

WORKS AGREEMENT

Recitals

- A. The Client requires Enviro Lining to complete the Works.
- B. Enviro Lining agrees to complete the Works in accordance with this Agreement.

1 Definitions

In this Agreement:

Access Date means the date identified as such in the Quote.

Agreement means these terms and conditions and the Quote.

Approval means any licence, permit, consent, approval, determination, certificate or permission from any authority or under any law, which must be obtained or satisfied to perform the Works in accordance with this Agreement.

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 and 31 December.

Client means the client named in the Quote.

Client Information means all information and documents supplied to Enviro Lining by or on behalf of the Client.

Client Material and Equipment means all things the Client is required to supply to Enviro Lining in relation to this Agreement, as detailed in the Quote.

Client's Representative means the person notified as such to Enviro Lining by the Client and any delegate or replacement notified to Enviro Lining by the Client or the Client's Representative.

Completion means the stage when:

- (a) the Works are complete except for minor defects Enviro Lining has reasonable grounds for not promptly rectifying; and
- (b) those tests required by law to be carried out and passed have been carried out and passed.

Confidential Information means all information and Intellectual Property Rights revealed by or on behalf of Enviro Lining to the Client that:

- (a) is by its nature confidential;
- (b) is marked or designated as confidential or proprietary at the time of its disclosure; or
- (c) the Client knows or ought to know is confidential.

Contract Sum means the sum identified or calculated in accordance with the Quote, as adjusted in accordance with this Agreement.

Date for Completion means the date identified as such in the Quote, as adjusted in accordance with this Agreement.

Date of Completion means the date on which Completion is determined in accordance with clause 14(a).

Enviro Lining means Enviro Lining Pty Ltd (ABN 26 060 538 909) of 2/75 Corish Circle, Banksmeadow NSW 2019.

Force Majeure Event means each of the following and all other events beyond the reasonable control of Enviro Lining, including their effects in each instance, to the extent they are not caused or contributed to by Enviro Lining:

- (a) war, invasion, act of foreign enemy, act of terrorism, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or civil commotion, riot or disorder;
- (b) confiscation by order of any government or authority;
- (c) mass sickness or illness, including COVID-19; and
- (d) earthquake, fire, flood, cyclone or hurricane.

Imported Goods has the meaning given to that term in clause 18.

Intellectual Property Rights means all intellectual property rights and other proprietary rights in relation to inventions, innovations, ideas, patents, applications for patents, copyright, registered and unregistered designs, registered and unregistered trademarks, utility models, designs, mask rights, rights in relation to technologies in development, trade secrets, know-how and confidential information and all other intellectual property as defined in the Convention establishing the World Intellectual Property Organization of July 1967, whether created before or after the date of this Agreement.

Latent Conditions means physical conditions on the Site and its near surrounds, including artificial things and hazardous substances, but excluding weather conditions, which differ materially from the physical conditions which:

- (a) were represented to Enviro Lining by or on behalf of the Client; or
- (b) should reasonably have been anticipated by a competent contractor at the date of the Quote.

Personnel means a party's employees, agents and contractors, excluding Enviro Lining in the case of the Client.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Quote means the quote issued to the Client by Enviro Lining in respect of the Works.

Security Interest has the meaning given to that term in clause 24.

Site means the site identified in the Quote, including a suitable laydown area located next to the installation area.

WHS Laws means the *Work Health & Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW).

Works means the works defined in the Quote.

2 Interpretation

In this Agreement:

- (a) 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture, a partnership and a trust;
- (b) a reference to a party includes its executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (c) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced;
- (d) a reference to a statute includes its delegated legislation and all consolidations, amendments, re-enactments and replacements;
- (e) a word importing the singular includes the plural and vice versa;
- (f) if a word is given a defined meaning, any other part of speech or form of that word has a corresponding meaning;
- (g) 'includes' is not a word of limitation;
- (h) a reference to '\$', 'A\$', '\$A', 'AUD' or 'dollar' is to Australian currency;
- (i) references to time are to local time in Sydney;
- (j) if the time for giving any notice, issuing or making any certificate, direction, approval or comment or making any payment required by this Agreement, falls on a day that is not a Business Day, then the time for giving the notice, issuing or making the certificate, direction, approval or comment or making the payment is deemed to be on the next Business Day; and
- (k) no term or provision of this Agreement will be construed against Enviro Lining on the basis that this Agreement was put forward or drafted by or on behalf of Enviro Lining.

