

HandL Consultancy

SUBCONTRACTING

WITH NEW REQUIREMENTS FROM BOTH THE NSW AND FEDERAL GOVERNMENTS IN RELATION TO PROOF REGARDING SUBCONTRACTORS, WE HAVE DECIDED TO INTRODUCE A FORMAT FOR CLIENTS TO FOLLOW, ONE WHICH WILL ASSIST IN DETERMINING THE MERITS OF WHETHER OR NOT A PERSON OR COMPANY IS A SUBCONTRACTOR OR EMPLOYEE.

WE SUGGEST THAT WHEN YOU ARRANGE A SUBCONTRACT WITH A NEW OPERATOR THAT YOU COMPLETE, SIGN AND HAVE THE SUBCONTRACTOR SIGN THE ATTACHED CONTRACT.

WE ALSO SUGGEST YOU ASK THEM TO COMPLETE THE ATTACHED FORM WHICH WILL BE FILED WITH THE WRITTEN CONTRACT AS EVIDENCE OF YOUR EFFORTS, AS FAR POSSIBLE, TO ENSURE THAT PERSON OR ENTITY IS A SUBCONTRACTOR.

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT ME ON 97121566, 97121500 OR 0418225180.

REGARDS

**JOHN LAWS
DIRECTOR**

SUBCONTRACTOR DECLARATION

To assist the Principal Contractor (**Your Company Name Cleaning Services**) in determining your status as a Subcontractor, we would appreciate you completing the information below.

This information will be regarded as Private and Confidential and is being obtained exclusively for the purpose of ensuring your eligibility to operate as a Subcontractor.

We must obtain this information to satisfy legal requirements imposed by both Federal and State Government Departments:

1. Company Name.....ACN.....
2. Address.....
3. If no company name then ABN.....
4. Do you employ staff?.....Yes/No If Yes, you require Workers' Compensation coverage. Do you have it?.....Yes/No
Policy Number.....Insurance Company.....
A copy of the Certificate of Currency is attached.....Yes/No
5. Public Liability Insurance to \$5 million is required. Do you have it?...Yes/No
Policy Number.....Insurance Company.....
A copy of the Certificate of Currency is attached.....Yes/No
6. Are you aware that you may not be a Subcontractor, but an employee, if more than 80% of your work is with the one company?.....Yes/No
7. Do you confirm your status as a Subcontractor by stating that you are free to work for more than one company and do you confirm by your signature that at least 20% of your income is from sources other than this company?
Yes/No.....Signature.....Date.....
8. I acknowledge and understand it is a legal requirement that I complete and send the Subcontractors Statement with every Invoice.

This information has been supplied without any pressure from the Principal and to the best of my knowledge is true and correct in all respects.

Name.....Signature.....Date.....

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION (Note 1)

Workers Compensation
s175B Workers Compensation Act 1987

Pay-roll tax
Part 5B s31G-31J Pay-roll Tax Act 1971

Remuneration
ss127, 127A Industrial Relations Act 1996

Sub Contractor: _____ ABN: _____
(Business name)

of _____
(Address of subcontractor)

has entered into a contract with _____ (Note 2)
(Business name of principal contractor)

ABN: _____ For work between: / / and / / (Note 3)
Date Date

and/or Payment Claim Details: _____ (Note 4)

Nature of contract work: _____ (Note 5)

DECLARATION

I, _____ a Director of / a person authorised by the subcontractor on whose behalf this
(delete as appropriate)
declaration is made, hereby state that the abovementioned subcontractor:

Is either

A sole trader or partnership without workers or subcontractors (Note 6).
OR

Has and will maintain in force valid workers compensation insurance, policy _____
(Policy Number)
held with _____ as indicated on the attached Certificate of
(Insurance Company)

Currency dated _____, in respect of work done in connection with the contract, during any period of the contract and has paid all workers compensation insurance premiums payable in connection with the contract (Note 7).

Is Is not also a principal contractor in connection with the work under contract (Note 8).

Has Has not been given a written statement by subcontractors in connection with the work.

Is Is not required to be registered as an employer under the Pay-roll Tax Act 1971 _____
(Pay-roll tax client No.)

Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as required at the date of this statement (Note 9).

Has paid all remuneration payable to relevant employees, for work done under the contract during the period outlined above (Note 10).

