
Small Works and Services

Terms of Contract for Small Works



1. The Contract

The Contract comes into existence when Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (TfNSW) writes to you accepting your offer.

The Contract is made up of:

- (a) the Offer Documents including the Contractor's Offer, this Terms of Contract, Contract Details, all Specifications; and
- (b) the TfNSW letter of acceptance; and
- (c) any documents incorporated into the Contract by the TfNSW letter of acceptance.

2. Starting Work

Before starting the Work, you must:

- 1) If required, provide evidence of your insurances (*see clause 10 and Contract Details*).
- 2) Provide details necessary for Principal Arranged Insurance to TfNSW as required by TfNSW's Insurer (*see clause 10.3 and Contract Details*).
- 3) Provide evidence of any licences or approval required for the Work.
- 4) If the Contract Sum is greater than \$25,000 and the Work is building and/or construction work to which the *Building and Construction Industry Long Service Payments Act 1986* applies:
 - Pay to the Building and Construction Industry Long Service Corporation or the Corporation's agent, the amount of the long service levy payable in respect of the Work,
 - If the Long Service Corporation serves a notice under [section 41 of] the Long Service Payments Act, pay any required additional amount of long service levy, within the time specified in the notice; and
 - Produce to TfNSW the document evidencing payment of the levy referred to above.

3. Quality of Work

3.1 Use skill and care

You must carry out the Work diligently and conscientiously and to a high standard of skill and care. TfNSW enters into the Contract relying on your skill and knowledge.

3.2 Comply with Contract

Everything you make, design or supply under the Contract must fully comply with the Contract and be reasonably suitable for its intended purposes.

3.3 Use new materials

You must use new materials unless the Contract clearly states that you can use materials which are not new.

3.4 Assign warranties

You must obtain and assign to TfNSW the benefit of all warranties provided by manufacturers or suppliers of materials and things incorporated in the Work.

4. Time for carrying out Work

4.1 Working times

You must start and carry out the Work in a timely and expeditious manner and so as to comply with any time requirements set out in the Contract.

Restricted working times may apply to work sites and premises made available to you by TfNSW. The permitted working times are set out or referred to in the Contract Details.

4.2 Date for Completion and extensions of time

- (a) You must complete the Work by the Date for Completion set out in the Contract Details or as extended under clause 4.2(b).
- (b) TfNSW may, on your application, allow an extension of time for completion of the Work if the extension is necessary or desirable because of a delay which is not caused by you or within your reasonable control.
TfNSW may also extend the Date for Completion at any time and for any reason.

5. Your obligations

- (a) You must:
 - 1) comply with all work health, safety and rehabilitation and all environmental protection requirements of TfNSW relating to the Work or the use of TfNSW work sites or premises;
 - 2) ensure the safety and welfare of all people including your employees and subcontractors and members of the public who may be affected by your activities under the Contract or in relation to the Work;
 - 3) provide the details of the results of assessing risks and safe work method statements prior to commencement of activities under the contract;
 - 4) provide competent, experienced and appropriately qualified personnel and if you have nominated particular people to do the Work and TfNSW requires you to use those people, you must do so unless TfNSW gives its prior written permission to the use of other people;
 - 5) ensure that all Workers carrying out the Work are engaged on terms and conditions which are no worse (for the Worker) than those prescribed by relevant legislation, award, determination, judgment or a registered enterprise agreement;
 - 6) properly supervise the Work;
 - 7) at your own cost, promptly make good any loss or damage to property or the environment caused by you, your subcontractors, employees or agents while carrying out the Work;
 - 8) prevent nuisance or inconvenience to anyone who may be affected by the performance of the Work;
 - 9) keep clean and tidy all work sites and premises used for the Work including ensuring that potential pollutants are prevented from being discharged from the site or premises;
 - 10) comply with all directions of TfNSW in carrying out the Work and performing any of your other obligations under the Contract;
 - 11) comply with all legal requirements including, without limitation, all taxation legislation, workers' compensation, environmental laws and regulations, Work Health and Safety regulations, chain of responsibility provisions of the *Heavy Vehicle National Laws (NSW) (2013)*, all applicable codes of practice and regulations, the TfNSW Statement of Business Ethics and requirements of governmental or semi-governmental authorities and relating to performance of the Work the conduct of your business;
 - 12) comply with instructions issued by TfNSW to carry out any urgent work necessary to:
 - (i) prevent, avoid or minimise loss or damage to property or harm to the environment or personal injury to any person in connection with the Work, or
 - (ii) protect the safety, health or welfare of any person connected with, or who may be affected by, the Contractor's performance of the Work, and, unless TfNSW determines otherwise, at your own cost;
 - 13) supply everything required to safely and properly carry out the Work (other than things which TfNSW is required to supply under the Contract).

- (b) You are solely liable for preventing loss of or damage to materials, equipment and things required for the satisfactory completion of the Work (including things supplied by TfNSW) and the cost of replacing or repairing those things.
- (c) The NSW Government's Code of Practice for Procurement (NSW Code) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for Procurement (NSW Guidelines) apply to the works. By undertaking to perform the works, you warrant you are not precluded from entering the contract and accepting the works and agree that you will be taken to have read and understood, and that you will comply with, the NSW Code and NSW Guidelines.

