

## Labour Hire Agreement

This labour hire agreement is dated the day it is signed and accepted by the Client.

between:

You the Client (**Client**)

and:

Walters Civil & Construction Pty Ltd ACN 630 984 477 of PO Box 1068, Gailes QLD 4300, Labour Hire Licensee No. LHL-04630-F3D0J (**Walters Civil & Construction**)

## The Parties Agree

### 1. Definitions and Interpretation

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- 1.1. The following definitions will apply for the purpose of this agreement:
- (a) **Agreement** means this labour hire agreement.
  - (b) **Client Request** means a request by You the Client for Services as described in clause 2.1.
  - (c) **Fees** means the fees stipulated in a Quote.
  - (d) **Quote** refers to the quote for the Services in accordance with Clause 3.
  - (e) **Related Body Corporate** has the meaning given to this term under the *Corporations Act 2001* (Cth).
  - (f) **Services** means the labour hire service provided by Walters Civil & Construction, in which Walters Civil & Construction may supply Workers to the Client to undertake Work.
  - (g) **Site** means any place at which the Client requests the provision of services.
  - (h) **Term** means the time from the date of this Agreement to the termination of this Agreement for any reason.
  - (i) **Work** means the type of work specified in the Client Request and Quote.
  - (j) **Worker** means any person who is an employee, agent or contractor of Walters Civil & Construction and whose services are provided by Walters Civil & Construction to the Client.
- 1.2. Headings are for convenience only and do not affect the interpretation of this Agreement.
- 1.3. In the event of any inconsistency between the contract documentation, priority will be given in the following order from highest priority to lowest:
- (a) Quote;
  - (b) this Agreement; and
  - (c) Client Request.

### 2. Supply of Workers

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- 2.1. Supply of Workers
- (a) From time to time, the Client may request that Walters Civil & Construction supply a specified number of Workers, each of whom are suitable for performing the Work (**Client Request**).
  - (b) It is the responsibility of the Client to stipulate in the Client Request any necessary training, certifications, tools or equipment required of the Workers, the nature of the Work, and the expected start date or time.
  - (c) In response to a Client Request, Walters Civil & Construction may provide a Quote for the Services which must then be accepted by the Client on reasonable notice before the intended start of the Work. Upon acceptance of the Quote on this basis, Walters Civil & Construction is bound to deliver the Services and the Client is obligated to make payment as per the Quote and this Agreement.
  - (d) The Client agrees and acknowledges that for each Worker supplied per Client Request, Walters Civil & Construction will charge the Client for a minimum of 4 hours' Work for each Worker per shift, job or call out (as applicable).
  - (e) Walters Civil & Construction agrees that all Workers will be suitable for carrying out the Work and that the Workers supplied have been adequately trained for the role.
- 2.2. Replacement of Workers

- (a) If not satisfied with the services provided by a particular Worker, the Client will notify Walters Civil & Construction as soon as possible. Walters Civil & Construction will consult with the Client about its options.
- (b) The Client must pay Walters Civil & Construction a minimum of 4 hours' Work for any Worker who has been replaced with another Worker as a result of clause 2.2(a).

### **3. Quote**

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- 3.1. In response to a Client Request, Walters Civil & Construction may issue a Quote which will set out the Fees for the Services and any additional terms or stipulations for the Services and Workers.
- 3.2. The Client acknowledges that:
  - (a) the Quote does not include any penalty or overtime payments which may be applicable to the Worker; and
  - (b) the Quote is only active and valid for acceptance by the Client for a period of 14 days from the date of issue to the Client, after which Walters Civil & Construction may reassess the Quote.
- 3.3. If the Client requests or directs any Worker to perform any overtime work or hours attracting penalty rates in relation to the Services, the Client is required to pay this overtime as per the applicable industrial instrument (if any) to Walters Civil & Construction for that Worker.
- 3.4. In this clause, "*overtime*" is given the meaning as it is set out in the applicable industrial instrument (if any).

