

Retention Instrument

APPLICATION FORM

QBE Insurance (Australia) Limited ABN 78 003191 035 AFSL 239 545



Company details			
Company name (Applicant)			Company number
Street address			Postcode
Registered office			Postcode
Geographical location of operation		Year business commenced	
Does company act in a trustee capacity <input type="checkbox"/> Yes <input type="checkbox"/> No			
Nature of business			Website
Contact name			Position
Telephone		Mobile	
Authorised persons (in addition to directors) (see additional terms)			
Authorised Email Account(s) of the company (see additional terms)			
Are all Banking Covenants being met? If not please provide details.			

Checklist		
Information required	Details of information required	Attached
Financial accounts	The last three years' financial statements are required (either audited or signed by Directors). Where the most recent financial statements are more than six months old, up-to-date management accounts must also be provided. Where the Applicant forms part of a larger group of companies, consolidated financials for the group and each individual entity are required.	Yes No
Cashflow forecast / budgets	A copy of the most recent 12-18 months cashflow projections and budgets.	Yes No
Current pipeline of contracted work	A copy of the "work in progress" pipeline of current and future contracted work by contract including contract counterparty, nature of contract, value of contract, date started and estimated time to completion.	Yes No
History of previous projects	A history by contract of previous projects completed by date, name and contract value to enable QBE to gain a fuller understanding of the clients' history and capabilities.	Yes No
Corporate profile	Relevant information which includes corporate profile for the company, each indemnifier, ownership structure, key personnel details (Directors/Management CVs) and other relevant information.	Yes No
Corporate structure	A current company organisation chart plus commentary as the extent of any Deed of Cross Guarantee, Cross Defaults, Class or Orders or other Guaranteeing Group.	Yes No
Statement of assets & liabilities (separate form)	Are you able to provide detailed statement by Indemnifiers / Guarantors of their personal assets and liabilities?	Yes No
A list of all current bank guarantees / bonds	A list of all bank guarantees / bonds on issue by favouree name including amount, type and expiry date.	Yes No
Details of existing bank facilities	A copy of any existing bank / financial institution provided facility agreement/s (inc details of security provided for those facilities).	Yes No
Trusts	If an Applicant / Indemnifier is a trustee of a trust, a certified true copy of the relevant trust deed (including any variations) must be provided together with details of the unit holders or beneficiaries of the trust.	Yes No
Current retention schedule list of all retentions currently held		Yes No

Reporting - how often are they produced/ reviewed. Tick appropriate box.

Management accounts	Monthly	Quarterly	Half yearly	Annually
Cash flow statements	Monthly	Quarterly	Half yearly	Annually
Projects status reports	Monthly	Quarterly	Half yearly	Annually
Are the above reports reviewed at Board level?	Yes No	Yes No	Yes No	Yes No

Facility required

What is the maximum amount of retention held from <u>subcontractors</u> in the past 12 months	\$
Specify maximum amount of <u>sub-contractor</u> retentions required to be secured by the Instrument	\$
What do you currently project will be the maximum amount of <u>sub-contractor</u> retentions held in the next 12 months?	\$

Corporate debt and liabilities

Bankers (Lead)		Branch	
Bankers (Other)		Branch	
Period with Bank (Lead)	years	months	
Period with Bank (Other)	years	months	

Bank facilities

Bank facilities	Established limit	Total drawn	Expiry date
Bank guarantee	\$	\$	
Letters of credit	\$	\$	
Overdraft	\$	\$	
Short term loans	\$	\$	
Commercial bills	\$	\$	
Leasing finance	\$	\$	
Long term finance	\$	\$	

How are the above facilities secured

Please confirm that all obligations are up to date and in order. Yes No

Outstanding surety/performance bonds

Issued by	Approved facility	Current balance outstanding
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Total	\$	\$

If insufficient space, please attach a listing.

Other Non-Bank Facilities		
	Value utilised	Expiry date
Hire purchase	\$	
Operating leases	\$	
Finance leases	\$	
Other	\$	

Contingent liabilities (Indemnities, guarantees, etc.) Nature of exposure	In favour	Amount of exposure
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

Inter company debt		
Total owing to the company/applicant		
BY related entities	\$	
TO related entities	\$	

Claims history		
Have any claims or attempted claims ever been made against any bonds/guarantees issued to the company/group of companies, or do circumstances exist that could lead to a claim against bonds/guarantees issued currently or in the last 5 years?	Yes	No
Have there ever been claims on any bonds or guarantees issued on behalf of Entities associated with Directors of the Company/Applicant?	Yes	No
<i>If 'Yes', to either question, please attach details.</i>		

Key personnel					
Name	Position	Shareholding in company (%)	Length of service (in years)	Keyman cover in place	
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No
				Yes	No

Industrial relations

Has any industrial action been initiated against your company in the last five years? Yes No

If 'Yes', please give details. (Attach separate sheet if insufficient space).