3 General Obligations

- (a) Enviro Lining must complete the Works in accordance with this Agreement.
- (b) The Client must pay Enviro Lining the Contract Sum for doing so.

4 Client Warranties

- (a) The Client warrants for the benefit of Enviro Lining and repeats on each day of the term of this Agreement, that:
 - (i) the Client is responsible for all construction methods and obtaining all Approvals;
 - (ii) all Client Material and Equipment will be fit for purpose;
 - (iii) all Client Information will be complete and accurate;
 - (iv) Enviro Lining's review, comment on or approval of any Client Information will not relieve the Client of responsibility for those things; and

- (v) it is legally entitled to, and has power to, enter into and perform this Agreement in accordance with its terms.

(b) The Client acknowledges and agrees that:

- (i) the Contract Sum does not include any allowance for:
 - (A) compliance with any Approvals or Site or project specific policies, procedures or agreements that are not expressly referenced in the Quote; or
 - (B) Site or project specific inductions; and
- (ii) Enviro Lining:
 - (A) has relied on the warranties in clause 4(a) in executing this Agreement; and
 - (B) would not have done so but for them.

5 Subcontracting and Assignment

- (a) Enviro Lining may subcontract Works without the Client's consent.
- (b) The Client must not, without the prior written consent of Enviro Lining, assign, novate or otherwise seek to transfer any of its rights or obligations under this Agreement.

6 Client's Representative

- (a) The Client must ensure that at all times prior to the Date of Completion, there is a Client's Representative with authority to issue directions and bind the Client in all matters relevant to this Agreement.
- (b) All matters within the knowledge of the Client's Representative are deemed to be within the knowledge of the Client.

7 Site

- (a) The Client must grant Enviro Lining access to the Site:
 - (i) by the Access Date; and
 - (ii) sufficient for Enviro Lining to safely and efficiently perform the Works in accordance with this Agreement.
- (b) Notwithstanding Enviro Lining's access rights under this Agreement, the Client must:
 - (i) control access to, secure and ensure public safety on, the Site; and
 - (ii) keep disruptions to a minimum.

8 Latent Conditions

Enviro Lining must, after becoming aware of a Latent Condition:

- (a) give the Client's Representative notice of the nature of the Latent Condition; and
- (b) determine the effects of the Latent Condition, which will be a deemed variation, and all associated adjustments to the Date for Completion and Contract Sum.

9 Work Health and Safety

- (a) Enviro Lining must perform the Works in accordance with the WHS Laws.

- (b) The parties agree that, as between them and for the purposes of the WHS Laws, the Client is 'principal contractor' for the Works.
- (c) The Client must put in place measures to appropriately protect all people and property at all times during the term of this Agreement.

10 Client Material and Equipment

- (a) The Client must:
 - (i) provide the Client Material and Equipment to Enviro Lining for its use in the performance of this Agreement; and
 - (ii) ensure that all Client Material and Equipment is at all times fit for purpose and supplied as needed for Enviro Lining to efficiently perform the Works in accordance with this Agreement.
- (b) The Client acknowledges and agrees that Enviro Lining is not liable for defects in or other issues with Client Material and Equipment.

11 Variations

- (a) The Client may at any time prior to the Date of Completion request that Enviro Lining provide it with a proposal to vary the Works (**Variation Request**).
- (b) Within a reasonable period after its receipt of a Variation Request, Enviro Lining must:
 - (i) confirm to the Client that it is not possible for Enviro Lining to perform the proposed variation; or
 - (ii) provide the Client with a proposal to perform the proposed variation.
- (c) Where a proposal provided in accordance with clause 11(b)(ii) is:
 - (i) accepted by the Client, this Agreement will be amended in accordance with such proposal; or
 - (ii) not accepted by the Client, Enviro Lining is not required to perform the proposed variation.
- (d) Where:
 - (i) Client Information is incomplete or inaccurate; or
 - (ii) Client Material and Equipment is not fit for purpose,
 and Enviro Lining is delayed or incurs additional costs as a consequence, a variation will be deemed to have been directed to rectify such things, the effects of which must be determined by Enviro Lining and the Contract Sum and Date for Completion adjusted accordingly.

