Property Work Order Terms (terms)

1. GENERAL

1.1 Application of terms

(a) By accepting a Work Order issued by the University for Works the Contractor agrees to these terms applying to the supply of Works under that Work Order.

(b) These terms are to be read as in addition to any terms specified in the Work Order. No other terms apply to the Work Order except where:

(i) the University first provides its agreement in writing; or

(ii) enters into a longer form agreement on the University's terms and that agreement is quoted in the Work Order in which case the terms of that agreement will apply between the parties.

1.2 Amendments

No amendments to these terms will be binding on the parties unless approved in writing by the University staff member with the delegated authority to approve any such amendments.

1.3 Definitions

Throughout this Agreement each word or phrase which appears in bold in this clause 1.3 or in the Work Order has the meaning given to it in this clause 1.3 or in the Work Order.

Agreement means the binding agreement referred to in clause 2.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney or 27, 28, 29, 30 or 31 December.

Background IP means Intellectual Property owned by a party prior to the Commencement Date.

Completion means the stage when:

(a) the Works are complete except for minor Defects which do not prevent the Works from being reasonably capable of being used for their intended purpose; and

(b) the Contractor has done everything which the Contract requires it to do prior to Completion.

Commencement Date means the date specified in the Work Order or if no date is specified, 4 weeks prior to the Contractors commencement of the Works.

Contract IP means Intellectual Property created in providing the Works.

Contract Materials means Works containing Background IP or Contract IP.

Contractor means the party named in the Work Order as providing the Works.

Confidential Information means all data and/or information in any form or medium exchanged between the parties for the purposes of this Agreement before, on or after the Commencement Date (including the terms of this Agreement) relating to the past, present or future operations, business, research or technology of the disclosing party or the controlled entities of the University.

Defect means any aspect of the Works which is not in accordance with the requirements of this Agreement.

Defects Liability Period means the period which commences on the date of Completion of the Works and expires 52 weeks after the date of Completion of the Works.

Fee means the amount specified in the Work Order or if no amount is specified in the Work Order an amount agreed between the parties as a fair and reasonable fee based on fair and reasonable market rates.

Goods means goods and materials forming part of the Works.

Losses means liabilities, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

Intellectual Property means all present and future rights conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

Statutory Requirements means

(a) any law applicable to the Works or the carrying out of the Works including Acts, ordinances, regulations, by-laws, orders, awards and proclamations; and

(b) certificates, licences, consents, permits, approvals and requirements of any authority, body or organisation having jurisdiction in connection with the Works.

University means Macquarie University.

University Representative means the person or entity nominated by the University to act on its behalf under this Agreement.

Works means the works specified in or reasonably inferred from the Work Order.

Working Hours means 7.00am to 5.00pm Monday to Friday or as otherwise agreed between the parties.

Work Order means an order for works issued by the University and any attachment to it that is expressly incorporated in writing.

1.4 Interpretation

Unless the contrary intention appears, in this Agreement:

(a) references to the singular includes the plural and vice versa;

(b) references to person or individuals include that person's successors, administrators, executors and assigns and a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency; and

(c) generic words are not to be narrowly construed by the examples that may follow them.
2. OFFER AND ACCEPTANCE

(a) The Contractor is taken to have accepted a Work Order if it notifies the University that it accepts the Work Order or if the Contractor commences the Works.

(b) If the Contractor is unable or unwilling to accept the Work Order, it must notify the University promptly. It may propose a variation to the Work Order, or offer other Works in substitution, but these must first be approved in writing by the University before delivery.

(c) The Work Order once accepted, combined with these terms and any terms in the Work Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties (Agreement).

(d) The Contractor must complete the Works by the date for Completion specified in the Work Order.

3. CANCELLATION AND VARIATIONS

(a) The University may at any time before commencement of the Works vary or cancel a Work Order.

(b) If the University cancels a Work Order and the Contractor establishes to the University’s satisfaction the Contractor already incurred expense in arranging for the order or delivery of the Works, the University agrees to pay the Contractor’s reasonable costs or expenses incurred.

(c) Cancellation of a Work Order operates to terminate this Agreement.