Litigation and disputes

Has the Company, its parent, controlled or associated companies, directors or officers filed for bankruptcy or liquidation or had a receiver appointed? Yes No

Has the Company entered into any compromise or scheme of arrangement with its creditors? Yes No

Has the Company, its parent, or controlled or associated entities, directors or officers had any judgement awarded against them? Yes No

Has the Company or its parent, controlled or associated companies, directors, officers or owners entered into litigation disputes? (Other than customer contractual disputes) Yes No

Please Note: If answered 'Yes', to any of the above questions, please attach full details of the incident and/or case and comment on actual or expected outcome.

Insurances

Does the Company carry the following insurance cover?			Limit of Indemnity	Insurer	Due Date
Professional Indemnity	Yes	No	\$		
Directors' and Officers' liability	Yes	No	\$		
General liability Insurance	Yes	No	\$		
Environmental Liability	Yes	No	\$		

Financial management and controls

Name of accounting firm			
Contact name		Phone	
Does the company employ an accountant internally?	Yes	No	
Can QBE obtain and discuss any financial data directly with your external Accountant?	Yes	No	
<i>If 'Yes' to above question signature required below. QBE will advise applicant before making contact.</i>			
Signature			Date

Declaration - please complete the above application before printing and signing below.

The undersigned hereby declares that the information and details provided herein are full and true answers and that it is understood the information provided will be used for the evaluation of this submission by QBE. Further, the undersigned confirms that he/she is duly authorised to sign this questionnaire for and on behalf of the Applicant.

I/We also acknowledge that Brokerage may be payable to our broker in relation to the issuance of this Instrument.

Authorised signatory		Date	
Name		Position	

Insurance brokers details

Will your insurance Broker be representing you in this transaction? Yes No

If 'Yes', please complete details below.

Company name			
Contact name			
Office			Postcode
	Phone		Email

Brokers authority to act

I/ we give permission for the above named broker to act on our behalf to arrange the Retention Instrument for and on behalf of the Applicant company and its related entities.

This Authority will be binding until further advised in writing.

Signature		Name	
		Date	

Additional terms

1 Acknowledgements

The Applicant(s) request(s) QBE Insurance (Australia) Limited (QBE) to provide it with a Retention Instrument.

The Applicant(s) warrant(s) and represent(s) that all of the information and materials provided to QBE in respect of this application are true and correct and none of the information is by content or omission misleading in any way. The Applicant(s) further warrant(s) and represent(s) that it has provided QBE with all the information known to it which could reasonably be expected to be relevant to the decision by QBE to issue a Retention Instrument. If there is any material change in that information from the time it was provided and before the Retention Instrument is issued the Applicant(s) will immediately advise QBE of the change. QBE may at its option revoke any approval if there is any material change.

If a Retention Instrument is provided, the Applicant(s):

- acknowledges that the provisions of this agreement (including those under the heading Counter Indemnity Agreement) will automatically be binding;
- acknowledges and agrees that QBE:
 - may rely on any certification from a Beneficiary in a Retention Demand (including as to whether retention amounts are due and payable under the relevant sub-contract and whether there is any dispute in relation to the relevant retention amounts) as being true and accurate in all respects and QBE shall not be required to investigate the validity of any such certification.
 - may pay out under the Retention Instrument if it receives a Retention Demand with all relevant attachments irrespective of whether there is a dispute.
- acknowledges and agrees that QBE is irrevocably authorised to pay out under the Retention Instrument immediately upon a request for payment being made under a Retention Demand (received with all relevant attachments) and may make such payment without reference to the Applicant and without the need for any further authority from the Applicant.
- acknowledges that it has received and approved the form of, and authorised and instructed QBE to issue, the Retention Instrument.
- acknowledges and agrees that QBE is irrevocably authorised to contact any Beneficiary (or former beneficiary) under the Retention Instrument from time to time for any reason in connection with the Retention Instrument, including to advise any such Beneficiary of a change in its Relevant Retention Amount.

The Applicant(s) warrant(s) and represent(s) that to the best of their knowledge there are or have been:

- (i) no material claims, attempted claims, or potential claims against an insurer, a guarantor, a financier or any other surety body in relation to the applicant(s);
- (ii) no material industrial or litigious action against the applicant(s) or a related third party.

