



Ambasciata d'Italia
Canberra

Note to tenderers: This contract will be reviewed prior to award to ensure compliance with mandatory requirements of the Building Act 2004 and Regulation in relation to residential building work.

CONTRACT

BETWEEN

The Embassy of Italy in Canberra, hereinafter referred to as "Client"

and

Ultimate Windows, hereinafter referred to as "Contractor"

Article 1 - Purpose

1.1 The Contractor shall perform the services set forth in:

- (a) Appendix 2 to the letter of invitation, attached to this contract of which it forms an integral part, and
- (b) the Contractor's tender for the services (to the extent identified in the letter of award).

Article 2 – Price

2.1 The contract price is (TBC AUD), inclusive of GST.

2.2 The price indicated in this article is fixed. Subject to the express terms of this contract, the price is not subject to revision and is the total amount due for all activities necessary for the proper and regular execution of the services.

2.3 The Contractor may not demand from the Client payments in excess of the total amount indicated in this article, for services covered by this contract. Upon payment of the said amount, the Contractor shall be satisfied of all its claims.

Article 3 – Completion, Date for completion and defects liability

3.1 Subject to Article 3.1, the services must be completed within the time for completion provided in Appendix 2 to the letter of invitation.

3.2 The Client may extend the time for completion at any time and for any reason by a period determined solely by the Client, whether at the request of the Contractor or otherwise.

3.3 When the Contractor considers the services are complete, the Contractor must notify the Client and arrange a joint inspection. If the Client agrees the services are complete, the Client will issue a notice of completion, stating the date of completion.

3.4 On or prior to completion, the Contractor must assign to the Client the benefit of any manufacturer's warranties relating to the windows.

3.5 Without limiting the terms of any manufacturer's warranty, a defects liability period of **6 months** commencing on the date of the Client's notice of completion applies to the completed service. During that period, the Client may issue a direction to the Contractor requiring it to return and rectify any defect at the Contractor's cost. The Contractor must comply with any such direction.

Article 3A – Variations

3A.1 The Client may direct the Contractor to vary any part of the services at any time (including to do additional work, omit work or change any aspect of the services), provided that the variation does not significantly change the scale and type of services required under the contract.

3A.2 The Contractor must not vary the services without a written direction from the Client stating that it is a variation direction.

3A.3 Before issuing a variation direction, the Client will seek a written submission from the Contractor setting out the price adjustments required for the proposed variation and the anticipated impact on the time for completion.

3A.4 The Client will, acting reasonably, determine the value of any variation (and any associated extension of time) after taking into account the Contractor's submission and applicable market information. The Client's determination shall be included in the variation direction.

3A.4 The Contractor must promptly provide a written submission when required to do under Article 3A.3, and must promptly comply with any variation direction issued by the Client.

Article 4 - Modalities of Execution

4.1 The contract may not be assigned to third parties and subcontracting is prohibited.

4.2 The Contractor undertakes to perform the contractual services in compliance with all the clauses and conditions, none excluded or excepted, contained herein, as well as with the instructions given by the Client.

4.3 Violation of the provisions of this article by the Contractor shall be considered a serious breach of contract and shall be just cause for termination of the contract.

Article 4A – Licences and Insurances

4A.1 The Contractor must comply with all laws applicable to its business and the performance of the services, including all trade and occupational licences and all laws and best practice applicable to workplace health and safety.

4A.2 The Contractor must hold, and maintain, suitable insurances at all times when carrying out services under this contract to cover all reasonably insurable risks and liabilities that may arise in the course of performing the services. The insurances must include public liability cover of at least \$20million, motor vehicle third party property cover of at least \$20million for all vehicles used in carrying out the services, workers compensation cover as required by law and contract works insurance of an amount agreed with the Client prior to the award of contract.

4A.3 The Contractor must provide evidence of the insurances and their currency at any time upon request by the Client.

