**(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

**(corporation)** a reference to a corporation includes its successors and permitted assigns.

**(including) including** and **includes** are not words of limitation.

**(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.

**(singular)** the singular includes the plural and vice-versa.

**(rules of construction)** neither these terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

**(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

**(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

**(writing)** a reference to a notice, consent, request, approval or other communication under these terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

**(replacement bodies)** a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

**(Australian currency)** a reference to **dollars** or **\$** is to Australian currency.

**(day)** any reference to the word days is a reference to calendar days and is not limited to working days.

**(month)** a reference to a month is a reference to a calendar month.

**(year)** a reference to a year is a reference to twelve consecutive calendar months.

**(priority)** in the event any Contract Document is inconsistent with another Contract Document, the Contract Document ranking highest in priority (with (1) being the highest and (5) being the lowest), prevails to the extent of that inconsistency:

Part	Contract Document	Priority Ranking
A	Subcontract Schedule	1
B	Standard Subcontract Terms & Conditions	3
C	Rates & Labour Requisition template	2
D	Other Documents forming part of Contract	4
E	Relevant Forms	5

### 3 SCOPE OF CONTRACT

- 3.1 This Contract commences on the Term Commencement Date and expires on the Term Expiry Date unless extended in writing by mutual agreement of the parties.
- 3.2 This Contract sets out the terms by which all Labour Requisitions issued by Daracon and accepted by You will be governed.
- 3.3 You agree that, despite the existence of any other terms and conditions issued by You in any way connected with the Services, whether issued before or after the date of this agreement, that those terms and conditions do not apply except where those terms and conditions are expressly provided for in Part D of this Contract (in which case they apply to the extent they are consistent with this Part B.

### 4 WARRANTIES

You warrant to Daracon:

- (a) You have read these terms (and the Contract generally) and fully understand and comprehend the Contract;
- (b) You have had opportunity to obtain independent legal advice on these terms (and the Contract generally); and
- (c) You have full power and authority to enter into this Contract.

### 5 YOUR OBLIGATIONS

5.1 You must, where Daracon issues You with a Labour Requisition, provide Daracon with the details of the candidate including:

- (a) an up to date resume;
- (b) at least one reference not less than 3 months old and from a person to which the candidate has directly reported to in and otherwise in a format acceptable to Daracon;
- (c) records of a completed drug and alcohol screen from a provider acceptable to Daracon;
- (d) copies of the candidate's drivers licence, WHS General Induction card and all other tickets, licences and qualifications;
- (e) where the candidate is not an Australian Citizen, a copy of the candidate's passport and visa.

5.2 If, on receipt of a Labour Requisition from Daracon, You elect not to fill the placement, You must notify Daracon within 2 business days or such other timeframe acceptable to Daracon, which may be done either verbally or in writing.

5.3 You agree You and Your Personnel, including the Talent, must:

- (a) only nominate candidates with appropriate qualifications, competencies and experience to carry out the Services;
- (b) promptly give written notice to Daracon if and to the extent the You become aware that any document or other information provided by You is ambiguous or inaccurate or is otherwise insufficient to enable You to carry out the Services;
- (c) make reasonable enquiries to ascertain Daracon's requirements regarding the Services;
- (d) regularly consult with Daracon regarding the carrying out of the Services;
- (e) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to Daracon detailing the matter or circumstance and its anticipated affect on the Services;
- (f) comply with all Laws in carrying out the Services;
- (g) after reasonable prior written notice by Daracon, permit Daracon to inspect and discuss the work, relevant records, documents and material produced by You