12 Time

- (a) Enviro Lining must complete the Works by the Date for Completion.
- (b) Within a reasonable period after Enviro Lining becomes aware of anything which may delay its performance of the Works, it must notify the Client and give details of the possible delay.

- (c) Where:
 - (i) Enviro Lining gives the notice required by clause 12(b); and
 - (ii) the cause of the delay is beyond the reasonable control of Enviro Lining (including a change to or the introduction of a new law or a Force Majeure Event) or a suspension of this Agreement pursuant to clause 13,

Enviro Lining is automatically entitled to:

- (iii) an extension of time to the Date for Completion sufficient to overcome the effects of the delay; and
- (iv) all additional costs incurred by Enviro Lining as a result of the delay, which will be a debt due and payable by the Client to Enviro Lining once notified to it by Enviro Lining.

13 Suspension

Enviro Lining may by notice to the Client suspend performing some or all of the Works for such time as Enviro Lining thinks fit if the Client or any of its Personnel breach this Agreement.

14 Completion

- (a) When Enviro Lining considers that Completion has been reached, it must notify the Client.
- (b) Within three days after the issuing of a notice under clause 14(a), the parties must inspect the Works to determine whether Completion has occurred.
- (c) If, within two days after the inspection under clause 14, the parties do not agree whether Completion has occurred, Enviro Lining will determine whether Completion has occurred and the Date of Completion and notify the Client of such determination.

15 Working Hours

The hours of work on the Site are those set out in the Quote or, if the Quote does not so specify, hours that comply with all relevant laws.

16 Payment

- (a) Subject to clause 16(b), Enviro Lining may claim payment of the Contract Sum progressively in accordance with this clause 16 by issuing payment claims to the Client on a fortnightly basis.
- (b) In addition to its rights under clause 16(a), Enviro Lining may claim payment of the value of goods to be installed as part of the Works at any time following the delivery of such goods to the Site.
- (c) Each payment claim must be in writing and include:
 - (i) sufficient detail of the value of the Works done and/or goods supplied; and
 - (ii) detail of other money due to Enviro Lining pursuant to this Agreement.
- (d) The Client must, within 7 days after receiving a payment claim, issue to Enviro Lining a payment schedule evidencing its opinion of the moneys due from the Client to Enviro

Lining pursuant to the relevant payment claim and its reasons for any difference.

- (e) The Client must pay Enviro Lining the amount claimed in a payment claim within 14 days after the Client's receipt of the relevant payment claim.
- (f) Where the Client fails to pay Enviro Lining an amount due and owing pursuant to this Agreement by the date on which it is due and payable, interest will be due and payable on the outstanding amount by the Client to Enviro Lining (calculated on a daily basis by applying the rate of interest equal to 2% above the Commonwealth Bank of Australia business overdraft rate published at 10:00am on the due date for payment) up until the date on which full payment of the outstanding amount and all relevant interest is received by Enviro Lining.
- (g) Enviro Lining may set off against moneys otherwise due and payable by it to the Client under or arising out of this Agreement any moneys which are due or claimed to be due to Enviro Lining by the Client.

17 GST

- (a) Each party warrants to the other that it is registered for GST and must notify the other if it ceases to be so registered.
- (b) Despite the definition of 'consideration' in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth):
 - (i) consideration to be provided under or in connection with this Agreement is exclusive of GST; and
 - (ii) the Client must, at the same time as it makes payment in accordance with clause 16, pay Enviro Lining an additional amount equal to the GST payable on the relevant supply.