6. Variations

6.1 TfNSW may vary the Work

TfNSW may direct you to vary any part of the Work at any time and, if the change is consistent with the scope and intent of the Work as originally specified, you must comply with the direction.

You may not vary the Work without TfNSW's prior written approval.

6.2 Effect of variations

No variation invalidates the Contract.

6.3 Valuation of variations

TfNSW must determine in a fair and reasonable manner the value of variation after taking into account applicable rates and prices in the Contract, your views on the value of the variation, and any other readily available evidence of relevant market prices.

If as a result of a variation by TfNSW you incur less cost than you would otherwise have incurred, TfNSW is entitled to a reduction in the Offer Price.

7. Non-Conforming Work

- (a) TfNSW may direct you to correct work that is not in accordance with the Contract and you must correct that work within the time specified by TfNSW.
- (b) If you do not correct the non-conforming work within the time specified, or if TfNSW elects to do so, TfNSW may have the non-conforming work corrected by others and you must pay TfNSW the costs of having the work corrected by others.

8. Your relationship with TfNSW

You may not act outside the scope of the authority conferred on you by the Contract, and may not bind TfNSW in any way or hold yourself out as having authority to do so.

9. Indemnity for property damage or personal injury

You agree to indemnify and keep indemnified TfNSW against any claim, action, loss or damage which may be brought or made against TfNSW, its employees or agents in respect of personal injury or death or loss of or damage to property arising directly or indirectly out of any act or omission by you or the act or omission of your employees, subcontractors or agents.

10. Insurances

10.1 The insurances you must have

You must hold the insurances set out in the Contract Details whenever you are performing Work and until the end of the warranty period relating to the Work.

10.2 Evidence of insurance

You must provide evidence of insurances whenever requested to do so. The evidence must be in a form acceptable to TfNSW.

10.3 Principal Arranged Insurance

- (a) TfNSW has arranged third party liability insurance for the Work (**Principal Arranged Insurance**). This insurance covers your liabilities to TfNSW and to third parties for the

limits of liability as stated in the Contract Details. This Principal Arranged Insurance is in TfNSW's name, your name and the name of your subcontractors engaged in relation to the Work.

- (b) TfNSW will maintain the Principal Arranged Insurance for the Warranty on Completion period as set out in the Contract Details.
- (c) Before commencing Work and no later than 14 days after the formation of the Contract in clause 1, you must:
 - (i) Provide to TfNSW various details including contract, subcontractor/s and insurance information necessary for the Principal Arranged Insurance; and
 - (ii) Confirm to TfNSW the Principal Arranged Insurance excess amount which you are required to pay for each and every loss.
- (d) You must provide any further details, necessary for the Principal Arranged Insurance, to TfNSW whenever requested to do so.
- (e) An extract of the terms of the Principal Arranged Insurance is available from TfNSW and you may inspect the terms of the Principal Arranged Insurance by contacting the TfNSW representative under the Contract.
- (f) You acknowledge that TfNSW has obtained the Principal Arranged Insurance at its own costs and that your tendered rates and prices (including any lump sum price) do not include any allowance for the cost of third party liability insurance for this Work.

10.4 Principal Arranged Insurance Excess

You are responsible for meeting the amount of excess payable under the Principal Arranged Insurance as set out in the Contract Details. You may effect your own insurance to cover the amount of that excess.

11. Price and payment

11.1 Your price covers everything required

You warrant that your Offer Price (including any lump sum price) for the Work includes the cost of everything associated with or necessary for the proper performance of the Work.

11.2 Your payment claims

You may submit a claim at monthly intervals from the date of commencement of the Work or at completion of the Work.

A payment claim must:

- 1) identify the Work to which the claim relates;
- 2) indicate the amount which you consider to be due under the Contract for the Work done within the period covered by the claim;
- 3) include any details required by the Contract or reasonably requested by TfNSW for the purposes of assessing your claim;
- 4) be accompanied by a Contractor Statement and Supporting Statement in the form set out in Schedule 1;
- 5) if requested, be accompanied by proof of insurances in accordance with clause 10.2;
- 6) be accompanied by an electronic funds transfer form (clause 11.9); and
- 7) be lodged with TfNSW at the address and to the attention of the person nominated in the Contract (unless otherwise notified).

11.3 Payment Schedule

The TfNSW will assess each payment claim and issue a Payment Schedule to you within 10 Business Days of receipt of the payment claim.

The Payment Schedule must:

- 1) identify the payment claim to which it relates;
- 2) indicate the amount of the payment (if any) that TfNSW proposes to pay as the *Scheduled Amount*, and

- 3) if the *Scheduled Amount* is less than the *Claimed Amount*, provide reasons explaining why it is less and why any money is being withheld. Reasons why the *Scheduled Amount* is less than the *Claimed Amount* may include failure by the Contractor to comply with any outstanding obligations under:
 - i. clause 10 (Insurances);
 - ii. clause 11.2.4 (Contractor's Statement and Supporting Statement (Schedule 1));
 - iii. clause 11.2.1 to 11.2.7 (other requirements for a payment claim);
- 4) if applicable, be in the form of a Recipient Created Tax Invoice.