- in carrying out the Services or in connection with the Services;
- (h) do all things necessary and necessarily and incidental for the proper performance of Your obligations under the Contract;
  - (i) obtain all permits and pay all fees required in connection with the performance of the Services; and
  - (j) provide such plant and equipment necessary to complete the Services in a safe and efficient manner, otherwise ensuring the plant and equipment is acceptable to Daracon. You are solely responsible for maintaining all plant and equipment bought onto the Site by You or Your Personnel in safe and proper working condition.
- 5.4 You also agree and warrant to Daracon that You have examined all documentation relating to the Services and that they are suitable, appropriate and otherwise adequate for the purpose of performing the Services required to be carried out in accordance with this Contract.
- 5.5 You must comply with the obligations imposed on You under this Contract and any special conditions set out in a Labour Requisition.
- 5.6 You must comply with the guidelines set out in the WorkCover Factsheet for Labour Hire Agencies as set out in Schedule 2 of Part D and as otherwise updated by WorkCover from time to time.
- 5.7 You must ensure the Talent:
- (a) performs the Works in a proper and workmanlike manner to Daracon's satisfaction and in accordance with the provisions of this Contract;
  - (b) performs the Works with a standard of care and skill to be expected of a diligent and prudent subcontractor and who possesses the knowledge, skill and expertise of a subcontractor qualified and experienced to act in that capacity;
  - (c) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice required for carrying out the Works;
  - (d) comply with all directions provided by Daracon, whether in writing or otherwise;
  - (e) remain fully responsible for the Works despite any review or acceptance of those Works by Daracon.
- 5.8 You must obtain Daracon's consent prior to substituting Talent with any other person. Daracon may require You to provide such details relating to the proposed substitute as it considers necessary from time to time.
- 6 DARACON'S OBLIGATIONS**
- 6.1 From time to time, Daracon will provide to You with Labour Requisitions requesting that You provide Talent to perform certain Works. For the avoidance of doubt, Daracon under no obligation to issue You with any Labour Requisition
- 6.2 On receipt of the information described in clause 5.1, Daracon may accept or reject the proposed candidate to fill the requirements set out in the Labour Requisition and, if accepted by Daracon, will be on the terms set out in this

Contract and include any special conditions as required on a case by case basis which may add to or otherwise vary this Contract.

- 6.3 Daracon is not obliged to accept any candidate proposed by You.

## **7 INVOICING AND PAYMENT**

- 7.1 The Contract Sum is firm and not subject to adjustment for rise and fall in costs or for any other cause whatsoever except where:

- (a) Daracon agrees otherwise in writing; or
- (b) the Contract Sum refers to an award rate and that award rate is varied.

- 7.2 Prior to any payment being made and prior to the Invoice Lodgement Date, You must ensure You have lodged:

- (a) a complete and duly signed subcontractor's statement in accordance with Part E;
- (b) a complete and duly signed Undertaking in accordance with Part E; and
- (c) Your Invoice.

- 7.3 You acknowledge that if You fail to comply with Your obligations under this Contract, Daracon is under no obligation to make any payment to You for the affected Services.

- 7.4 Where Daracon accepts all or part of an Invoice made by You, Daracon will certify that Invoice (or the agreed portion of it) and, subject to the applicability of clause 7.6, the responsible party (as determined by clause 7.6) must issue an invoice.

- 7.5 Where Daracon does not accept all or part of a Invoice, Daracon will notify You that it does not accept all or part of the Invoice, provide summary reasons for its determination and require You to submit an amended Invoice.

- 7.6 The parties agree:

- (a) You must issue a GST compliant invoice (and adjustment notes in respect of all supplies under or in connection with the Contract set out in a duly approved Work Docket) to Daracon; and
- (b) You warrant that You are registered for GST when You enter into this Contract and that it will continue to be registered for the duration of the Term.

- 7.7 On receipt of an invoice issued under clause 7.6, Daracon agrees that it will pay the Invoice Amount:

- (a) within the Payment Period; and
- (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.

- 7.8 Progress payments made to You will not be evidence of the value of work carried out or an admission of liability or evidence that the work has been executed satisfactorily but will be on account pending final reconciliation by Daracon of money payable to You for the Services.

- 7.9 Daracon may set off any amount which You owe to Daracon under this Contract as a debt due against any progress payment or final payment relating to any Services.

## **8 TAXES**

All prices quoted are exclusive of GST and any other Government charges and taxes that may be

levied now or in the future unless specifically stated otherwise. Any such charges or taxes will be at Your expense.

## 9 LIABILITY FOR DEFECTS AND DAMAGE

Should any defect arise as a result of any act, default or omission by You or Your Personnel which may result in loss or damage (or likely loss or damage) being suffered by the principal, Daracon or other person, You must, within 14 days of receipt of notice in writing from Daracon, remedy that defect (and any consequential effect of that defect) at Your own cost and expense. If You fail or neglect to make good such damage within 14 days from receipt of a notice from Daracon, then Daracon may make good such damage at Your expense and as a debt due by You to Daracon.