### **4. Relationship Between the Parties**

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- 4.1. The Client engages Walters Civil & Construction to provide the Services as an independent contractor.
- 4.2. Neither Walters Civil & Construction nor any Worker, is the Client's employee, partner, legal representative, agent, joint venturer or franchisee.
- 4.3. Neither party has any right or authority to:
  - (a) bind the other party;
  - (b) assume or create any obligations for, or on behalf of, the other party; or
  - (c) make any representations or warranties for, or on behalf of, the other party.
- 4.4. No contractual relationship will exist between the Client and the Workers. However, all Workers will be under the direct supervision of the Client, and not Walters Civil & Construction, for the duration of the Work.
- 4.5. The Workers are not entitled to any benefit from the Client that is usually attributable to an employee, other than overtime or penalties specified in clause 3.3 (for the avoidance of doubt such overtime or penalties are to be paid to Walters Civil & Construction as additional Fees, and Walters Civil & Construction will be responsible for the remittance to the Workers as required by law).
- 4.6. Walters Civil & Construction agrees to exercise sufficient control over the Services performed by the Workers to ensure that those services comply with lawful and reasonable directions issued to the Workers by the Client.

### **5. Insurances**

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- 5.1. The Client must obtain and maintain at all times during the Term of this agreement:
  - (a) public liability insurance to provide cover of at least \$20,000,000.00; and
  - (b) third party and property damage insurance to provide cover of at least \$10,000.00.
- 5.2. The Client must provide to Walters Civil & Construction on request copies of the certificates of currency for each insurance policy referred to in clause 5.1 within 21 days of a request made by Walters Civil & Construction.

### **6. Walters Civil & Construction's Specific Obligations**

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- 6.1. Subject to clause 3.3, Walters Civil & Construction will be solely responsible, and will solely bear the liability, for:
  - (a) the payment of remuneration to the Workers, including salaries and wages, superannuation, annual leave, sick leave, long service leave and other benefits to which workers may be entitled under any contract of service or under any rule, statute, common law or industrial instrument (as defined in relevant legislation);
  - (b) the payment of all taxes and duties in respect of such remuneration and benefits;
  - (c) compliance, and the cost of compliance, with all statutory, award or other legal or contractual requirements with respect to employees, agents, servants and contractors; and

- (d) the maintenance, and the cost, of obtaining appropriate workers' compensation policies to provide coverage for the Workers.
- 6.2. Subject to clause 3.3, neither the Client, nor any Related Bodies Corporate of the Client, will have any responsibility for:
- (a) the payment of salary or wages to any Worker;
  - (b) the payment of any payroll tax, PAYG tax instalments or superannuation guarantee charge associated with the employment of any Worker; or
  - (c) annual leave, personal/carers leave or long service leave which may accrue to any Worker.

## **7. Fees**

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### **7.1. Fees**

- (a) In consideration for Walters Civil & Construction providing the Services, the Client must pay Walters Civil & Construction the Fees stipulated in the Quote.

### **7.2. GST and invoicing**

- (a) For the purpose of this clause:
  - i. **GST** means a goods and services tax, or similar value added tax, levied or imposed under the GST Law; and
  - ii. **GST Law** means the same as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Walters Civil & Construction will issue an invoice to the Client on a weekly basis. The invoice must:
  - i. state the rate being charged by Walters Civil & Construction and the basis on which it has been calculated;
  - ii. state the total amount payable by the Client;
  - iii. comply with the GST Law; and
  - iv. comply with other laws, including state or territory laws or regulations specifically applicable to the provision of the Services and any other requirements reasonably required by the Client.
- (c) The Fees (plus applicable GST) must be paid by the Client within seven (7) days after receiving the invoice.
- (d) Unless expressly stated otherwise, all amounts payable by the Client to Walters Civil & Construction pursuant to this Agreement are exclusive of GST.
- (e) If the Client does not make payment of an invoice within seven (7) days after receiving the invoice, Walters Civil & Construction shall be entitled:
  - i. to charge interest on the outstanding amount at the rate of 15% per annum accruing on a day to day basis, and all costs associated with recouping this amount, until such time the Client pays the outstanding amount and interest (if any); or
  - ii. upon notice to the Client, cease providing the Services.

### **7.3. Documentations**

- (a) The Client is responsible for maintaining its own timesheet, using the preferred reporting software of Walters Civil & Construction from time to time, showing:
  - i. the number of Workers supplied by Walters Civil & Construction to the Client (**Supplied Workers**);
  - ii. the dates on which the Supplied Workers were supplied to the Client;
  - iii. the total number of hours worked by the Supplied Workers on each of the dates on which their services were supplied to the Client; and
  - iv. the locations at which the Work was performed by each Supplied Worker.

to ensure that all entries are completed on time and agreed by both parties to ensure seamless transactions for both payroll and invoicing purposes.
- (b) Walters Civil & Construction agrees to provide all documentation reasonably requested by the Client, in order to enable the Client to verify any information contained in an invoice.