The Applicant(s) and each guarantor warrant(s) and represent(s) that:

- this deed is in all respects valid and binding on it and enforceable against it in accordance with its terms;
- it has obtained all necessary consents and complied with all internal procedures in relation to its execution of, and the performance of its obligations under, this deed;
- the Company/Applicant is solvent and properly accounts for retention monies;
- each Retentions Schedule (including each confirmation and certification contained in it) delivered by it to QBE is true correct and accurate in all respects at the time it is delivered;
- where the Applicant delivers a Retentions Schedule to QBE by email from an Authorised Email Account, the person sending such email is authorised by the Applicant to give all confirmations and certifications contained in such email; and
- it has not relied upon any representation or statement by or on behalf of QBE but has decided to enter into this deed solely upon its own assessment after having obtained advice from its own advisors.

2 Counter Indemnity Agreement

In consideration of QBE issuing the Retention Instrument to the applicant(s) and the guarantors, the applicant(s) and guarantors each:

- A. (i) unconditionally and irrevocably agrees to reimburse QBE on demand for any amount paid by QBE or requested to be paid by QBE directly or indirectly under or in connection with the Retention Instrument, and unconditionally and irrevocably indemnifies QBE against all actions, claims, demands, liabilities, Goods and Services Tax liabilities, losses, damages, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) which QBE at any time suffers or incurs directly or indirectly under or in connection with the Retention Instrument;
- (ii) agrees to pay QBE within seven (7) days of demand any amount so indemnified;
- (iii) understands that if it does not pay any amount demanded by QBE under this indemnity when due, then interest will accrue on that amount from the date payable up until the day the outstanding amount is paid. Interest will accrue on a daily basis at the 90 day bank bill swap reference rate (rounded to two decimal places) plus a margin of 2%. This interest is payable on demand.
- B. Without limiting the generality of the indemnity in paragraph A above, agree that:
- the indemnity in paragraph A covers:
 - any payment made on a claim under the Retention Instrument which QBE makes in the belief that it is obligated to make the payment notwithstanding that it may not be so obligated;
 - any money paid and actual or contingent liabilities incurred in taking any action (including, without limitation, performing, attempting to perform or procuring the performance of any obligation of the applicant(s) owed to a Beneficiary of the Retention Instrument) which QBE at any time considers appropriate to satisfy, reduce or limit any actual or contingent liability it has under the Retention Instrument; and
 - any cost or expense incurred by QBE in investigating, considering, defending, appealing, arbitrating, mediating or paying any claim under the Retention Instrument; and
 - its obligations to indemnify under paragraph A and QBE's right to demand and receive payment under that indemnity are not reduced or affected by:
 - any reinsurance, other indemnity or sharing arrangement of any nature entered into at any time by QBE in respect of its liability under the Retention Instrument or any payment received under any such agreement or arrangement; or
 - any variation to the Retention Instrument made in accordance with this deed or the terms of the Retention Instrument.
- C. Agrees
- that QBE as attorney and agent of the Applicant(s) shall be entitled to do anything which the Applicant(s) is required to do under these terms and conditions; and
 - to ratify and confirm any and all acts that QBE carries out as its agent and/or attorney pursuant to the above authority and power of attorney and indemnify QBE against any loss, cost, expense or liability suffered or incurred by QBE in connection with carrying out any such acts.
- D. Agrees to
- carry on any business conducted by it in a good and efficient manner and comply with the terms of any legislation, licence, lease or any other matter applicable to that business;
 - without limiting the immediately preceding paragraph, comply with all provisions of the Construction Contracts Act 2002 which are relevant to it;
 - ensure that:
 - all amounts retained by it which are not covered by the Retention Instrument are held on trust for the relevant subcontractor in a separate trust account (**Trust Retention Amounts**);
 - at any time, the ratio of (A) the total Trust Retention Amounts at that time; to (B) the total of all of its retained amounts at that time (whether held on trust in a separate trust account or covered by the Retention Instrument), expressed as a percentage exceeds the Retention Trust Percentage set out above (this paragraph being the **Retention Trust Percentage Covenant**).
 - until the occurrence of the Termination Date, deliver by email to QBE on a monthly basis a Retentions Schedule completed with details of all subcontractors for which retention amounts have been retained (whether held on trust or covered by the Retention Instrument) and clearly marking which subcontractors are Beneficiaries and which retention amounts are intended to be subject to the Retention Instrument and containing all confirmations and certifications required by the form of Retentions Schedule in the Retention Instrument.
 - we may separately agree with you in writing:
 - to your delivery of more than one Retentions Schedule per month; and/or
 - to you using a Retentions Schedule in a form different to that set out in Schedule 1 of the Retention Instrument, provided that any such schedule must contain the same confirmations and certifications as set out in that schedule.
 - provide QBE the following information:
 - within 45 days of the end of each financial quarter, its financial statements for that quarter. With each set of financial statements delivered under this paragraph, a director shall certify that (i) the financial statements give a true and fair view of its financial condition at the time they were prepared; and (ii) the applicant has at all times complied with the Retention Trust Percentage Covenant; and
 - promptly upon becoming aware, reasonable details of any dispute which (i) relates to a retention amount which is subject to the Retention Instrument or (ii) is with a counterparty that is a beneficiary under the Retention Instrument; and
 - provide QBE with such financial and other information in relation to it, any subcontract and any business carried on by it as QBE may from time to time require;
 - provide QBE, on request, with any information or document in the relevant Beneficiary's possession or otherwise readily available to the relevant Beneficiary, where such information or document is required by QBE to comply with any Relevant Laws (or required by QBE in order to comply with any policy established by QBE in order to comply with Relevant Laws)
 - pay, by their due date, all rents and all taxes (including GST), rates, fees and other statutory and any other contractual charges payable by it and, on demand by QBE, provide evidence of such payment.