## 10 WHS&E COMPLIANCE

10.1 You and all Your Personnel must comply with all relevant Laws including obtaining any necessary certificates, licenses, consents, permits and approvals of any organisation having jurisdiction required for performance of the Services.

10.2 In addition to its obligations under clause 10.1, You must comply with the obligations set out in the *Work Health and Safety Act 2011 (and any of its regulations)* and *The Protection of the Environment Operations Act (NSW) 1997*.

10.3 Before commencing Works, You must provide evidence of the Talent:

- (a) having completed the WorkCover Accredited General Induction for Construction Work; and
- (b) having completed a Work Activity Induction (as per the WorkCover Code of Practice for WHS Induction Training in the Construction Industry).

10.4 During the term of this Contract, You must:

- (a) ensure all Personnel are competent and suitably skilled and trained for the assigned task;
- (b) ensure Personnel carry in their possession any relevant licence, ticket, training records and any other document required by Daracon from time to time (including Certificates of Competency where required) and present those documents to Daracon on request;
- (c) ensure Your Personnel immediately report to Daracon any changes to the work conditions, the work method, condition of equipment that impact upon risk;
- (d) report all incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects to Daracon and the project manager immediately during the term of this Contract. All documentation created as a result of the incident, near miss, injury, illness, equipment failure or defects are to be provided to Daracon as soon as reasonably practicable following its creation;
- (e) at all times, comply with Daracon's WHS policies as released by Daracon from time to time including those set out in

Part D (if any) (copies of which Daracon must make available to You on request);

- (f) comply with any direction provided by Daracon or any of its superintendents, customers or principals;
- (g) if working on or about a mine site, comply with all requirements of the *Coal Mine Health and Safety Act (NSW) 2002* and related regulations;
- (h) report any ambiguities or inconsistencies contained in any Daracon policy relating to the Services.

10.5 All communication for the purpose of this clause 10 must be:

- (a) immediately communicated verbally by the You to Daracon; and
- (b) confirmed in writing by You to Daracon within 12 hours of the occurrence of the event giving rise to the notice obligation.

10.6 You must participate in Daracon's WHS consultation arrangements when required to do so by Daracon.

10.7 You acknowledge You and Your Personnel have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agree You and Your Personnel must:

- (a) comply with the terms of that policy, including the right for Daracon to conduct random and "show cause" testing from time to time; and
- (b) be "fit for work" at all times when performing the Services.

10.8 If You are in breach of Your obligations under clause 10.7, Daracon may require You to take such remedial or corrective action as it considers reasonably necessary and You must do so at Your expense. Failure by You to comply with Your obligations under this clause will entitle Daracon to terminate this Contract in accordance with clause 12.

## 11 INSURANCES

11.1 Prior to the Term Commencement Date, You must obtain and maintain the Insurance Policies referred to in Item 8 of Part A:

- (a) where the policy is on a claims incurred basis, for duration of the Term; and
- (b) where the policy is on a claims made basis, for the duration of the Term and for an additional period of 5 years after Completion.

11.2 Daracon and the principal must, on Daracon's request, be a nominated as an interested parties in each policy of insurance relevant to the Contract (excluding Workers Compensation insurance).

11.3 You must produce evidence of the currency of each policy to Daracon immediately prior to the Term Commencement Date and within 7 days of any subsequent request by Daracon.

11.4 If You do not comply with Your obligations under this clause, You agree Daracon may obtain the Insurance Policies on Your behalf and treat any costs associated with such Insurance Policies as a debt due by You to Daracon and exercise its rights of set off.

## **12 TERM AND TERMINATION**

- 12.1 This Contract is valid for the Term and otherwise applies in accordance with clause 3.
- 12.2 A party may immediately terminate this Contract if:
- (a) the other party defaults in the performance of a term of this Contract and that default is capable of remedy and the default is not remedied within 14 days after written notice specifying the default and the acts required to rectify the default has been given to the other party;
  - (b) the other party defaults in the performance of a term of this Contract and that default is not capable of remedy;
  - (c) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
  - (d) the other party ceases or threatens to cease to carry on its business;
  - (e) the other party is unable to pay its debts as and when they fall due; or
  - (f) the other party has a receiver and/or manager or official manager or provisional liquidator appointed or a secured creditor takes possession of the whole or a substantial part of its assets or undertaking; or convenes a meeting for the purpose of, or enters or proposes to enter into, any arrangement or composition with its creditors.
- 12.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time.
- 12.4 Where Daracon terminates this Contract for any reason and where You have complied with Your obligations under this Contract, You are entitled to be paid for the Services performed to the date of termination.