(d) If the University varies the Work Order and the variation causes an increase or decrease in the cost of the Works, or time required to deliver the Works, the Contractor must promptly notify the University of:

(i) the additional or reduced cost resulting from the proposed variation; and

(ii) any revised delivery or completion times as a result of the variation.

(e) If the parties agree, the Work Order will be varied by the University to reflect the agreed variation including costs and delivery times.

4. PERFORMANCE AND QUALITY

4.1 Warranties of Contractor

The Contractor represents and warrants that:

(a) it has all licences and interests necessary to conduct the Works;

(b) the Contractor and its personnel are suitably qualified, skilled and competent to perform the Works;

(c) each of its personnel providing Works is entitled to work in Australia and the Contractor has procedures in place to ensure, and must verify in accordance with the Migration Act 1958 (Cth), that each of its personnel is entitled to work in Australia. On request by the University the Contractor will provide evidence, within seven Business Days, that it is complying with its obligations under this clause;

(d) any Goods will be new, fit for the purposes intended and must comply with the requirements of this Agreement;

(e) the Works will be completed to a high standard in accordance with best industry practice;

(f) if applicable, Works will meet any agreed design and performance criteria and correspond with any sample;

(g) the Works will be free from material faults in design and free from defects in materials, workmanship and installation;

(h) as far as is aware it is entitled to licence any Intellectual Property transferred to the University under this Agreement;

(i) the University’s use of Contract Materials will not infringe the Intellectual Property of any person; and

(j) it will supply to the University in English all complete, accurate and up-to-date documentation associated with the use of any Goods.

4.2 Statutory Warranties

The warranties in clause 4.1 are in addition to any statutory warranties applicable to the Works.

4.3 Defects

(a) During the Defect Liability Period the University may give written notice to the Contractor of any failure or defect in the Works.

(b) The Contractor must promptly correct any defect or failure notified by the University during the Defect Liability Period at no cost to the University by repair, replacement, modification or other means acceptable to the University and in a manner which causes little inconvenience to the occupants of the Site and its surroundings.

(c) If the Contractor fails to correct any defect or failure of which it has been notified under this clause 4.3 within the time specified in the notice, the University has the right to rectify the defect or failure itself or have the rectification undertaken by a third party. All costs incurred constitute a debt due and payable by the Contractor to the University and may be deducted from moneys otherwise payable by the University to the Contractor.

5. THE SITE

5.1 Access

(a) The University is not obliged to provide the Contractor with sole access to the Site and may engage others to work upon or in the vicinity of the Site at the same time as the Contractor.

(b) The Contractor must at all reasonable times give the University Representative, the University and any authorised person access to the Works, the Site or any areas off-site where the Contractor is performing the Works.

(c) The Contractor must co-operate and co-ordinate the Works with any other contractors engaged by the University to perform other works on or in the vicinity of the Site or the Works.

5.2 Contractor not to cause disruption

The Contractor must use its best endeavours not to cause disruption or interference to:

(a) the normal occupancy, business and operations of the University and any tenants in the vicinity of the Site or the use by the public of any public areas; or

(b) the use by the public of the public areas within and surrounding the Site including maintaining:

(i) trafficable areas and manage pedestrian traffic flow;

(ii) a non-hazardous environment for visitors to the University’s business and operations at the Site at all times; and
5.3 Other Contractor obligations
The Contractor must:
(a) keep the Site and the Works clean, free from refuse and secure at all times;
(b) comply with all reasonable directions of the University concerning any tenants in the vicinity of the Site;
(c) undertake the Works during the Working Hours or as directed in writing by the University;
(d) provide secure dust proof curtains or shrouds to minimise dust generated from the conduct of any Works and remove these as directed by the University;
(e) comply with any direction of the University in relation to the positioning of site sheds and site amenities within the Site; and
(f) give not less than 2 weeks’ notice to the local fire brigade and the University prior to disconnecting or shutting down any fire protection, electrical or hydraulic services.

6. CONSTRUCTION

6.1 Execution of Works
(a) The Contractor must regularly and diligently progress the execution of the Works in accordance with:
(i) the Works Description and this Agreement; and
(ii) any direction of the University or the University Representative.