18 Exchange Rate Risk

The Client acknowledges and agrees that where:

- (a) Enviro Lining supplies goods as part of the Works; and
- (b) those goods are ordered from an overseas supplier (**Imported Goods**),

if the applicable exchange rate changes after the date on which such goods are ordered by Enviro Lining, such that the actual price payable by Enviro Lining for the Imported Goods is greater than the price of those goods included in the Quote, the difference will be:

- (c) determined by Enviro Lining; and
- (d) added to the Contract Sum.

19 Intellectual Property Rights

- (a) The Client:
 - (i) represents and warrants and repeats on each day of the term of this Agreement that it has all necessary rights and licences to Intellectual Property Rights subsisting in Client Information needed for Enviro Lining to use such things for

the purposes contemplated in this Agreement; and

- (ii) grants to Enviro Lining an irrevocable, non-exclusive and royalty free licence (including a right to sublicense) for Enviro Lining and its Personnel to use and copy all Client Information for the purposes contemplated in this Agreement.

- (b) Nothing in this Agreement, nor the supply of anything to the Client by or on behalf of Enviro Lining will result in the transfer or assignment to the Client of any Intellectual Property Rights owned by or licensed to Enviro Lining.

20 Confidential Information

- (a) Subject to clause 20(b), the Client must not, without the prior written consent of Enviro Lining, disclose or permit to be disclosed to a third party any Confidential Information.
- (b) Clause 20(a) does not apply to the disclosure of Confidential Information:
 - (i) which is now or hereafter comes into the public domain through no default of the Client or any of its Personnel; or
 - (ii) which is required to be disclosed by the Client by law,

provided that the Client first obtains (and enforces if directed to do so by Enviro Lining) an undertaking from each such person to comply with clause 20(a) as if it applied to them directly.

21 Insurance

Before the Access Date and until the Date of Completion, Enviro Lining must effect the following insurances:

- (a) a public liability insurance policy for an amount of \$20 million per claim or as otherwise specified in the relevant Quote; and
- (b) workers' compensation insurance as required by law.

22 Indemnity

- (a) The Client indemnifies Enviro Lining and its Personnel from and against all losses, costs, expenses and damages they suffer or incur as a result of or arising out of:
 - (i) a breach of this Agreement by the Client;
 - (ii) any unlawful, wilful or negligent act or omission of the Client or any of its Personnel;
 - (iii) Enviro Lining's use of any Client Information or Client Material and Equipment; or
 - (iv) any:
 - (A) personal injury (including sickness) to or death of any person; or
 - (B) loss of or damage to property or WUC,

except to the extent caused or contributed to by Enviro Lining.

- (b) Each indemnity in this Agreement is continuing, separate and independent from the Client's other obligations and survives expiry or termination of this Agreement.

23 Limitation of Liability

To the fullest extent permitted by law:

- (a) Enviro Lining's maximum aggregate liability to the Client under or arising out of this Agreement or any law is capped at the amount equal to 50% of the Contract Sum; and
- (b) Enviro Lining has no liability for any of the following types of loss or damage under or arising out of this Agreement:
 - (i) loss of revenue, use, production, goodwill, profit, data, business, contract or anticipated savings;
 - (i) financing costs or increased operating costs; or
 - (ii) other financial or economic or special or indirect loss or damage.

24 Personal Property Securities Act

If Enviro Lining determines that this Agreement or any transaction in connection with it is or contains a security interest for the purposes of the PPSA (**Security Interest**), the Client must (at its cost) do all things Enviro Lining directs to:

- (a) ensure that the Security Interest is enforceable, perfected and effective with the highest priority;
- (b) enable Enviro Lining to obtain any registration, or give any notification, in connection with the Security Interest; and
- (c) enable Enviro Lining to exercise all relevant rights in connection with the Security Interest.