## **13 INDEMNITY AND RISK**

- 13.1 You indemnify Daracon and its principal's to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon or any of its principals (including third party claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:
- (a) breach of Your obligations under this Contract;
  - (b) injury, total and permanent disability or death caused by You or Your Personnel;
  - (c) damage to property (whether owned by Daracon or not) caused by You or Your Personnel; and
  - (d) negligent act or omission by You or Your Personnel.
- 13.2 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 13.1 may be reduced proportionately to the extent that the act or omission of Daracon or its Personnel (excluding You and Your Personnel), have contributed to the loss or damage.
- 13.3 With respect to You only, the operation of Part 4 of the *Civil Liability Act (NSW) 2002 (the Act)* 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 claim in tort (including negligence), in equity, under statute or otherwise at Law.

- 13.4 You specifically agree and undertake that in the event of any proceedings to which the Act are applicable, You will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.
- 13.5 Despite this clause 13, Daracon will not be liable to You under or arising in connection with this Contract, whether arising in contract, negligence or otherwise for any loss of use, loss of profit, consequential loss, loss of contract, loss of goodwill, loss of opportunity or additional or wasted overheads.

## **14 CONFIDENTIALITY**

- 14.1 You acknowledge that You and Your Personnel may be given access to Confidential Information in the course of performing the Services.
- 14.2 Except as otherwise required by Law, You must, and You must ensure Your Personnel:
- (a) keep strictly secret and confidential the Confidential Information; and
  - (b) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, contractors and agents directly involved in the performance of this Contract and only to the extent that such disclosure is required for the performance of this Contract.
- 14.3 On demand by Daracon, You must immediately return to Daracon all Confidential Information and other information obtained during the course of providing the Services to Daracon.

## **15 DISPUTE RESOLUTION**

- 15.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 15 except where the party seeks urgent interlocutory relief.
- 15.2 A party claiming that a Dispute has arisen under or in relation to this Contract must give written notice to the other party to this contract specifying the nature of the Dispute within 5 days of the cause of the Dispute arising.
- 15.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.
- 15.4 If the parties do not agree within 7 days of receipt of the notice (or any further period agreed in writing by them) as to:
- (a) the dispute resolution technique and procedures to be adopted;
  - (b) the timetable for all steps in those procedures; and
  - (c) the selection and compensation of the independent person required for such technique,
- the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales



- or the President's nominee to select the mediator and determine the mediator's remuneration.
- 15.5 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 15 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 15 for any purpose other than in an attempt to settle the Dispute concerned.
- 15.6 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.
- 16 HEAD CONTRACT COMPLIANCE**
- 16.1 This clause 16 only applies where Item 8 of Part A states "Yes".
- 16.2 You agree it is an essential term of this Contract that You must comply with all the conditions of the Head Contract to which Daracon is subject, as if You were a party to the Head Contract to the extent that it relates to the Services.
- 16.3 You are responsible for determining whether clause 16.1 applies and You warrant to Daracon that You have fully inspected and understood the requirements of any applicable Head Contract.
- 16.4 Daracon must make the relevant terms of any Head Contract available to You on request.
- 17 INDUSTRIAL REQUIREMENTS**
- 17.1 You must ensure that You and any of Your Personnel comply with all Laws relating to industrial matters (including all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines) during the execution of the Services and any Works.
- 17.2 You must comply with Schedule 1 of Part F unless otherwise agreed in writing with Daracon.
- 17.3 You agree this clause is a material term of this Contract and any failure by You to comply with Your obligations under this clause is a material breach of this Contract.
- 17.4 For the purposes of this clause, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably applied to the matter.
- 18 FEDERAL CODE 2013**
- 18.1 This clause applies where Item 10 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 18.2 You must comply with the Code and the Guidelines. Copies of the Code are available at [www.deewr.gov.au/BuildingCode](http://www.deewr.gov.au/BuildingCode).
- 18.3 Compliance with the Code shall not relieve You from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code.
- 18.4 Where a change in the Contract is proposed and that change would affect compliance with the Code, You must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code will be affected.
- 18.5 You must maintain adequate records of the compliance with the Code by:
- (a) You;
  - (b) Your Subcontractors;
  - (c) consultants; and
  - (d) its Related Entities.
- 18.6 If You do not comply with the requirements of the Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by You or a related entity in respect of work funded by the Commonwealth or its agencies.
- 18.7 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, You may give preference to subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
  - (b) increasing the participation of women in all aspects of the industry; or
  - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 18.8 You must not appoint a subcontractor or consultant in relation to the Project where:
- (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
  - (b) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the tenderer has not fully complied, or is not fully complying, with the order.
- 18.9 You agree to require that You and Your subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
  - (b) inspect and copy any record relevant to the Project the subject of this Contract; and
  - (c) interview any person as is necessary to demonstrate its compliance with the Code.
- 18.10 Additionally, You agrees that You and Your related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

