

# CONTRACTOR WORK HEALTH AND SAFETY REQUIREMENTS



## BACKGROUND

### 1. Application

These terms and conditions apply to all Contractors (Specialist and Non-specialist) engaged by the Company to perform Activities on Site, in a Ring-Fenced Area or at an Off-site Location, but do not apply to Autonomous Contractor Activities.

### 2. Definitions

The following definitions apply in this document, unless the context otherwise requires:

**Activities** means, as applicable, the Services to be performed by the Contractor, the Goods to be supplied by the Contractor and the Works to be performed by the Contractor under the Contract.

**Assurance Report** means a report prepared by the Contractor, in a form determined by the Company, that provides assurance to the Company of the Contractor's compliance with:

- (a) applicable WH&S Laws;
- (b) the Contract;
- (c) as applicable:
  - (i) the Company's WHSRMS;
  - (ii) the Company's Site-Based WHSRMS Requirements;
  - (iii) the Contractor's WHSRMS;
  - (iv) the Contractor's Activity-Based WHSRMS;
  - (v) the Principal or Lead Contractor's Site-Based WHSRMS Requirements;
  - (vi) any Safe Work Method Statements; and
  - (vii) any WHS Management Plan; and
- (d) any directions issued by the Company or a Principal or Lead Contractor in respect of WHS matters.

**Authority** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial, regulatory or administrative body.

**Autonomous Contractor** means a Contractor who is identified in the Contract as an Autonomous Contractor and who performs Autonomous Contractor Activities.

**Autonomous Contractor Activities** means Activities performed by a Contractor at a site that is owned, leased, or licenced by the Contractor under the Contractor's WHSRMS.

**Business Day** means a day that is not a Saturday or Sunday, nor a public holiday, nor 27, 28, 29, 30 or 31 December.

**Company** means the party so named in the Contract.

**Contract** means the instrument of agreement, whether a purchase order, letter agreement, contract or otherwise, which refers to or attaches these terms and conditions.

**Contractor** means the party so named in the Contract.

**Company's WHSRMS** means the Company's own WHSRMS.

**Company's Site-Based WHSRMS Requirements** means those parts of the Company's WHSRMS that are of general application to workers on Site and are not specific to the Activities being performed by the Contractor. Examples include, but are not limited to, speed limits, minimum PPE requirements and blood and alcohol testing requirements.

**Contractor's Activity-Based WHSRMS** means those parts of a Contractor's WHSRMS that are specific to the Activities being performed by the Contractor. Examples include, but are not limited to, task-based safe work procedures and safe work instructions.

**Contractor's Personnel** means the Contractor's directors, officers, employees, agents, invitees, subcontractors (of any tier under the Contractor) and any director, officer, employee, agent or invitee of any agent, invitee, subcontractor (of any tier) of a Related Body Corporate of the Contractor.

**Contractor's WHSRMS** means the Contractor's own WHSRMS.

**Goods** means the goods, if any, specified as such in the Contract (including any part of the goods specified).

**Interacting Risks** means the risks or hazards, or potential risks or hazards, arising from, or in relation to, the interacting of Activities performed by the Contractor and any other person on Site or performing work or other packages of works on Site.

**Interfacing Risks** means the risks or hazards, or potential risks or hazards, arising from, or in relation to, the Contractor's interaction with any members of the public or other persons in proximity to any Activities being conducted at an Off-site Location.

**Law** means:

- (a) legislation including regulations, by-laws, orders, awards and proclamations with which a Party is legally required to comply;
- (b) common law, equity and civil law (if applicable); and
- (c) Authority requirements, guidelines, consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a Party is legally required to comply.

**Lead Contractor** means a contractor who is identified in the Contract as a Lead Contractor and as a Specialist Contractor (but who is not appointed as a Principal Contractor under WH&S Law) and who is appointed with management and control of the Ring Fenced Area or Off-Site Location (as the case may be) where it will undertake its Activities.

**Near Miss** means an event that does not result in any Recordable Injury/Illness but had the clear potential to do so.

**Non-specialist Contractor** means a contractor who is identified in the Contract as a Non-specialist Contractor and who, as compared to the Company, does not have superior Technical Expertise, qualifications and licenses to lead the task-based risk assessment process and develop safe systems of work for the Activities and safely perform the Activities.