25 Force Majeure Event

- (a) Where Enviro Lining is unable, wholly or in part, by reason of a Force Majeure Event, to perform an obligation under this Agreement and Enviro Lining:
 - (i) provides the Client with details of the relevant Force Majeure Event and, to the extent known, likely extent to which it will be unable to perform or be delayed in performing that obligation; and
 - (ii) uses reasonable endeavours to mitigate the effects of the Force Majeure Event, all affected obligations are suspended to the extent they are adversely affected by the Force Majeure Event.
- (b) If a Force Majeure Event prevents the performance of some or all of this Agreement by Enviro Lining for more than 30 continuous days, Enviro Lining may terminate this Agreement by written notice to the Client, in which case:
 - (i) this Agreement will be deemed to have been frustrated; and

- (ii) Enviro Lining will be entitled to be paid, as a debt due and owing:

- (A) the full value of all Works performed to the termination date; and
- (B) all other costs reasonably incurred by Enviro Lining as a result of the frustration of this Agreement.

26 Dispute Resolution

- (a) If a dispute arises under or in connection with this Agreement, either party may issue a written dispute notice to the other setting out details of the dispute.
- (b) Within 7 days after a notice is issued in accordance with clause 26(a), senior representatives from each party must meet to endeavour to resolve the dispute.
- (c) If a dispute is not resolved within 15 days after the meeting referred to in clause 26(b), either party may commence litigation to resolve it.
- (d) Nothing in this clause 26 prejudices the right of a party to commence legal proceedings at any time to seek injunctive or urgent declaratory relief.

27 Default and Termination

- (a) If the Client commits a substantial breach of this Agreement and such breach is:
 - (i) incapable of remedy, Enviro Lining may immediately terminate this Agreement by written notice to the Client; or
 - (ii) capable of remedy, Enviro Lining may give the Client a written notice which states:
 - (A) the alleged substantial breach;
 - (B) that the Client must rectify the breach; and
 - (C) the time by which the Client must do so.
- (b) If the Client fails to rectify a breach by the time stated in a notice issued under clause 27(a)(ii), Enviro Lining may immediately terminate this Agreement by written notice to the Client.

28 Termination for Insolvency

If Enviro Lining determines (acting reasonably) that the Client is or is likely to soon be insolvent or financially unable to proceed with this Agreement, Enviro Lining may, to the extent permitted by law, immediately terminate this Agreement by written notice to the Client.

29 Notices

- (a) A notice or other communication under this Agreement is only effective if it is:
 - (i) in writing;
 - (ii) signed by the issuing party's Representative;
 - (iii) addressed to the other party; and
 - (iv) either left at the addressee's address or sent to the addressee by mail or email.

- (b) If a notice is:
- (i) left at the addressee's address between 9:00am and 5:00pm on a Business Day, it is taken to have been immediately received;
 - (ii) sent by mail, it is taken to have been received 4 Business Days after posting; or
 - (iii) sent by email, the *Electronic Transactions Act 2000* (NSW) will apply to determine when it is received.

30 'Battle of the Forms'

The Client acknowledges and agrees that:

- (a) this Agreement govern the performance of the Works; and
- (b) no other terms will apply to such performance unless they are expressly accepted by Enviro Lining by written notice to the Client.

31 Waiver

Except as provided by law, nothing in this Agreement will be varied, waived, discharged or released without the prior written consent of the parties.

32 Relationship

Nothing in this Agreement:

- (a) creates or is intended to create any representative, joint venture, partnership, agency, trust or other fiduciary or employment relationship; or
- (b) is to be construed as creating or requiring any continuing relationship between the parties after the Date of Completion.

33 Governing law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

34 Joint and Several Obligations and Liabilities

If the Client is comprised of two or more persons, its obligations and liabilities under this Agreement bind those persons jointly and severally.

35 Entire Agreement

- (a) This Agreement contains the entire agreement between the parties in respect of its subject matter.
- (b) The Client:
 - (i) warrants that it did not rely on any information, representation, statement or documentation made by or provided to the Client on Enviro Lining's behalf for the purposes of entering into this Agreement;
 - (ii) warrants that it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that Enviro Lining executed this Agreement relying on the warranties in clauses 35(i) and (ii).

36 Survival

This clause 36 and clauses 1 - 4, 8, 9(b), 10(b), 11(c), 12(c), 13, 14(c), 16, 17, 19 and 22 - 35 survive the termination or expiration of this Agreement.

ENVIRO LINING