- 18.11 You must ensure that all subcontracts impose obligations on sub contractors equivalent to the obligations under these Contract clauses.

## **19 NSW STATE CODE**

- 19.1 This clause applies where Item 11 in Part A indicates “Yes” or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 19.2 In addition to terms defined in this document, terms used in this clause 19 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### **Primary Obligation**

- 19.3 You must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- 19.4 You must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 19.5 Where You engage a subcontractor or consultant, You must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that You must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- 19.6 You must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

### **Access and information**

- 19.7 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- 19.8 You must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- enter and have access to sites and premises controlled by the contractor, including but not limited to the project site;
  - inspect any work, material, machinery, appliance, article or facility;
  - access information and documents;
  - inspect and copy any record relevant to the project;
  - have access to personnel; and
  - interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by You and Your subcontractors, consultants, and related entities.
- 19.9 You, and your related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain

date, whether in person, by post or electronic means.

### **Sanctions**

- 19.10 You warrant that at the time of entering into this contract, neither You, nor any of Your related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded You from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 19.11 If You does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against You in connection with the NSW Code or NSW Guidelines.
- 19.12 Where a sanction is imposed:
- it is without prejudice to any rights that would otherwise accrue to the parties; and
  - the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - take them into account in the evaluation of future procurement processes and responses that may be submitted by You, or Your related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

### **Compliance**

- 19.13 You bear the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. You are not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.

## **20 ASSIGNMENT**

- 20.1 You must not assign or sublet the whole or any part of this Contract without first obtaining written approval from Daracon. Such consent may be withheld in Daracon's absolute discretion.
- 20.2 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.
- 20.3 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.

## **21 RELATIONSHIP BETWEEN THE PARTIES**

- 21.1 Nothing in this Contract:
- constitutes a partnership between the parties; or
  - except as expressly provided, makes a party an agent of another party for any purpose.
- 21.2 A party cannot in any way or for any purpose:
- bind another party; or
  - contract in the name of another party.
- 21.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to

assist the other in the performance of that obligation.

## **22 GENERAL**

- 22.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.
- 22.2 A provision of this Contract can only be varied by a later written document executed by all parties.
- 22.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- 22.4 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.
- 22.5 The contents of this Contract constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Contract, whether orally or in writing.
- 22.6 A word or provision must be read down if:
- (a) this Contract is void, voidable, or unenforceable if it is not read down;
  - (b) this Contract will not be void, voidable or unenforceable if it is read down; and
  - (c) the provision is capable of being read down.
- 22.7 A word or provision must be severed if:
- (a) the provision is void, voidable or unenforceable if it is not severed; and
  - (b) the contract will be void, voidable or unenforceable if it is not severed.
- 22.8 The remainder of this Contract has full effect even if clause 22.7 applies.
- 22.9 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.
- 22.10 Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- 22.11 Clauses 4, 10, 11, 13, 14, 15 and any other clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.
- 22.12 The Laws applicable in New South Wales govern this Contract.
- 22.13 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## PART C – RATES & LABOUR REQUISITION

### **Rates**

[TO BE INCLUDED]

## Labour Requisition Template

**NOTE:**

- This is a draft text template only. Actual form may vary from time to time at Daracon's sole discretion.