(b) In carrying out the Works, the Contractor must:
(i) comply with all Statutory Requirements and any requirements of the University;
(ii) apply for and obtain any certificates, licenses, consents, permits and approvals required by any authority, body or organisation with jurisdiction in the Works; and
(iii) give all notices and pay all fees and charges in connection with paragraphs (i) and (ii).

6.2 Damage to environment
The Contractor must ensure that it does not pollute or otherwise damage the environment in carrying out the Works and that any pollution or damage is promptly reported to the University and remedied.

6.3 Removal of employee
The University or the University Representative may direct the Contractor to remove from the site any person employed by the Contractor, and the Contractor must immediately comply with such direction.

7. SUB-CONTRACTING

(a) Except as expressly provided in the Work Order, the Contractor must not sub-contract any obligations under this Agreement without the prior written consent of the University.

(b) Where the Contractor sub-contracts any of its obligations under this Agreement, the Contractor remains liable for carrying out and completing those obligations.

8. FEE AND INVOICES

8.1 Fee
(a) The University agrees to pay to the Contractor the Fee. Subject to clause 8.3 the Fee includes all taxes, costs and charges including freight and courier charges.

(b) The Fee also includes all plant, equipment, materials and work necessary to perform the Works whether or not expressly mentioned in the description of the Works.

8.2 Invoices
(a) The Contractor must not issue an invoice for any work until Completion. At Completion the invoice must:
(i) specify the Contractor’s name, ABN and telephone number;
(ii) specify the Work Order number;
(iii) describe the Works completed;
(iv) note the invoice recipient as Macquarie University Property;
(v) specify bank account details for electronic payment; and

(b) All invoices must be emailed to:
invoices@mq.edu.au.

(c) Unless otherwise specified in the Work Order, on receipt of an invoice complying with clause 8.2 the University agrees to pay the Contractor the Fee within 30 days of receipt and acceptance of an invoice by the University.

8.3 GST
If GST is payable in connection with the Works to be supplied under this Agreement, then the Contractor irrevocably warrants a GST inclusive price of those Works unless otherwise agreed in the Work Order.

9. INDEMNITY AND INSURANCE

9.1 Indemnity
The Contractor indemnifies the University (and each of the University’s employees, officers, students and agents, for whom the University holds the benefit of this indemnity in trust) against all Losses it directly or indirectly sustains or incurs as a result of:
(a) any act or omission of the Contractor, Contractor personnel, or any subcontractor engaged by the Contractor; and
(b) any infringement of the Intellectual Property or moral rights of a third party arising out of the provision or use of the Works.

9.2 Third Party claims
If a third party claims, or the University reasonably believes that a third party is likely to claim, that all or part of the Contract Materials infringe their Intellectual Property or breach confidentiality, the Contractor must, in addition to the indemnity under this Agreement and to any other rights that the University may have against it, promptly, at the Contractor’s expense:
(a) use its best efforts to secure the rights for the University to continue to use the affected Contract Materials free of any claim or liability for infringement; or
(b) replace or modify the affected Contract Materials so that the Contract Materials or the use of them does not infringe the Intellectual Property of any other person without any degradation of the performance or quality of the affected Contract Materials.
9.3 Insurance

(a) The Contractor must have and maintain the following insurances on terms satisfactory to the University:

(i) works insurance for the amount stated in the Work Order or if no amount is stated an amount equal to the amount of the Fee plus twenty percent;
(ii) professional indemnity insurance in the amount of $10,000,000 (Ten Million Dollars);
(iii) public and products liability insurance in the amount of $20,000,000 (Twenty Million Dollars);
(iv) motor vehicle insurance covering third party property damage for a minimum of $20,000,000 (Twenty million dollars) in respect of registrable vehicles to be brought onto University premises;
(v) workers’ compensation insurance as required by law; and
(vi) other reasonably required insurances having regard to the nature of the business and obligations to supply Works under this Agreement.

(b) In relation to the works insurance and the public and products liability insurance, the Contractor must ensure that the University's interest is noted on the policy as a person to whom the benefit of the policy extends for its own acts and omissions.

(c) The Contractor must in relation to:

(i) the professional indemnity insurance, have the policy in place until 8 years after the expiry of the Defects Liability Period; and
(ii) the public and products liability insurance and workers’ compensation insurance, have the policy in place until the later of the end of the Defects Liability Period or the date upon which all Defects have been rectified in accordance with this Agreement.