Signature _____ Full Name _____

Position/Title _____ Dated _____
(please print)

WARNING

- Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).
- This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987**

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates.

Section 127(6) *Industrial Relations Act 1996* defines remuneration as '*remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation 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.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996*.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Pay-roll Tax Act 1971* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

APPOINTMENT OF CLEANING CONTRACTOR

THIS AGREEMENT is made on the day and date appearing in paragraph 1 of the First Schedule hereto. The parties to this agreement are firstly:

Your Company Name, the registered office of which is situated at **PO** (hereinafter called "the Principal")

and secondly:-

the party named and described in paragraph 2 of the First Schedule to this Agreement (hereinafter called "the Contractor").

AND WHEREAS:-

1. **THE** Principal is a company supplying cleaning services throughout the Commonwealth of Australia.
2. **THE** Contractor conducts an independent cleaning service and is willing to provide cleaning services on a non-exclusive basis to the Principal.

RECORDS as follows:-

TERMS OF APPOINTMENT

1. **THE** Contractor shall provide cleaning services for customers and clients of the Principal, particulars of which are set out as Schedule 2 to this agreement. The said Schedule incorporates details of works to be performed, place of performance, time of performance and any other relevant particulars. The terms and conditions set out in the Second Schedule shall, in this agreement, be collectively referred to as the **Head Contract**.
2. **THE** appointment shall subject to this agreement, continue for such period as the Head Contract shall continue to operate between the Principal and the client identified in the Head Contract.
3. **THE** Contractor will provide the services, equipment, facilities and supplies necessary to perform the work as specified in paragraph 3 of the First Schedule hereto and shall provide the services of experienced and qualified personnel where necessary to that end.
4. **THE** Contractor shall be given the utmost discretion with respect to the performance of its tasks and the provision of its services provided however that the Principal shall be entitled to call for regular reports on the progress of the Contractor's work and shall be entitled to review all work performed and results achieved on a regular basis.
5. **WHERE** the Contractor provides its own equipment, facilities or supplies the Principal shall not be liable to contribute to the maintenance, repair, insurance or any other outgoings associated with the provision of such equipment, facilities or supplies.
6. **THE** Contractor shall provide its services, equipment, facilities and supplies during such times and on such days and at such locations as are specified in the Head Contract.
7. **THE** Contractor recognises that the Principal is the owner of certain trade names and service marks which apply to and are for use in connection with the Principals business and this Agreement in no way assigns, transfers or conveys to the Contractor any rights in or to the said names or marks or any other rights to its use except that the Contractor may be permitted to use the trade names or marks in connection with the Agreement or as specifically directed in writing by the Principal.
8. **THE** Contractor shall not make purchases on behalf of or in any way pledge the credit of the Principal except in the normal course of trading without express consent in writing to do so.
9. **THE** Contractor shall not be authorised to receive on behalf of the Principal any sum in payment of any account due for the supply of goods or services and in the event that the Contractor receives any payment, it shall forthwith forward such sum direct to the Principal.
10. **EXCEPT** as required by Law, the Contractor shall not at any time during the term of this Agreement, divulge to any person any information or fact relating to the business of the Principal or of its services and products, staff or personnel or in any way relating directly or indirectly to the business and undertaking of the Principal which may come to the knowledge or attention of the Contractor or its servants and agents in connection with or incidental to the Contractor engagement pursuant to this Agreement and the Contractor shall also obtain a similar covenant from its servants and agents to this affect.