**To: Labour Hire Company** \_\_\_\_\_

(insert labour hire company name)

<b>Position to be filled in accordance with position requirements:</b>	
<b>Job Location:</b>	
<b>Supervisor name &amp; Contact Number:</b>	
<b>Reason for requisition:</b>	<input type="checkbox"/> Replacement <input type="checkbox"/> Transfer <input type="checkbox"/> Increase <div style="text-align: center;">(include details)</div>
<b>Date required from:</b>	_____ / _____ / _____
<b>Estimated length of time required:</b>	_____ weeks
<b>Additional criteria and requirements:</b> (in addition to job description provided)	

<b>Approvals</b>	
<i>Requisitioned by:</i> [Supervisor]	
<i>Supported by:</i> [Superintendent]	
<i>Approved by:</i> [Divisional Manager]	

<b>Human Resources Use Only</b>	
<i>Labour Hire Company meets IR &amp; Other Requirements</i>  <i>Commencement Date:</i> ____ / ____ / 2009  <i>Authorised by:</i>	Yes / no _____  _____  _____

Special conditions relating to the Services include:

- MAKE SURE ANY UNUSUAL PROVISIONS CONTAINED IN THE HEAD CONTRACT HAVE BEEN PASSED TO THE SUBCONTRACTOR.

**[EXAMPLE DESCRIPTION]**

Hours of work will be 6.30am to 5.00pm Monday to Friday, including 0.5 hour for unpaid lunch break. A minimum of 50 hours of working time per week is to be provided.

Provision for travel cost of a vehicle for the first 50klms per day is included in the agreed rate. For the purposes of calculation, the point of charge will be from the [INSERT LOCATION], or from a nominated site prior to the commencement of a shift. For all travel in excess of 50klms, the rate of \$1.30per/km shall apply.

You will be responsible, within the rates agreed, for the supply, maintenance and operating costs of provisioning their technician with a fully maintained service vehicle, necessary tooling, a laptop computer with appropriate software and a mobile phone. All equipment being agreed between the parties.

All required site inductions will be at Your expense, including the time of attendance.

Within the term of the appointment, reviews will be carried out as follows:

1. Initial Review – one month from commencement
2. Ongoing Review – every three months from the initial review.

Daracon will nominate a representative to sign off all time sheets required by Daracon prior to processing.

\*\*\**Head contract compliance required?*\*\*\*

<b>PART D – OTHER DOCUMENTS FORMING PART OF CONTRACT</b>
--

Schedule Number	Topic	Applicable
Schedule 1	WorkCover Factsheet – Labour Hire Agencies	Yes
Schedule 2	OH&S Policy	Y / N
Schedule 3	Drug & Alcohol Policy	Y / N
Schedule 4	Fatigue Management Policy	Y / N



## FACTSHEET

# LABOUR HIRE AGENCIES

## MANAGING THE SAFETY OF ON-HIRED WORKERS

This information provides an overview of your OHS responsibilities as a labour hire agency including:

- consulting with workers on OHS matters
- taking reasonable steps to ensure risks are controlled at the host (client) workplace
- monitoring and reviewing the effectiveness of measures to protect workers.

### WHAT ARE THE OCCUPATIONAL HEALTH AND SAFETY (OHS) RESPONSIBILITIES OF LABOUR HIRE AGENCIES?

Labour hire agencies and group training companies are usually the direct employers of on-hired workers. This means you have the OHS duties of employers under the *Occupational Health and Safety Act 2000*. Even though you will not always have direct control or management of the workplaces involved, your duty of care remains as an employer to your on-hired workers.

It is your legal obligation to take action to establish that the workplace and its operations are safe before workers are placed with a client. You also need to continue monitoring workers' safety throughout the term of their placement. Your client as the host employer also has OHS duties to labour hire workers and contractors. A labour hire agency cannot 'pass on' its legal duty of care even if agreed by the host employer.

**Effective consultation** between labour hire agencies, their workers and clients is fundamental to securing safe work placements. The labour hire agency has a legal obligation and ongoing responsibility to consult with workers on OHS matters. You should also be assured of the appropriateness of your clients' OHS consultative arrangements as they relate to your employees.

