



# SUBCONTRACT AGREEMENT

(Lump Sum)

**CONTRACT No:**  
**{Projects.Number}-C{Contracts.ContractNumber}**

**Date: {Date.Short Date}**

**Between**

**Multi Span Australia Pty Ltd**

**and**

**{Company.Name}**

**AGREEMENT:**

1. The Subcontractor has agreed to carry out the Works for the Contract Sum specified in Schedule 1.
2. The Builder has agreed to pay the Subcontractor to carry out the Works in accordance with this Contract.
3. The Parties agree that the contract is made up of the following:
  - (a) this Agreement;
  - (b) the General Conditions of Contract; and
  - (c) the Schedules

Execution of Agreement:

**Multi Span Australia Pty Ltd**

**{Company.Name}**

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{User.CurrentUser}  
{User.Title}

Signature

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Name



## **SCHEDULE 1**

- 1. BUILDER:** Multi Span Australia Pty Ltd  
ABN 12 065 483 918  
Address: 32 Precision Street Salisbury, Qld, 4107  
Phone: (07) 3274 4209  
Fax: (07) 3875 1012
- 2. SUBCONTRACTOR:** { Company.Name }  
ABN { Company.FederalID }  
Address: { Addresses.Address1 }  
{ Addresses.City }, { Addresses.State }  
{ Addresses.Zip }  
Phone: { Addresses.Tel }  
Fax: { Addresses.Fax }
- 3. PROJECT:** { Projects.Name }  
Address: { Projects.Address }
- 4. THE WORKS:** { Contracts.ScopeOfWork }
- 5. PLANS AND SPECIFICATIONS:** The Plans and Specifications listed in Schedule 2
- 6. CONTRACT SUM:** { Contracts.OrigValue } (*Excluding GST*)
- 7. DATE OF COMMENCEMENT:** { Contracts.ActualStart }
- 8. COMPLETION DATE:** { Contracts.OrigSubstComplDate }
- 9. PROGRESS CLAIMS:**  
(1) Date of the month for submission of Progress Claims. 25th day of each Month  
(2) Time for Payment of Progress Claims 35 Business Days after receipt of a Payment Claim
- 10. DEFECTS LIABILITY PERIOD:** 12 Months from Practical Completion of the Project under the Head Contract.
- 11. LIQUIDATED DAMAGES:** { Projects.UserText1 }
- 12. DESIGN OBLIGATIONS:** Yes No



## **SCHEDULE 2**

Attached to the Contract Documentation is the following Plans and Specifications

<b>Drawing/Spec. No.</b>	<b>Description</b>	<b>Rev.</b>	<b>Date</b>
{DwgsSpecsHeaders.Number}	{DwgsSpecsHeaders.Title}	{DrawingsSpecs.RevisionNumber}	{DrawingsSpecs.RevisionDate}

# **GENERAL CONDITIONS OF CONTRACT**

## **1. SUBCONTRACT WORKS**

- (a) The Subcontractor must carry out and complete the Works:
  - (i) in a proper and tradesperson like manner;
  - (ii) in accordance with the Plans and Specifications;
  - (iii) in accordance with the Building Code of Australia; and
  - (iv) in accordance with any development permit for the Works and all Legislative Requirements and any other requirements of Authorities.
- (b) If the Subcontractor discovers any ambiguity, omission, discrepancy, inconsistency, conflict or error in the Plans and Specifications, the Subcontractor must notify the Builder in writing immediately and seek directions as to the interpretation to be followed. No direction will be construed as a variation to the Works or be reason for adjustment to the Contract Sum;
- (c) Minor items not expressly mentioned in the Plans and Specifications but which are necessary for the proper execution and completion of the Works must be supplied and executed by the Subcontractor without adjustment to the Contract Sum;
- (d) The Subcontractor is deemed to have allowed for reasonable tolerances resulting from differences between actual sizes and the dimensions shown in the Plans and Specifications.
- (e) Unless otherwise agreed, the Subcontractor must supply everything necessary to carry out the Works.
- (f) All requests made by the Subcontractor for information regarding the Works (including requests for further detail and directions regarding the timing and sequence of operations), must be submitted in writing to the Builder.
- (g) The Subcontractor is not entitled to any extra costs or expenses arising out of any additional information unless such additional costs or expenses have been authorised by the Builder in writing.

## **2. INCORPORATION OF PROVISIONS OF THE HEAD CONTRACT**

- (a) The Head Contract is available for inspection at the office of the Builder. The Subcontractor acknowledges having reviewed or being given the opportunity to review the Head Contract and accepts the terms and conditions of the Head Contract and all documents contained within the Head Contract.
- (b) The Subcontractor accepts that the provisions of the Head Contract which relate to the Works apply to this Subcontract.
- (c) The Sub-Contractor must observe, perform and comply with all of the provisions of the Head Contract so far as they relate and apply to the Works under this Subcontract.
- (d) If there is any inconsistency between the provisions of the Head Contract over this contract then the provisions of the Head Contract prevail.