- 11.
- I. THE Contractor shall not for any cause, by any means whatsoever do either one or more of the following acts without prior written approval of the Principal namely:
 - a)either personally or by agents or by letters, circulars, or advertisements whether on his own behalf or on behalf of any other person, firm or company canvass or solicit orders for work from any person, firm or company who shall have been during the continuance of this Contract a customer or client of the Principal or any parent, subsidiary related or associated company of such customer or client with whom the Contractor has provided services pursuant to this Contract.
 - (b)in any way defame or bring discredit on the Principal as to prejudicially affect the relationship between the Principal and any of its customers or Contract.
 - II. THE performance by the Contractor of its services pursuant to this Contract shall not constitute a breach of any of the provisions of subclause (I) hereof.
 - III. THE Contractor shall not upon and after the termination of this agreement without the prior approval of the Principal, for a period of two years commencing from the date of termination and within the geographical location defined in paragraph 8 of the First Schedule hereto (or in the event that a Court of competent jurisdiction shall determine that the period of time referred to in this subclause constitutes an unlawful restraint of trade or otherwise constitutes a breach of the provisions of the Trade Practices Act Commonwealth 1974 as amended or any other Legislation of the Commonwealth or of a State or Territory then for such lesser time and within such more restrictive geographical location as shall not constitute an unlawful restraint of trade or a breach of the aforementioned Legislation and to the maximum permissible extent), do any of the matters listed in subclause (1) hereto.
 - IV. (a) THE Principal shall not unreasonably withhold its consent to the Contractor doing any one or more of the acts referred to in subclause (1) (a) hereto provided the Contractor shall first pay to the Principal the sum of **FIFTY THOUSAND DOLLARS** (\$50,000.00) in consideration of the Principal's prospective loss of goodwill.

In the event of the loss of a customer, contract or other benefit and or remuneration by the Principal as a consequence of the Contractor doing any one or more of the matters referred to in subclause (1) hereof it shall be presumed that the Contractor has sought consent from the Principal and the Contractor shall be obligated to pay to the Principal the sum referred to in subclause (IV)(a) hereof

to procure the consent of the Principal.

12.THE termination of this Contract shall not release the Contractor from any obligations imposed under this Agreement whereby the context of such obligations are intended to continue notwithstanding the termination.

13.THE Principal acknowledges that the Contractor performs cleaning services and provides equipment and facilities or supplies to that end to clients and/or customers other than clients or customers associated with the Principal. The Contractor hereby warrants that it does not have any obligations which now or in the future will prevent or inhibit the performance and observance by it of its obligations herein contained and that it is free notwithstanding other contracts and obligations to honour the terms and conditions of this agreement without conflict in time or interest that would be detrimental to the Principal.

14.THE Contractor shall receive in full compensation for performance hereunder the fee specified in paragraph 4 of the First Schedule hereto. The Contractor shall render invoices at intervals specified in paragraph 4 of the First Schedule hereto. Invoices rendered by the Contractor shall be payable twenty one days from the date thereof.

15.THE Principal shall supply the Contractor at the Contractors request with cleaning supplies at prices fixed from time to time and published in a price circular distributed to the Contractor. Any materials ordered prior to publication of price variations will be honoured at the prices in the price list current at the time of order.

16.THE Contractor acknowledges that work performed is expressly subject to General Conditions for Contractors as are more specifically set out in Schedule 3 to this Agreement.

17. THE Contractor shall not be entitled to assign its rights hereunder. This Agreement shall be binding upon the assigns of the parties hereto.

18.

(a) THE Contractor acknowledges responsibility for all liability incurred for Workcover or Compensation pursuant to the provisions of the Acts of the Parliament of New South Wales or any other State or the Commonwealth for the Contractor and/or its Servants and Agents.

(b) THE Contractor acknowledges its position as an independent Contractor and agrees to indemnify the Principal for all liability for compensation, negligence or contractual liability to which the Principal may be liable as a consequence of the activities of the Contractor and or its Servants or Agents pursuant to this Agreement.

(c) WHERE pursuant to any relevant legislation the Principal is held liable for Workcover or like payments on behalf of Contractors the parties agree that responsibility for the paying any such payments shall be to the account of the party hereto nominated in paragraph 5 of the First Schedule hereto.

(d) THE Contractor shall carry at all times and with insurance companies acceptable to the Principal the insurances more particularly set out as paragraph 7 of the First Schedule hereto.

19. THIS Agreement shall in no way be construed as preventing the Principal from appointing other Contractors to perform services or provide equipment facilities and supplies such as are contemplated pursuant to this agreement and in particular, in performance of the Head Contract, provided the same shall not interfere with or otherwise prevent the Contractor from performing its services under this Contract.

20. EITHER party to this agreement shall be entitled to determine the agreement upon giving notice in writing to the other of the intention to determine the Contract. The Contract shall be determined at the expiration of the period specified in paragraph 6 of the First Schedule hereto (the Notice Period).