This application form is entered into as a deed. The law governing this deed is the law of New Zealand.

The guarantees and indemnities in this deed shall remain in full force and effect until QBE has, by notice in writing, released the applicant(s) and each guarantor from their liability under it.

Additional Terms

3 Defined Terms

In this agreement:

- **Authorised Email Account** any email account of an Authorised Person and any email account designated by the applicant (in this application form or otherwise) as being an account from which the applicant may send Retention Schedules to QBE.
- **Authorised Person** means any director of the applicant and any other person identified as such on this application form.
- **Guarantee Demand, Relevant Retention Amount, Retentions Schedule and Termination Date** each has the meaning given to that term in the Retention Instrument.
- **Event of Default** means each of the events or circumstances set out below:
 - An applicant or guarantor does not pay QBE an amount payable under this deed on the due date for payment.
 - An applicant or guarantor does not comply with any provision of this deed.
 - Any representation or statement made by an applicant or guarantor in this deed or on any other document delivered by or on its behalf under or in connection with this deed is or proves to have been incorrect or misleading in any [material] respect when made or deemed to be made.
 - An Insolvency Event occurs in relation to an applicant or a guarantor.
 - A court determines that the Retention Instrument is not a complying instrument for the purposes of Construction Contracts Act 2002.
 - Regulations are introduced, or the Construction Contracts Act 2002 is amended, and the effect of such regulation or amendment is that the Retention Instrument is not a complying instrument for the purposes of Construction Contracts Act 2002.
- **Insolvency Event** means, in relation to a person, the occurrence of any of the following events:
 - that person ceases or threatens to cease to carry on all or any material part of its business or operations;
 - that person convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register is given;
 - an encumbrancer takes possession, or a trustee, official assignee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that person or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
 - a distress, attachment or other execution is levied or enforced upon, or commenced against, any assets of that person and is not discharged or stayed within 10 Business Days, except, in each case, where the QBE is satisfied that that person is contesting the same in good faith by appropriate proceedings;
 - that person is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
 - that person has committed an act of bankruptcy, has been adjudicated bankrupt, or made an assignment of property or composition of debts under any law relating to bankruptcy, or (in accordance with Part 5 of the Insolvency Act 2006) has entered into a no asset procedure;
 - that person suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
 - that person is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989 or a statutory or judicial manager is appointed over all or any of the assets of that person; or
 - all of the directors of that person resign, or signal their intention to resign.
- **Relevant Laws** means laws relating to money laundering, terrorism financing, bribery, corruption, tax evasion, fraud or similar, including any such laws requiring any person to carry out 'know your customer' or other identification checks or procedures.
- **Retention Instrument** means an instrument in the form [attached/provided to the applicant with this application form] and, if and once issued, means the retention instrument issued by QBE in relation to certain of the applicant's retention monies (as amended, varied or supplemented from time to time)

4 If an Event of Default occurs:

- QBE may demand that the applicant(s) provide(s) cash collateral in an amount up to the then applicable Maximum Retention Amount plus QBE's estimate of other amounts indemnified under clause 2 (or other security or financial support on terms satisfactory to QBE).
- QBE may by notice in writing to the applicant(s) immediately:
 - reduce the Maximum Retention Amount in accordance with clause 6 of the Retention Instrument.
 - shorten the Relevant Period in accordance with clause 6 of the Retention Instrument.
- The Applicant shall (and QBE may) notify any relevant beneficiary of changes made to the Relevant Period in accordance with this clause within 5 business days of the change and the applicant shall provide all necessary assistance to QBE in connection with such notifications.

5 The applicant(s) acknowledge(s) QBE may assign its rights to a third party.

6 The representations and warranties contained in this application form are made on the date of this application form, on the date any Retention Instrument is issued and on each date that QBE has liability (contingent or otherwise) under the Retention Instrument.