**Notifiable Incident** means any incident which is required to be notified to a relevant Authority under the applicable WH&S Law.

**Off-site Location** means a physical or geographical location that is outside a Company operated or owned, leased or licenced area, but does not include a location owned, leased or licenced by the Contractor.

**Principal Contractor** means 'principal contractor', as defined in the applicable WH&S Law.

**Principal or Lead Contractor Site** means the Ring Fenced Area or Off-Site Location that a Principal or Lead Contractor has management and control over, and, if the Contractor is the Principal or Lead Contractor, is set out in the Contract Specifics..

**Principal or Lead Contractor's Site-Based WHSRMS Requirements** means those parts of the Principal or Lead Contractor's WHSRMS that are of general application to workers working within the Principal or Lead Contractor's Site and are not specific to a task or activity. Examples include, but are not limited to speed limits, minimum PPE requirements and blood and alcohol testing requirements.

**Recordable Injury/Illness** means an injury or illness that results in death, days away from work, restricted work or transfer to another job or treatment beyond first aid.

**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth), and, in respect of the Company, includes any Related Body Corporate of South32 Limited.

**Ring Fenced Area** means a Company designated or confirmed area within a Site which is either geographically separate from the Company's operations on the Site or is capable of being physically separated from the rest of the Site (whether by tape, bunding or fencing, including temporary fencing, or other means) for the purpose of assigning over management and control of that area.

**Safe Work Method Statement** means a document that sets out the high-risk work activities to be carried out in connection with the Activities, the hazards arising from those activities and the measures to be put in place to control, mitigate or to the extent reasonably possible, eliminate the risks.

**Separate Contractors** means contractors, consultants and other persons engaged to carry out any works or services, of whatever nature, at or in the vicinity of the Site (other than the Contractor and all of the Contractor's Personnel).

**Services** includes services, works, activities, tasks, deliverables and similar.

**Site** means a physical or geographical location (including lands, waters vessels) operated or owned, leased or licenced by the Company.

**Specialist Contractor** means a contractor who is identified in the Contract as a Specialist Contractor and who, as compared to the Company, has equal or superior Technical Expertise to lead the task-based risk assessment process and develop safe systems of work for the Activities and safely perform the Activities.

**Subcontractor** means any person engaged directly or indirectly by the Contractor as a contractor to perform any part of the Activities.

**Technical Expertise** means technical knowledge, skills, experience, qualifications and/or licences in respect of the Activities.

**Unsafe** includes actual or potential hazards that directly or indirectly result in, has the potential to result in, harm, to any person, property or the environment.

**WHS** means workplace health and safety.

**WH&S Law** means any applicable health and safety related Law, including a Law related to occupational or work health and safety, dangerous goods, chain of responsibility, mining, electrical health and safety, and any other industry specific Law, and any related codes of practice, standards, notices and directions issued by any relevant Authority.

**WHS Management Plan** means a work health and safety management plan that is prepared in accordance with the requirements of the Contract, including these terms and conditions and applicable WH&S Law, and which includes, but is not limited to, the following details:

- (a) the names, positions and responsibilities of all persons who will have specific responsibilities in connection with the Activities;
- (b) the arrangements for the co-ordination of the health and safety of persons engaged to perform the Activities;
- (c) the arrangements for managing occupational health and safety accidents or incidents that occur; and
- (d) any Site safety rules, with the arrangements for ensuring that all persons at the workplace are informed of the rules.

**WHSRMS** means a workplace health safety and risk management system, being a set of policies, procedures, plans, rules and requirements to manage health, safety and risk in the workplace and minimise the risk of injury and illness.

**Works** means the physical works, if any, specified as such in the Contract (including any part of the specified Works and any ancillary Works) that the Contractor must complete and hand over to the Company.