## LABOUR HIRE AGENCIES: MANAGING THE SAFETY OF ON-HIRED WORKERS

### ESTABLISHING YOUR OHS OBJECTIVES

To effectively manage the health and safety issues associated with labour hire, OHS must be an integral part of the way **you** do business. You should establish:

- organisational objectives that include OHS goals
- a framework for achieving these goals
- roles and responsibilities for staff accountable for OHS risk assessments and decisions
- training to ensure staff have the right skills to manage on-hired worker placements.

WorkCover. **Watching out for you.**



New South Wales Government



## **KEY STEPS TO ENSURING SAFE WORK PLACEMENTS**

Achieving the safe placement of on-hired workers presents OHS situations that are distinctive to the labour hire industry. Along with the general OHS duties of an employer, labour hire agencies should also take the following actions for every placement:

1. provide an induction
2. assess the placement
3. monitor the workplace.

### **1. Provide an induction**

Information must be provided to the worker about the host workplace and work tasks, including workplace hazards and their controls. This includes both generic and site specific OHS training and induction. Usually, the agency provides the general induction prior to placement and the host employer provides the site specific induction. You need to consult with the host employer to ensure all appropriate induction and training is covered. If adequate induction and training is not provided (by both the agency and host employer), the worker may be exposed to unacceptable risks from the moment they start work.

### **2. Assess the placement**

The agency must adequately and competently assess the client's worksite and the workers capacity to undertake the required work safely prior to the placement being made. You should keep a training register to demonstrate that agency staff (permanent and temporary) have the required knowledge, skills and capabilities to safely carry out the roles assigned to them.

### **3. Monitor the workplace**

The agency must continue to monitor the workplace to ensure that health and safety requirements are being implemented as expected and that no new or potential risks to health and safety have arisen.

## **TAKING EFFECTIVE ACTION**

To effectively assess and control the OHS risks to the on-hired worker, the labour hire agency needs to:

1. gather information
2. visit the worksite
3. implement hazard controls and assess their adequacy.

### **1. Gather information**

The first step in securing a safe work placement is to gather information about:

- the client (the prospective host employer)
- the work
- the worker
- the work environment.

#### *The client*

You must know about the client's operations and hazards, their OHS performance and their approach to managing safety in the workplace. Remember, it's your decision to place an on-hired worker or trainee. **If you are not convinced the host workplace is safe, you should not provide personnel.**

#### *The work*

You must obtain details of the jobs to be carried out by the worker. Included in the job summary should be information about:

- plant or equipment to be operated
- materials and substances to which the worker could be exposed
- specific hazards associated with any operation or activity.

Workplace arrangements for consultation and supervision should be clear to both the labour hire agency and the client. Details of induction and other training should also be documented. It is your duty to ensure that consultation, supervision and training of your employees is carried out and ongoing. Describe any personal protective equipment (PPE) that is required and clarify who will provide it.

#### *The worker*

You must be confident that the qualifications and experience of the worker will enable them to undertake the work safely. Their level of skill, knowledge, competency, experience and training will all contribute to making this assessment. If the job requires certification, you must ensure on-hired workers have the appropriate and current licenses.

#### *The work environment*

You can use information about the work environment to determine whether an employer is operating within a high risk industry or an industry that has risks requiring specific control measures and operating certificates. Hazards within the work environment should be identified and recorded. The worker must know how to report any safety issues at the workplace. You should also obtain information about facilities and amenities.

## **2. Visit the worksite**

The objective of worksite visits is to assess the OHS risks at the site and demonstrate commitment to carrying out your duty of care to your workers. The number of site visits required should reflect the degree of potential risk. Known high risk industries are likely to require more frequent monitoring.

It is essential the agency engages a competent person to make an informed OHS assessment of the worksite. This will require knowledge and understanding of the client's operations, workplace hazards and OHS management systems. The initial site assessment should be made **before** the worker is placed at another employer's workplace. The host employer's OHS documentation should reflect its safe operating procedures relevant to the work. The OHS policy manual, hazard specific policies and procedures should be reviewed and a job safety assessment (JSA) should be carried out and documented.

### 3. Implement hazard controls and assess their adequacy

You should consult with the host employer to ensure action is taken to control OHS risks. You must be satisfied that hazards will be managed effectively and your workers will not be at risk. Timeframes must also be agreed with the host employer to ensure that action is taken without undue delay. Representatives of the labour hire agency and the host employer should document and sign off agreed risk control measures.