## **8. Work Health and Safety**

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- 8.1. The Client and Walters Civil & Construction must:
- (a) make all reasonable attempts to ensure that all Work carried out pursuant to this Agreement complies with all work health and safety requirements of the state or territory in which the Work is carried out;
  - (b) ensure that the Workers are not exposed to risks to their health or safety or to hazards arising from the provision of Work;
  - (c) ensure that any equipment or facilities provided for use in the provision of Work are safe and without risks to health and safety when properly used;
  - (d) ensure that systems of work and the working environment are safe and without risks to health; and
  - (e) provide such information, instruction, training and supervision as necessary to ensure that the Work is provided without hazards or risks to health and safety.
- 8.2. The Client must ensure that all of the Workers supplied:
- (a) fully comply with the appropriate regulations, standards and legislation;
  - (b) fully comply with all relevant workplace health and safety procedures of the Client while performing Work;
  - (c) exercise reasonable and necessary precautions which are appropriate to the nature of the Work and the conditions under which the Work is carried out;
  - (d) receive adequate training to ensure tasks are undertaken in a manner that minimises the risk to the Workers' health and safety and the health and safety of others; and
  - (e) will not undertake any tasks for which they have not received adequate training.
- 8.3. Walters Civil & Construction must notify the Client of any injury sustained by any of the Workers on the Site, or any injury sustained by any of the Workers during the time in which their services were being supplied to the Client.

## **9. Confidentiality**

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- 9.1. Walters Civil & Construction must maintain the confidentiality of, and not disclose, any trade secret, confidential information or commercially sensitive information about the Client or any of its Related Bodies Corporate obtained while providing services to the Client, other than when required by law or when the information falls into the public domain.
- 9.2. The Client must maintain the confidentiality of, and not disclose, any trade secret, confidential information or commercially sensitive information about Walters Civil & Construction or any of its Related Bodies Corporate obtained while receiving services from Walters Civil & Construction, other than when required by law or when the information falls into the public domain.
- 9.3. This clause will survive termination of this Agreement.

## **10. Intellectual property rights**

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- 10.1. All intellectual property rights in materials developed or created by Walters Civil & Construction or Workers while they are providing Work, on the Client's time, or using the Client's resources (including its confidential information), whether such materials were created during business hours or not, will vest in the Client, and neither Walters Civil & Construction nor the Workers will have any claim to or interest of any nature in such intellectual property rights. Walters Civil & Construction will do, and will ensure that all Workers do, whatever is necessary and sign any document required by the Client to ensure that such intellectual property rights are vested in the Client.
- 10.2. The Client must ensure that each of the Workers supplied to the Client agree to the terms of this clause before those Workers are supplied to the Client.

## **11. Non-solicitation of Workers by Client**

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- 11.1. In this clause 11 the term "**Restricted Worker**" means any person who is or was a Worker (as defined in clause 1.1(j)) at any time during the term of this Agreement.
- 11.2. The Client agrees that during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement for any reason:
- (a) neither it nor any of its Related Bodies Corporate will approach, canvass or solicit or permit any other person to approach, canvass or solicit any Restricted Worker, for the purpose of enticing such

Restricted Worker into employment or business with the Client or any of the Client's Related Bodies Corporate;

(b) neither it nor its Related Bodies Corporate will, recruit, engage or contract with or take any action which may interfere with, impair, subvert, disrupt or alter the relationship, contractual or otherwise, between a Restricted Worker and Walters Civil & Construction; and

(c) neither it nor its Related Bodies Corporate will recruit, engage, or contract with a Restricted Worker;

unless:

(d) Walters Civil & Construction provide written consent.

11.3. Without limitation to Walters Civil & Construction's rights under this clause 11, in the event the Client breaches clause 11.1 and 11.2 to the detriment of the Walters Civil & Construction, the Client must pay Walters Civil & Construction as liquidated damages \$7,000.00 per Restricted Worker solicited or recruited in this manner. The Client agrees that these liquidated damages clauses are an appropriate and reasonable estimate of the cost of the disruption, replacement and training of its Restricted Workers.

## **12. Warranties and Indemnities**

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12.1. Both parties warrant and agree that:

(a) they have the right, power and authority to enter into and perform their respective obligations in accordance with this agreement;

(b) all corporate and other necessary action has been taken by each of them to authorise the signing and performance of this agreement; and

(c) this agreement is valid and legally binding on them in accordance with the terms of this agreement.