## GENERAL PROVISIONS

**These general provisions apply to all Contractors (Specialist and Non-specialist).**

### 3. General WHS obligations

The Contractor and Contractor's Personnel must:

- (a) at all times comply with all WH&S Law, industry codes, safety standards, handbooks and guidelines applicable to the Activities and best practice expected from a Contractor that normally performs the Activities;
- (b) prior to commencing Work under the Contract, provide the Company with any documents required to be provided to the Company in accordance with applicable WH&S Laws and, if the Company requires changes to those documents, make those changes before Work is commenced;
- (c) if the Contractor is a Non-specialist Contractor, comply with the Company's Activity Based WHSRMS Requirements;
- (d) when the Activities are being performed on Site and not within a Ring-Fenced Area, comply with the Company's Site-Based WHSRMS Requirements;
- (e) when the Activities are being performed in a Principal or Lead Contractor Site, comply with the Principal or Lead Contractor's Site-Based WHSRMS Requirements and the Principal or Lead Contractor's WHS Management Plan;
- (f) maintain a safe and healthy working environment and take all necessary and reasonable steps to ensure the safety and health of all Contractor's Personnel performing the Activities, and to ensure that the safety and health of any other persons is not affected by the performance of the Activities;
- (g) immediately notify a Site representative of the Company of any accident, Unsafe event, act, omission, condition or health threatening occurrence;

- (h) do all things necessary to assist the Company and refrain from doing anything that may impede the Company or its employees, agents and contractors in discharging any of their obligations under any WH&S Law;
- (i) ensure any and all Contractor Personnel tasked with carrying out the Activities, or any part thereof, are sufficiently trained (including all activity based and site specific WHS induction training), qualified and skilled to carry out the Activities, or any part thereof, and have obtained all relevant licences, permits or permission required to perform the Activities;
- (j) as soon as reasonably possible, notify the Company of any Recordable Injury/Illness, Near Miss, Notifiable Incident or event reportable under applicable WH&S Law of or involving any Contractor Personnel;
- (k) comply with the directions of any statutory position holder appointed under applicable WH&S Law carrying out their WHS responsibilities under WH&S Law;
- (l) comply, at its own cost, with any direction issued by the Company, or any Company appointed representative, to remove or mitigate the effect of any Unsafe condition or stop any Unsafe activity;
- (m) if the Contractor is a Non-specialist Contractor, comply with any direction issued by the Company or any Company appointed Supervisor or any Site representative of the Company about any WHS matter;
- (n) promptly comply with any direction issued by the Company to rectify any non-compliance with its obligations referred to in the Contract, including the terms and conditions set out in this document and (as applicable) the Company's WHSRMS, the Company's Site-Based WHSRMS Requirements, a Principal or Lead Contractor's Site-Based WHSRMS Requirements, a Principal or Lead Contractor's WHS Management Plan or any of the documents referred to in clause 8 of this document;
- (o) without limiting the Company's right to monitor or audit any aspect of the Contract, cooperate with any monitoring, assurance and/or audit activities conducted or required by the Company and/or the Company's duly appointed and authorized representatives in respect of the Activities and allow the Company to review, inspect, audit or otherwise observe the Contractor's work practices and performance related to the Activities at any reasonable time;
- (p) cooperate with the Company to the extent of any inquiry or investigation conducted in relation to any Unsafe event, accident, act, omission, condition or health threatening occurrence, including by providing information, access and assistance to the Company;
- (q) at the Company's request, conduct an incident investigation and submit, in a timely manner to the Company, the completed incident investigation report (including the steps the Contractor will take to rectify any damage and prevent a recurrence);
- (r) at the Company's request, provide the Company, its other contractors or agents with any information, access (including access to Contractor Personnel for interview purposes) and assistance as reasonably required by the Company in respect of WHS matters in connection with the Activities or in relation to any claim allegedly arising out of the Company's operations, business and activities;
- (s) where the Activities are performed at an Off-Site Location or in a Ring-Fenced Area, notify the Company as soon as practicable, and in all cases within one Business Day, of the Contractor becoming aware of any access to the Off-site Location or Ring Fenced Area by an Authority, or any request by an Authority for information in relation to the Activities; and

- (t) as soon as practicable, and in all cases within one Business Day of receipt, notify the Company and provide a copy of any safety related notice, correspondence or other notice issued to the Contractor by any Authority or other person in connection with the Activities, or any action commenced pursuant to any WH&S Law against the Contractor or Contractor's Personnel relating to the Activities.