21. NOTWITHSTANDING the provisions of Clause 20 hereof.

(a) The Principal shall be entitled in the event of a breach of the obligations of the Contractor to :

- I. determine this Contract on giving 48 hours notice.
- II. recover from the Contractor any loss or damage sustained as a consequence of the breach.

(b) The Contractor shall be entitled:

I. to suspend its services or the provision of equipment, facilities and supplies in the event of failure by the Principal to pay the remuneration due to the Contractor on the date or dates herein specified or if the Principal fails to perform any other obligation on it to be performed to the terms of this contract or and in particular but without being limited thereto a failure to make available such facilities as may be necessary to enable the Contractor to perform its work in accordance with its obligations herein contained.

II. and if such refusal or failure by the Principal subsists for more than forty-eight (48) hours to terminate this agreement and thereafter the Contractor shall be entitled to render an invoice for all moneys due to the Contractor which shall included a proportion of the remuneration calculated to the date of suspension plus the remuneration that would have normally have been payable to the Contractor for a period of two weeks from the date of termination if the Contract had not been terminated.

22. IN the event of a dispute between the Principal and the Contractor occurring, both parties agree to confer initially to determine whether the dispute can be resolved. In the event that the parties are unable to resolve the dispute within seven (7) days from the commencement of negotiations, then the parties shall:

I. Refer the dispute for mediation before a mediator nominated in the absence of agreement between the parties by the Director of HandL Pty Ltd

II. IN the event that mediation does not resolve the dispute within twenty-one (21) days of the appointment of a mediator, such dispute shall be resolved by submission to arbitration in accordance with and subject to The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrators.

23. EXCEPT as otherwise expressly provided herein each notice or consent herein provided for shall be deemed given and made if and when deposited in the mail, duly registered with return receipt request. For the purposes of this Agreement the proper address of either party shall be as hereinbefore appearing and in the event that there is a change of address by either party the party changing address must give to the other party at least fifteen days notice in writing specifying the new address. Invoices, orders and payments may be sent to either party by ordinary mail.

24. SUB-HEADINGS used in this Agreement shall be read as subject to the specific conditions hereof in the event of any conflict arising.

IN WITNESS whereof the parties hereto have set their hands and seals the day and year first hereinbefore written.

EXECUTED as an Agreement

Signed by Your Company Name ABN by its duly authorised officer in the presence of:

Signature of authorised officer... .. Name:

Position:.....

Signature of Witness: Name:.....

Position.....

Signed by by its duly authorised officer in the presence of:

Signature of authorised officer.....Name.....

Signature of Witness.....Name:.....

Position.....

SCHEDULE 1

1. DATE OF AGREEMENT:day of2003.
 2. THE CONTRACTOR:
ofin the
 3. EQUIPMENT AND FACILITIES TO BE PROVIDED BY THE CONTRACTOR
 - 4.
 - 5.
 - 6.
 - 7.
 - 8.
 - 9.
 - 10.
- (A)COMPENSATION FOR PERFORMANCE:
- (B)INTERVALS FOR RENDERING INVOICES:.....
- NOMINATED PARTY TO PAY WORKCARE:.....
- THE NOTICE PERIOD:
- APPLICABLE INSURANCE COMPANIES:
- GEOGRAPHICAL LIMITATIONS:
- ABN NUMBER:.....
- TOTAL CONTRACT PRICE PER ANNUM:
- GOODS AND SERVICES TAX (GST): 10% of Invoice Value.....

SCHEDULE 2

CUSTOMERS, CLIENTS AND CLEANING SERVICES TO BE SERVED BY CONTRACTOR
(TO FORM HEAD CONTRACT)

This subcontractor agreement pertains to the said customer and cleaning services only:

A CUSTOMER:

B LOCATION:

C CLEANING SERVICES

1 FREQUENCY:

2 SERVICES:

3 COMMENCEMENT OF CLEANING:

SCHEDULE 3

GENERAL CONDITIONS FOR CONTRACTORS.