12.2. Walters Civil & Construction warrants and agrees that it:

(a) has the requisite skills, experience, resources and infrastructure to provide and perform the Services;

(b) holds and will continue to hold during the Term, all relevant authorisations required by law to provide the Services; and

(c) will comply with any applicable industrial awards or agreements that apply in respect of its employment, or contracting, of the Workers.

12.3. The Client indemnifies Walters Civil & Construction and its Related Bodies Corporate and keeps each of them indemnified from and against all liability, loss, damage, penalty, charge, claim, harm, injury, costs or expenses of any kind whatsoever (including consequential loss) (**Loss**) incurred or suffered directly or indirectly from or in connection with:

(a) any breach of this Agreement by the Client;

(b) the termination of this agreement because of a breach by the Client;

(c) any wilful, unlawful or negligent act or omission of the Client or any Related Bodies Corporate;

(d) any injury to or death of a natural person and any loss of or damage to a third party's real or personal property caused or contributed to by the Client or any Related Bodies Corporate;

(e) any loss of or damage to real or personal property of Walters Civil & Construction, caused by or contributed to by the Client or any Related Bodies Corporate;

(f) any claim, action, demand or proceeding by a third party against Walters Civil & Construction or any of its Related Bodies Corporate caused by or contributed to by the Client or any of its Related Bodies Corporate; or

(g) any claim, action, demand or proceeding by a third party against Walters Civil & Construction or any of its Related Bodies Corporate arising directly or indirectly out of a breach of this Agreement by the Client or any of its Related Bodies Corporate, or by any wilful, unlawful or negligent act or omission of the Client or its Related Bodies Corporate,

except to the extent that any Loss is solely and directly caused by the negligence of Walters Civil & Construction or any of its Workers.

12.4. For the purposes of clause 12.3, Walters Civil & Construction has entered into this agreement as principal and also as agent for each of its Related Bodies Corporate. The terms and conditions of clause 12.3 will also extend to protect Walters Civil & Construction's Related Bodies Corporate.

12.5. This clause will survive termination of this Agreement.

### **13. Minimum period of Services**

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13.1. The minimum period for the hire of any employee is eight (8) hours.

### **14. Cancellation of Services**

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14.1. The Client must notify any cancellation of any Services immediately.

14.2. In the event any Service is cancelled by the Client in the 24 hours before the shift starts, the Client acknowledges and agrees that Walters Civil & Construction may charge the Client a minimum of four (4) hours for the Services at the applicable Hourly Rate.

14.3. In the event any Services are cancelled by the Client due to weather, the Client will need to give Walters Civil & Construction reasonable amount of notice to cancel the Worker. If the Client fails to contact Walters Civil & Construction in time and the Worker arrives on site, four (4) hire minimum charge will be applied

14.4. Walters Civil & Construction may cancel the Services immediately without prior notice if:

- (a) the Client fails or refuses to pay any amount invoiced to the Client as per the payment terms in clause 7;
- (b) the Client breaches any health and safety requirement; or
- (c) there is any change of circumstances which reasonably prevents Walters Civil & Construction from providing the agreed Services.

### **15. Termination and Suspension**

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15.1. Either party may terminate this agreement at any time by giving 30 days' notice in writing to the other without prejudice to the accrued rights of the parties.

15.2. Walters Civil & Construction may suspend or terminate its Services immediately without penalty or compensation if:

- (a) the Client has failed to pay an invoice by the due date for payment;
- (b) the Client is otherwise in breach of any term of this agreement;
- (c) It is aware of any fact or matter which in its opinion, acting reasonable, would endanger the health and safety of any Worker; or
- (d) it is unable to provide the required Workers for any reason.

### **16. Assignment**

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16.1. The Client may not assign this agreement or any of its obligations under this agreement or otherwise transfer the benefit of this agreement or a right or remedy under it, without the prior written consent of Walters Civil & Construction. Walters Civil & Construction may assign its obligations under this agreement only after providing the Client two (2) weeks' notice in writing.

### **17. Electronic Execution**

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17.1. This Agreement may be executed electronically by the Client via any appropriate method confirming acceptance by the Client.

17.2. The signatory of this Agreement on behalf of the Client warrants and represents to Walters Civil & Construction that he or she had full power and authority to enter into this Agreement on behalf of the Client.

### **18. Miscellaneous**

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18.1. This Agreement may only be amended in writing.

18.2. This Agreement is governed by the laws of Queensland, Australia.

18.3. This Agreement constitutes the entire agreement between the parties as to the subject matters.