#### **4. Acknowledgement of Separate Contractor as Principal or Lead Contractor**

If a Separate Contractor has been appointed by the Company as Principal or Lead Contractor for a Principal or Lead Contractor Site in which the Activities are occurring, then the Contractor acknowledges and accepts that:

- (a) a Principal or Lead Contractor has been appointed over the Principal or Lead Contractor Site in which the Activities will be performed;
- (b) it will not disturb, impede or obstruct the carrying out of the Principal or Lead Contractor's obligations;
- (c) it will comply with the Principal or Lead Contractor's Site-Based WHSRMS Requirements, WHS Management Plan and all reasonable directions issued to it by the Principal or Lead Contractor in relation to WHS; and
- (d) it is not entitled to make any claim against the Company arising out of any direction or requirement of the Principal or Lead Contractor.

#### **5. Engagement of Subcontractors**

If the Contractor is permitted to engage Subcontractors under the Contract, and engages any Subcontractors, the Contractor must:

- (a) ensure that the subcontract includes provisions that the Subcontractor comply with obligations in the terms of those in clauses 3(a) to 3(t) of this document (substituting the Company for the Contractor as applicable);
- (b) if the sub-contracted Activities are to be performed on Site, and not within a Ring-Fenced Area, provide the Subcontractor with the Company's Site-Based WHSRMS Requirements;
- (c) if the sub-contracted Activities are to be performed within a Principal or Lead Contractor Site:
  - (i) provide the Subcontractor with the Principal or Lead Contractor's Site-Based WHSRMS Requirements and WHS Management Plan; and
  - (ii) ensure that the subcontract includes provisions that the Subcontractor:
    - (A) acknowledges the appointment of a Principal or Lead Contractor for the purposes of any WH&S Law, the Contract or both;
    - (B) will not interfere with, disturb, impede or obstruct the carrying out by the Principal or Lead Contractor of the Principal or Lead Contractor's obligations;
    - (C) will cooperate and comply with any direction of the Principal or Lead Contractor;
    - (D) will comply with the Principal or Lead Contractor's Site-Based WHSRMS Requirements and WHS Management Plan; and
    - (E) will not be entitled to make any Claim against the Company or the Contractor (unless the Contractor is the Principal or Lead Contractor) arising out of, or in any way in connection with this clause 5 or any direction or requirement of the Principal or Lead Contractor or any other person authorised or permitted under any relevant WH&S Law to give a direction or impose a requirement; and

- (d) take all reasonable steps to ensure that the Subcontractor complies with the terms of the subcontract and (as applicable) the Company's WHSRMS, the Company's Site-Based WHSRMS Requirements or the Principal or Lead Contractor's Site-Based WHSRMS Requirements and WHS Management Plan, and, if the Subcontractor is not complying, direct the Subcontractor to comply and, if appropriate, direct the Subcontractor to 'stop work' to remedy the breach.

## **ADDITIONAL SPECIALIST CONTRACTOR CONDITIONS**

**These additional Specialist Contractor conditions only apply to Contractors who have been identified in the Contract to be Specialist Contractors.**

### **6. Acknowledgements**

The Contractor acknowledges and agrees that:

- (a) it has been appointed as a Specialist Contractor by the Company having regard to the Contractor's Technical Expertise;
- (b) it has the required Technical Expertise, experience, financial and human resources to safely carry out the Activities;
- (c) it is solely responsible for ensuring the safety of the Activities, the Activities will be performed using the Contractor's Activity-based WHSRMS, and the Activities will not be directly supervised by the Company;
- (d) before commencing the Activities, it will prepare and provide to the Company the documents and material specified in clause 8 of this document;
- (e) it must ensure that the Activities are completed safely and in accordance with the documents and material specified in clause 8 of this document; and
- (f) it must, as soon as reasonably possible, notify the Company (or, if the Activities are being performed within a Principal or Lead Contractor Site, the Principal or Lead Contractor) of any Interacting Risks or Interfacing Risks that the Contractor reasonably suspects the Company (or the Principal or Lead Contractor) may not otherwise be aware of.