A 'monitoring' inspection should be conducted and recorded. Use previous worksite assessments as a starting point. Discuss the job with the worker and meet with the client after the inspection to discuss the results and to resolve any issues or concerns that you have identified.

### FURTHER INFORMATION

Further information can be obtained from the WorkCover NSW website at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) or by contacting the WorkCover Information Hotline on **13 10 50**.

### Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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## PART E – RELEVANT FORMS

1. Undertaking as to Payment Obligations
2. Subcontractor's Statement regarding Workers Compensation, Pay-Roll Tax and Remuneration
3. Form of Final Claim

## DECLARATION OF SUBCONTRACTOR

I, \_\_\_\_\_  
(Please Print Name)

of \_\_\_\_\_  
(Address)

undertake and warrant to and in favour of **Daracon Engineering Pty Limited (Daracon)** that:

1. I am the \_\_\_\_\_ (*insert position*) of \_\_\_\_\_ (*insert subcontractor name*) (**Subcontractor**) and that I am duly authorised and nominated to make this undertaking on behalf of the Subcontractor.
2. This undertaking relates to Services performed under subcontract to Daracon for \_\_\_\_\_ (*insert name of project*).
3. The Subcontractor has:
  - a. \* paid all money due and payable to workers who have at been engaged by the Subcontractor under the following award or agreement in respect of their employment:  
\_\_\_\_\_ (*name of award / agreement*)
  - b. \* paid all money due and payable to suppliers of materials to the Subcontractor; and
  - c. \* paid all subcontractors appointed by the Subcontractor with the exception of  
\_\_\_\_\_ (*insert details if any*),  
  
\* *delete whichever is not applicable by ruling a line through that subparagraph*
4. I am aware the statements made in this undertaking are being relied upon by Daracon and that if this undertaking contains any error, Daracon may suffer loss for which the Subcontractor will be liable.
5. Where the project is federally funded, the Subcontractor declares it is compliant with its obligations set out in the Building Code.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



## SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

### SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: \_\_\_\_\_ ABN: \_\_\_\_\_  
(Business name)

of \_\_\_\_\_  
(Address of subcontractor)

has entered into a contract with \_\_\_\_\_ ABN: \_\_\_\_\_  
(Business name of principal contractor) (Note 2)

Contract number/identifier \_\_\_\_\_ (Note 3)

This Statement applies for work between: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ And \_\_\_\_ / \_\_\_\_ / \_\_\_\_ inclusive (Note 4)

subject of the payment claim dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (Note 5)

I, \_\_\_\_\_ ~~a Director or~~ a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated \_\_\_\_/\_\_\_\_/\_\_\_\_ (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature \_\_\_\_\_ Full name \_\_\_\_\_

(g) Position/Title \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_.

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

## Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

## Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

## Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## FORM OF FINAL CLAIM

**To be printed on Subcontractor letterhead and forwarded with the Subcontractor's Final Claim for payment**

###/##:##

Date

Daracon Engineering Pty Limited  
Attention: The Chief Financial Officer  
PO Box 299  
Wallsend NSW 2287

Dear Sir

**RE:     *Final Statement***  
          *<Subcontract Description>*  
          **Project No.:** <insert number> **Project Name:** <name>

I, <insert name>, as the authorised representative for <insert company name> of <company address> in respect of the above subcontract declare as follows:

The following has been agreed to our mutual satisfaction and allowed for in the final Subcontract Sum amount of \$###,###.00 EXCL GST.

- (a) all adjustments to the Subcontract Sum;
- (b) all claims under the Subcontract;
- (c) all extensions of time to the Date for Substantial Completion;
- (d) all other entitlements or claims arising out of or in connection with the Subcontract Services; and
- (e) the Date of Practical Completion being <insert date of practical completion>.

Additionally, I declare that:

- (a) all remuneration and other entitlements payable to or on behalf of our employees and all amounts to our subcontractors and suppliers in respect of the Services; and
- (b) all relevant taxes, duties, statutory fees, charges and other amounts in respect of the Services;

which are due and owing by <Subcontractor company name> have been paid.

I acknowledge that representations made in this statement are being relied upon by Daracon and that if this statement contains any error, Daracon may suffer loss for which I will be liable.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_