(d) The Contractor must ensure that any sub-contractor engaged by it is insured to a level commensurate with the insurance obligations of the Contractor under this Agreement.

(e) The Contractor must provide the University with a certificate of currency from its insurance broker certifying that it has the insurance required under this Agreement.

10. WORK HEALTH AND SAFETY

10.1 Definitions

In this clause:
- **construction work** has the meaning given to that term under the WHS Regulations;
- **workplace** has the meaning given to that term under the WHS Act and the WHS Regulations;
- **principal contractor** has the meaning given to that term under the WHS Act and the WHS Regulations;
- **WHS Act** means the Work Health and Safety Act 2011 (NSW);
- **WHSE Management Plan** means a work health safety and environment management plan which includes the requirements of the University and satisfies the requirements of the WHS Act and the WHS Regulations; and
- **WHS Regulations** means the Work Health and Safety Regulations 2011 (NSW).

10.2 Appointment as principal contractor

(a) Without limiting the Contractor’s obligations under any other provision of this Agreement, to the extent the Works involve any construction work the University:

(i) engages the Contractor as the principal contractor in respect of the construction work under this Agreement; and
(ii) authorises the Contractor to have management and control of each workplace at which the Works are to be carried out and to discharge the duties of a principal contractor under the WHS Regulations.

(b) The Contractor accepts the engagement as principal contractor and must, in respect of the Works:

(i) discharge the duties imposed on a principal contractor under the WHS Act and WHS Regulations; and
(ii) perform the Works in a manner which ensures that the University satisfies its obligations under the WHS Act and the WHS Regulations.

(c) To the extent not prohibited by law, the Contractor indemnifies the University against any Loss, incurred by the University arising out of or in connection with the failure by the Contractor to comply with this clause 10.

10.3 General WHSE obligations

The Contractor must:

(a) prior to commencing the Works, meet the University’s work health, safety and environment requirements and must continue to comply at its own cost with any directions the University issues until the later of Completion and the rectification of any Defects;

(b) prior to commencing the Works, complete the University’s Contractor Site Induction Requirements as detailed in Appendix 1 of this Agreement;

(c) notify the University promptly if the Contractor is issued any type of improvement, prohibition, non-disturbance notice or letter or information request from any regulatory body which is related to any work health, safety or environment matter at the Site and provide the University with a copy of such document and all subsequent formal communications between the Contractor and the regulatory body in respect of the notice, letter or information request;

(d) at all reasonable times provide the University with access to such records as may be necessary to establish the Contractor’s compliance with its obligations under this clause 10;

(e) comply with its obligation under the WHS Act and the WHS Regulations to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter including (but without limiting its obligation as principal contractor) any other contractor or consultant engaged by the University.

10.4 Condition precedent

As a condition precedent to the University's obligation under this Agreement to provide the Contractor with access to, or possession of, the Site the Contractor must:

(a) prepare and submit to the University a WHSE Management Plan for the Works including submitting an amended WHSE Management Plan where the University has rejected a previous version of the plan under this clause;

(b) allow the University 10 Business Days to review the WHSE Management Plan; and
(c) not commence the Works until the earlier of:
   (i) the period of 10 Business Days elapsing without
       the University rejecting the WHSE Management
       Plan; or
   (ii) the University directing the Contractor that it has
        no objection to the WHSE Management Plan;

10.5 Review WHSE Management Plan
    During the Works the Contractor must regularly review and
    update the WHSE Management Plan for the Works and
    submit any amended WHSE Management Plan for the
    Works to the University all as required by the WHS
    Regulations.

10.6 Duty under WHS Act
    Without limiting the Contractor's obligations under any
    other clause of this Agreement, insofar as the Contractor,
    in carrying out the Works is under any duty imposed by the
    WHS Act or the WHS Regulations the Contractor must do
    everything necessary to comply with any such duty

11. INTELLECTUAL PROPERTY RIGHTS AND
    CONFIDENTIAL INFORMATION

11.1 Intellectual Property
    (a) All interest in any Contract IP is owned by the
        University, and to the extent needed, the Contractor
        assigns all interest it may have now or in the future in
        the Contract IP to the University.
    (b) Background IP remains with the contributing party.
    (c) The Contractor grants to the University a permanent,
        irrevocable, royalty-free worldwide, non-exclusive
        licence (including a right of sub-licence) to use,
        reproduce, modify, publish, adapt, or communicate to
        the public and exploit the Contractor’s Background IP
        in conjunction with the Works, and the Contract IP.