Article 5 - Terms and methods of payment

5.1 The Contractor shall indicate a bank account to which the Client will make payments. The Client will not make payments by other means than by transfer to the said bank account.

5.2 The Contractor's payment claims shall indicate the following code: "CIG 9744236DEA".

5.3 Payment will be made according to the following schedule:

- 10% once the Contractor has performed the equivalent of 10% of the agreed contract (preliminary work and one completed window);

- 40% once the Contractor has performed the equivalent of 50% of the agreed contract (11 windows completed)

-50% at completion of the contracted services;

5.4 The Contractor may submit a payment claim for a progress payment whenever it considers it has reached a milestone identified in clause 5.3.

5.4 The Client will then perform an assessment of the completed services and the payment claim, and shall issue the payment only after confirming clearance.

5.7 After assessment of a payment claim, the Client will:

- (a) issue a payment schedule within 10 Business Days of receipt of the payment claim; or
- (b) pay the requested amount in full within 10 Business Days of receipt of the payment claim;

5.8 Any payment schedule will:

- (a) identify the payment claim to which it relates;
- (b) state the amount of the payment, if any, that the Client proposes to pay (scheduled amount);
- (c) if the scheduled amount is less than the claimed amount, indicate the reasons why (including reasons for withholding payment, if applicable).

5.7 The Client may deduct from an amount payable to the Contractor under this Contract any amount which is, or in the opinion of the Client is likely to become, payable by the Contractor to the Client.

5.8 In this Article, Business Day means a day that is not (a) a Saturday or Sunday; or (b) a public holiday or bank holiday in the ACT, but does not include 27, 28, 29, 30 or 31 December.

Article 6 - Contact points

6.1 The project manager is Roberto Rizzo, Deputy Head of Mission.

Article 7 – Consequences of lack or loss of requirements

7.1 It is fundamental to the Client that the matters set out in the statutory declaration provided with its tender are, and remain, true and correct at all times during the currency of the contract.

7.2 If any of the matters set out in the statutory declaration cease to be true and correct at any time (or are found to have been untrue when the declaration was made), the Client may:

- (a) immediately terminate the Contract by notice in writing to the Contractor; and

(b) recover from the Contractor any loss, cost or damage it suffers or incurs as a result of the termination.

Article 8 – Default and its consequences (including liquidated damages for delay)

8.1 Any delay on the part of the Contractor in completing the services by the time for completion of the services (as determined in accordance with Article 3) shall, except in cases of force majeure beyond its control, entail the application of liquidated damages equal to 0.5 per thousand of the net contractual amount for each day of delay.

8.2 If the Contractor fails to comply with the terms and regulations contained in this contract during the performance of the services, the Client shall contest the non-fulfilment in writing, giving, if possible, the necessary instructions for compliance, and assigning a reasonable period of time in which to submit any counter-arguments. In the absence of suitable explanations, the Contractor shall comply with the instructions given and, if it fails to do so within the specified time limit, the Client may (without limiting any other right it has) take whatever action it considers appropriate to make good the non-compliance at the Contractor's cost, and recover the cost from the Contractor as a debt due and payable.

8.3 The request for or payment of liquidated damages for delay or the cost of make good under Article 8.2 shall in no case release the Contractor from the performance of the contractually agreed services.

8.4 If the amount of any payments due from the Contractor to the Client under this Article 8 reaches ten per cent of the contract price (as adjusted for any variations directed by the Client pursuant to Article 3A) , or in any other case in which, in the course of performance of the contract, the Contractor's breach of contractual obligations emerges such as to cause material damage to the Client, the Client may terminate the contract on the grounds of default by the Contractor and reserves the right to take action for damages. Without limiting any other entitlement to damages, the Contractor shall reimburse the Client for any additional expenses incurred by the Client in having the service performed by others.