### **7. Monitoring and auditing**

- (a) Where the Activities are performed at an Off-Site Location or within a Ring-fenced Area, the Contractor must, on request by the Company, provide the Company with an Assurance Report.
- (b) The Contractor acknowledges and agrees that:
  - (i) any review or any recommendation by the Company of the Contractor's performance of its obligations under the Contract does not constitute acceptance or approval of the adequacy of the matters reviewed or a waiver by the Company of any of its rights or the Contractor's obligations under the Contract; and
  - (ii) the Contractor has no right of action against the Company or any of its representatives, or any defence to any action or claim by the Company, arising from any review, alleged verification, approval or acceptance of any of the Contractor's work practices or procedures undertaken by the Company.

### **8. Material to be prepared**

The Contractor must prepare and provide to the Company, before the commencement of the Activities:

- (a) the Contractor's Activity Based WHSRMS, which must meet the Company's Safety Standard requirements and the requirements of applicable WH&S Law, including general duty provisions applying to the Contractor and specific regulations applicable to hazards or risks arising from the Activities;
- (b) any Safe Work Method Statements required by WH&S Law in respect of the Activities;
- (c) a risk register;
- (d) a workplace risk assessment;
- (e) statement of the qualifications and experience of the workers who will be performing the Activities;
- (f) a statement of the Contractor's plant and equipment it intends using in respect of the Activities (serial numbers and key specifications);
- (g) information that the Contractor (based on its experience) may deem necessary or reasonably required in the interests of the health and safety of workers; and
- (h) any other information that the Company may require from the Contractor (acting reasonably) in the interest of health and safety.

**9. Principal or Lead Contractors**

- (a) If the Contractor has been identified in the Contract to be the Principal or Lead Contractor in relation to the Principal or Lead Contractor Site, then:
  - (i) the Contractor acknowledges and accepts that:
    - (A) it is appointed by the Company as Principal or Lead Contractor to have management and control of the Principal or Lead Contractor Site;
    - (B) it agrees to carry out and discharge the duties imposed on a Principal or Lead Contractor under the Contract in respect of the Principal or Lead Contractor Site at its own costs;
    - (C) it is authorised to have, and has, management and control of the Principal or Lead Contractor Site, including any Interfacing or Interacting Risks within the Principal or Lead Contractor Site;
    - (D) prior to the commencement of the Activities, it must prepare and provide to the Company:
      - (1) the Contractor's WHSRMS for the Principal or Lead Contractor Site;
      - (2) a WHS Management Plan for the Principal or Lead Contractor Site; and
      - (3) any information that the Contractor (based on its experience) may deem necessary or reasonably required in the interests of the health and safety of workers; and
      - (4) any other information that the Company may require from the Contractor (acting reasonably) in the interest of health and safety,

noting that, if the Company has any comments about the Contractor's WHSRMS or WHS Management Plan, the Contractor must consider and address those comments in so far as is reasonably practicable and provide an amended Contractor's WHSRMS or WHS Management Plan to the Company;



- (E) it will comply with, and ensure that all Contractor's Personnel comply with the Contractor's WHSRMS and WHS Management Plan; and
  - (F) to the extent permitted by Law, it will discharge the Company's obligations under any WH&S Law, unless the Company directs otherwise.
- (ii) the Contractor acknowledges and accepts that it is responsible for all aspects of health and safety for, or in connection with, the Activities including, but not limited to:
- (A) ensuring the safe performance of the Activities;
  - (B) ensuring the Principal or Lead Contractor Site, and the means of entering and exiting it, is safe and secure; and
  - (C) solely managing any Interfacing Risks and Interacting Risks arising in the Principal or Lead Contractor Site.
- (b) The Contractor accepts and acknowledges that it may, if directed to do so by the Company, be required to transfer its appointment as a Principal or Lead Contractor to a Separate Contractor. If directed to do so, the Contractor shall fully cooperate and coordinate with the Company and the Separate Contractor who is to be appointed as the Principal or Lead Contractor so that the Separate Contractor has management and control of the Principal or Lead Contractor Site.