11.4 GST provisions

You must be registered for GST before submitting any claim for payment and notify TfNSW if you cease to be registered for GST at any time. TfNSW must notify you if it ceases to be registered for GST.

11.5 Time for payment

TfNSW must pay you the amount due on any Payment Schedule (ie. *Scheduled Amount*) within 15 Business Days after being served with the Payment Claim.

11.6 Valuation of Payment Claims

Payment claims will be valued by TfNSW as follows:

- 1) *Where a lump sum price applies*
For Work covered by a lump sum price, TfNSW will assess the quality and quantity of work done within the period of the claim on a pro-rata basis against the total lump sum price or on another basis set out in the Contract.
- 2) *Where Schedule of Contractor's Rates applies*
For Work covered by a Schedule of Contractor's Rates, TfNSW will assess the measured quantity work actually done in accordance with the Contract at the rate set out in the Schedule of Contractor's Rates.
- 3) *Defective or non-conforming work*
If any of the work covered by a payment claim is defective or non-conforming TfNSW in valuing the claim may, at its sole discretion but without limiting any other specific provisions of the Contract:
 - disregard the defective or non-conforming work , or
 - reduce the amount of the claim by an amount equal to the estimated cost of rectifying the defective or non-conforming work.
- 4) *Variations*
Payment claims for variations will be valued in accordance with the above provisions, based on the determination of the value of the variation made under clause 6.3.
- 5) *Set-off*
If TfNSW is entitled to make a deduction under clause 11.7, TfNSW must also include the amount of the deduction in the valuation of the claim.
- 6) *Withholdings*
If clause 11.8 applies, TfNSW must also include the amount to be withheld in the valuation of the claim.

11.7 Set-off

TfNSW may deduct from an amount payable to you under the Contract any amount which is, or in the opinion of TfNSW is likely to become, payable by you to TfNSW.

11.8 Withholdings under PAYG

If you do not quote your ABN in your Offer or on your payment claims or otherwise advise TfNSW of your ABN, TfNSW will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999*.

11.9 Payment method

Payment will be made by electronic funds transfer to a bank, building society or credit union nominated by you. You must provide to TfNSW a completed EFT form with the necessary details.

11.10 Effect of payment

Payments by TfNSW are on account only and do not evidence TfNSW's acceptance of the Work done by you.

12. Warranty on completion

You warrant that the Work as completed will be free from defects in workmanship and materials after completion of the Work for the period set out in the Contract Details.

13. Resolving disputes

The parties must attempt to resolve disputes speedily by negotiation in good faith.

If a dispute cannot be resolved by negotiation within 2 months of commencement of negotiations, either party may commence formal dispute resolution proceedings by mediation or expert determination.

The parties must continue to perform their obligations under the Contract in spite of the existence of a dispute.

14. If you default

If you breach or default under the Contract, TfNSW may suspend payment to you until the breach or default is rectified to TfNSW's satisfaction.

TfNSW may also issue you with a notice requiring you to show cause why the Contract should not be terminated. If you do not respond showing cause to the satisfaction of TfNSW within 14 days, TfNSW may terminate the Contract by written notice which takes effect immediately.

15. If you are insolvent

TfNSW may terminate the Contract immediately by written notice to you if you are unable to pay your debts as and when they fall due, or if you become subject to external administration within chapter 5 of the Corporations Law.

16. Waiver

No waiver of any breach of this Agreement will be held or construed to be a waiver of other subsequent or antecedent breach.

17. Building Code Compliance

The Contractor acknowledges and agrees that, if it is indicated at Item 9 of the Contract Details that the Code for the Tendering and Performance of Building Work 2016 issued under subsection 34(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (Building Code) applies to the Work under the Contract as there is Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) for the project which the Work under the Contract forms part of, the Contractor must comply with the Building Code in undertaking the Work under the Contract.

Notes for Contractor's Statement

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of TfNSW. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "TfNSW" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow TfNSW to withhold payment from a Contractor without any penalty unless and until the Contractor provides to TfNSW a Statement declaring that:
 - a. All 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; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where TfNSW is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for TfNSW. Generic versions of this Statement for non-TfNSW use can be obtained at:
http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

TfNSW will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rrpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website 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.

2. Supporting Statement

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

The Contractor is a "head contractor" in terms of the Building and Construction Industry Security of Payment Act 1999, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2008* cl 4A

Main Contract

Head contractor:

(Business name of the head contractor)

ABN

ACN

Of

(Address of Contractor)

has entered into a
contract with

Transport for NSW

Contract description

Contract
number/identifier

Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Statement

Period

This Statement applies for work _____ inclusive,
between:

subject of the payment claim dated: _____

I, _____ (full name) being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: _____ Date: _____

Full Name: _____ Position / Title: _____