In consideration of the Principal engaging the Contractor to supply services to the Principal or Principals clients/customers in addition to other obligations under the contract, the Contractor hereby agrees to abide by the following general terms and conditions:

SECURITY

1. The Contractor agrees and warrants that whilst on the premises of the Principal or its customers he will not read or otherwise seek to obtain knowledge of information contained in such premises, except where such information is expressly provided to the Contractor, or publicly displayed on a notice board, for the general information of visitors to the premises.
2. The Contractor agrees to maintain the confidentiality of any information supplied to him or otherwise gained by him in the performance of his work. Where the Contractor is supplied with Identification Badges or Keys, he will take all proper precautions to avoid loss, theft or misuse of such badges or keys. He will not transfer them to any individual without the express authorization of the Principal and will immediately report any loss, theft or suspected misuse to the Principal.
3. The Contractor acknowledges that it will come into possession of information know how or data of various kinds pertaining to the Principals services, products and business which the Principal may deem to be of a confidential nature. The Contractor agrees that it will not disclose any confidential or secret information in any manner or use any information other than for the promotion, sale or provision of services and products of he Principal in the course of this contract either during or after the termination thereof. If the Contractor shall be in doubt as to whether particular information is deemed by the Principal to be confidential it shall make specific enquiries before making any disclosures to persons or before using any such confidential information, know how or data to obtain specific authority from the Principal.

GENERAL CONDITIONS FOR CONTRACTORS

4. Work is to be carried out with the minimum disruption to the normal business activities of the Principal and its customers. Any disruption to building services (power, light etc.) even outside of normal working hours, must be prearranged for a time acceptable to the Principal/or its Customers and sufficient advance notification must be given.
5. The Contractor will notify the Principal immediately he becomes aware of any unforeseen shortage of materials or labour, which will materially affect the advised completion date of the project.
6. The Contractor will take care to avoid damage to the buildings and all fittings, fixtures and furnishings. Protective sheets will be used to cover furniture and carpets etc., whenever there is a risk of damage or soiling. Should damage or soiling occur the Contractor is responsible for re instatement of the damage or soiled item(s), and will notify the Principal immediately any such incident occurs.
7. On completion of work in any area, and as close as practicable to a daily basis, the area is to be restored to an acceptable working environment. This includes the removal of all equipment, supplies and rubbish etc. as required. In the case of a contract, which will be performed over an extended period of time, each work area will be cleaned as work is completed in that area.
8. Use of passenger lifts for transport of goods and materials is subject to the local building rules and may be prohibited during peak periods. In any event, care will be taken to avoid damage and soiling and lifts will be left in a clean and tidy state.
9. All materials supplied and work performed will comply with all applicable statutory regulations, standards and codes. The Contractor will ensure that all required permissions and approvals have been obtained prior to commencing work. Where final inspections and approvals are required by an authority, such approvals will be obtained by and at the expense of the Contractor. Any additional works or rectifications required due to non-compliance with regulations, standards or codes will be at the Contractors expense.
10. The Contractor will ensure compliance with all requirements of applicable OCCUPATIONAL HEALTH AND SAFETY LEGISLATION and that all necessary safety equipment and protective clothing is issued and utilised.

11. The Contractor will ensure that any subcontractors engaged by him, agree to the Principals standards, and are responsible for their compliance with these standards.
12. No Contractor may assign a contract or any portion thereof to another contractor without prior approval of the Principal.
13. The Contractor will supply all equipment and materials unless otherwise specifically provided to the contrary.
14. The Contractor shall not in supplying or providing the Principals services or products make or give any representation or warranty other than those contained in the Principals printed advertising material or unless specifically authorised by the Principal.
15. The Contractor shall assist the Principal by obtaining and furnishing sufficient data regarding any services or products supplied to enable the Principal to effectively invoice its customers.
16. The Contractor shall not be authorised to receive on behalf of the Principal any sum in payment of any account due for provision of the principal services or products pursuant to this contract, and in the event payment is received Contractor shall forthwith forward such sum direct to the Principal.
17. Service of notice for consent herein provided for shall be deemed given and made if when deposited in the mail duly certified with a return receipt requested. Change of address of either party may be sent to other party by ordinary mail.
18. Sub-headings shall be read as subject to the specific conditions hereof in the event of any conflict arising.
19. In the event that any provision of this contract or any modification thereof shall be in breach of the provision of the Trade Practices Act 1974, Commonwealth and Amendments and any State Legislation applicable thereto, then such provisions shall be severable from this agreement to the extent of any such invalidity or inconsistency with the terms of the aforementioned Acts or Regulations made thereunder.