8.5 Possible damages to the Residence building, which might occur during the installation of the windows and are caused by the age and conditions of the building itself, as already signalled by the contractor, will not be deemed responsibility of the Contractor. Any other damage, caused by the negligence of the Contractor, shall fall under article 8.4 and shall be reimbursed by the Contractor.

Article 9 - Termination

9.1 The Client may terminate the contract during its term if:

(a) the Contract undergoes a material change that requires the Client to undertake a new procurement procedure pursuant to Article 72 of Directive 2014/24/EU;

(b) the Contractor falls under one of the grounds for exclusion set out in Article 57 of Directive 2014/24/EU;

(c) the contract should not have been awarded to the Contractor in view of a serious breach of obligations under the European Treaties and Directive 2014/24/EU (if the Contractor is bound by the directive);

d) it has an express right to do so pursuant to any provision of this contract or pursuant to any applicable law. .

9.2 The Client may terminate the contract for convenience even if performance has begun, by giving written notice to the Contractor at least 20 calendar days in advance. In such a case, the Client shall pay the Contractor a reasonable amount (consistent with the contract price) for any unpaid services properly performed and acquired by the Client prior to the date of termination, and will also reimburse the Contractor for the expenses reasonably already incurred with a view to the performance of the services not yet performed. Where reimbursed expenses are for unfixed items purchased for, and not yet incorporated, into the Ambassador's residence, the Client's obligation to pay those expenses is subject to it receiving clear title to, and possession of, those items.

Article 10 - Liability

10.1 The Contractor shall assume all liability for accidents, loss and damage caused to the Client, its property or personnel or to any third party as a result of any default, negligence or other wrongful act or omission by it, its subcontractors, employees or agents in connection with the execution of the service. Without limitation, the Contractor indemnifies the Client against any claim or action which may be made or brought against the Client, its employees or agents in respect of personal injury or death or loss of, or damage to property arising directly or indirectly from any default, negligence or other wrongful act or omission by the Contractor or its employees, subcontractors or agents in connection with the performance of the contract.

10.2 The Contractor undertakes to guarantee the confidentiality of any information acquired in connection with this contract. Without limitation, the Contractor must ensure that confidential information is not disclosed to anyone other than its employees, subcontractors and agents who need to know the information in order to properly and effectively carrying out the services, and who have agreed in writing to maintain the confidentiality of the information.

10.3 The obligations assumed by the Contractor under this contract shall in no way constitute an employment or employment relationship of any kind between the Client and the personnel employed by the Contractor, nor shall they give rise to any claims against the Client other than those expressly agreed herein. Such personnel may only carry out the activities specified in this contract, no other activity being authorised in any way. The Contractor undertakes to make the personnel employed in any capacity whatsoever aware of this clause.

Article 11 - Final Provisions

11.1 Nothing in this contract may be interpreted as an express or implied waiver of the immunities granted to the Client under international law.

11.2 This agreement shall be governed by applicable Australian law. The place of jurisdiction for disputes shall be the Australian Capital Territory. Both parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory for the purposes of matters related to this contract.

11.3 This document contains the complete expression of the obligations of the Client and the Contractor and may only be amended by another contract in the same form, any other form of contractual amendment being excluded.

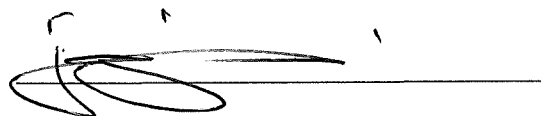
Executed as an agreement on the date of signature of the last party to sign (as set out below).

EXECUTED by Ultimate Windows

(ABN 17 121 737 102) IN
ACCORDANCE WITH S 127 OF
THE *CORPORATIONS ACT 2001*
(CTH):

Signature of director

Name (please print)



Signature of director/secretary

TYE SPIERINGS

Name (please print)

Date of signature: 07/06/2023.....

EXECUTED by The Embassy of
Italy in Canberra:

Date of signature: 06/06/2023.....

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