11.2 Confidential Information
    Each party (recipient) must keep any Confidential
    Information disclosed to it confidential and must not deal
    with it in any way that might prejudice its confidentiality.
    These obligations continue indefinitely beyond the end of
    this Agreement, but do not extend to disclosures:
    (a) required by law (including under the Government
        Information (Public Access) Act 2009 (GIPA)); and
    (b) to a recipient’s officers or employees:
        (i) who have a need to know for the purposes of this
            Agreement (but only to the extent that each has a
            need to know); and
        (ii) before disclosure, have been directed by the
            recipient to keep that Confidential Information
            confidential.

12. GENERAL

12.1 Termination
    (a) The University may, without prejudice to any other
        right it may have, immediately terminate this
        Agreement at its discretion.
    (b) If the University terminates this Agreement, the
        University will pay the Contractor for all work
        performed to the time of termination in full and final
        satisfaction of the University’s obligations to the
        Contractor.

12.2 Governing law
    The Agreement is governed by the law in force in New
    South Wales.

12.3 Giving effect to this Agreement
    Each party agrees to do anything (including execute any
    document) and must ensure that its employees and agents
    do anything (including executing any document) that the
    other party may require to give effect to this Agreement.

12.4 Notices
    Any notice to be given by one party to the other under this
    Agreement must be in writing and sent to the other party at
    the address set out in the Work Order or as that party
    otherwise notifies.

12.5 Rights and obligations
    (a) The University reserves the right to retain other
        persons or entities to supply the Works, including any
        part of the Works.
    (b) The Contractor may only assign its rights or novate its
        rights and obligations under this Agreement with the
        prior written consent of the University.
    (c) Each warranty and indemnity in this Agreement
        survives termination of this Agreement.

12.6 Exercise of rights
    The exercise of a right does not prevent any further
    exercise of that right or the exercise of any other right.
    Neither the exercise of a right nor a delay in the exercise
    of a right operates as an election or a variation of the
    terms of this Agreement.

12.7 Compliance with University policies
    The Contractor must comply with all reasonable directions
    of the University and must observe the University’s by-
    laws, rules and policies, which are downloadable from the
    following website: www.mq.edu.au.

12.8 Publication
    If required to do so by law whether under GIPA or
    otherwise, the Contractor agrees that the University has
    the right to publish details of this Agreement and/or this
    Agreement itself in the manner set out in the applicable
    requirements.

12.9 Inconsistency
    If there is an inconsistency between a provision of any two
    or more of the following, then the first-mentioned terms
    prevail in the order set out:
    (a) a longer form University contract entered into between
        the Contractor and the University for the Works
        described under the Work Order;
    (b) these terms;
    (c) any terms added to the Work Order; or
    (b) any annexures or attachments to the Work Order.
Appendix 1
Contractor Site Induction Requirements

Contractor Induction

All contractors engaged to undertake work at the University or any of its sites must complete an OHS Induction and must have all relevant Certificates of Competency and/or licenses for the equipment being used or tasks performed prior to commencing work at the University.

All contractors must access the University’s online OHS induction course and complete the required pass level to be able to work on campus. The course is found at the OHS website: http://www.elearn.com.au/mq/contractor/

Username: macquarie
Password: contractor

The induction programme covers a wide variety of topics essential in providing a safe workplace for contractors whilst working at the University. Officers however have a responsibly to inform contractors of any OHS hazards that may exist in the area in which they are working and assist them in eliminating the hazard.

The Contractor is required to print off the induction card as proof of having completed the induction and must carry this card with them whilst engaged on the University premises.

Who is a contractor?

A contractor can be a company, agency, or individual, contracted to provide goods, services or carry out works of any type, for the University. Contractors may include (but are not restricted to) security guards, technicians / Installers, builders, cleaners, electricians, plumbers, general handymen etc, but can also include temporary administrative staff from employment agencies.