## **3. COMMENCEMENT AND COMPLETION**

- (a) The Subcontractor must commence the Works by the Date for Commencement and regularly and diligently proceed with the Works in accordance with the construction Program so that the Works reach Practical Completion by the Completion Date.
- (b) The Builder may provide the Subcontractor with a revised Date for Commencement and may alter the time in the Construction Program when the Works are to be carried out provided the same period of time is allowed for the completion of the Works.
- (c) The Subcontractor will not be entitled to any extensions of time in relation to the Completion Date of the Works unless the Builder has certified in writing an extension under this Contract.
- (d) The Builder may grant to the Subcontractor an extension of time in the event of a delay not caused or contributed to by any act or default of the Subcontractor provided that:-
  - (i) the Subcontractor has notified the Builder in writing of the claim to an extension of time within five (5) calendar days after the cause of the delay which notice shall specify **full** facts and data supporting such claim; and
  - (ii) the delay directly impedes the progress of the Works and the time lost by reason of the delay cannot be reasonably recovered during the progress of the Works thereafter, the determination of which shall be at the sole discretion of the Builder whose decision shall be final and binding; and
  - (iii) the Builder is entitled to a similar extension of time under the Head Contract.
- (e) The Subcontractor will not in any circumstances be entitled to any additional costs or expenses by reason of any extensions of time or time related delays.
- (f) If the Subcontractor fails to bring the Works to Practical Completion by the Completion Date, the Builder is entitled to recover liquidated damages, as a debt due and payable to the Builder by the Subcontractor at the rate specified in Item 11 of Schedule

1 for the period during which the Works remain incomplete, or if no rate is specified at a rate which compensates the Builder for costs and any loss of profits incurred as a result of the delay.

- (g) Prior to the date of Practical Completion the Subcontractor must provide to the Builder all warranties, certificates, operating manuals and as-built drawings to be provided under this Contract or the Head Contract in respect of the Works.
- (h) On Completion of the Works the Subcontractor must give the Builder notice in writing that the Works have reached Practical Completion.
- (i) If the Builder accepts that the Works have reached Practical Completion, the Builder will issue a Certificate of Practical Completion.
- (j) If the Builder disputes that the Works have reached Practical Completion, the Builder must give the Subcontractor a written notice setting out the details of the further work to be carried out and Practical Completion will not be achieved until those Works have been carried out and the Builder has issued a Certificate of Practical Completion.
- (k) The Subcontractor, in the payment claim which follows Practical Completion, must give the Builder a final progress claim including all amounts which the Subcontractor intends to claim from the Builder for the Works under this Contract or otherwise.
- (l) The Subcontractor acknowledges that the payment claim made in clause 3 (k) is a final claim and is barred absolutely from making any further claim against the Builder for payment in relation to the Works other than to release the Retention Fund.

#### **4. REQUIREMENTS FOR PRACTICAL COMPLETION**

The Subcontractor must, prior to (and as a prerequisite to) Practical Completion, provide to the Builder the following:

- (a) certification that all Legislative Requirements (including testing) necessary for the use and operation of the Works have been carried out and complied with. This certificate must, if applicable, be in the form of a compliance certificate for building works pursuant to the Building Act 1975, the Building Regulations and the Building Code of Australia;
- (b) evidence that all services, plant, equipment and installations have been connected, tested and commissioned in accordance with all applicable Legislative Requirements;
- (c) all manufacturers and suppliers warranties for plant and equipment included in the Works, together with the evidence of assignment of those warranties to the Builder, or any nominee notified by the Builder to the Subcontractor, to hold the benefit of those warranties;
- (d) operation and maintenance manuals for all plant, equipment and services installed in the Works, which:
  - (i) describe the use, operation, maintenance and servicing required; and
  - (ii) include test plans and inspection schedules; and
  - (iii) include contact details for service contractors qualified to repair, maintain and test the plant and equipment.
- (e) "as constructed" drawings, specifications and photographs of the Works which show the Works "as built" and installed or erected both in hard copy and electronic format.

#### **5. SITE SETTING OUT AND SITE MEASUREMENTS**

- (a) The Subcontractor is deemed to have:-
  - (i) examined the Site and its surroundings;
  - (ii) informed itself of the physical conditions of the Site;
  - (iii) allowed for all risks and contingencies including subsurface conditions in the Contract Sum;
- (b) The Sub-Contractor accepts sole responsibility for the risk of all increased costs and expenses arising out of the physical conditions and characteristics of the Site including sub-surface conditions, latent conditions and other Site conditions encountered in the Project and is not entitled to an extension of time or adjustment to the price because of increased cost or delay arising out of the Site conditions.
- (c) The Subcontractor must accurately set out its own Work and inform other trades as to position of all penetrations, chases and ducts in brick work and/ or concrete work and advise the final position of any plant and equipment the Subcontractor is required to install together with any special clearances that are required for any plant and equipment.
- (d) Before commencing the installation of any plant and equipment, the Subcontractor must thoroughly examine the Plans and Specifications and check on all dimensions and obtain such measurements and information as may be required to carry out the installation of any plant and equipment. The Subcontractor must verify all dimensions on the Site prior to fabrication, by reference to shop drawings, samples and technical data as required.
- (e) The layout of plant and equipment as shown on the Services drawings (eg. Electrical, Hydraulics, and Mechanical) shall be taken as diagrammatic only and all measurements and other information required to carry out the Work under the Subcontract shall be verified by the Subcontractor by physical inspection at the Site and then checked by cross reference with the architectural Plans. The Subcontractor is not entitled to any extra cost resulting from failure to obtain measurements and other information on the Site or

for any inaccuracies or inconsistencies between actual measurements and the measurements shown on any drawings.

- (f) The Subcontractor must immediately inform the Builder if any previous work, over which the Works are to be carried out is unsatisfactory, unsuitable or incomplete. The Subcontractor must not carry out any part of the Works over the top of other work if in the opinion of the Subcontractor the previous work is unsatisfactory or unsuitable, unless the Builder issues a written instruction overriding any objection from the Subcontractor. For the purpose of this clause commencement of work is deemed to be conclusive evidence that the Subcontractor accepts the previous work on the Project.

## **6. TEMPORARY SERVICES**

The Builder shall generally provide temporary service facilities only where, when and whilst they are required by the Builder to be kept in position for the purpose of its own work and/or the common use of all sub-trades. The reasonable use thereof including the services of attendants and necessary operators will be available to the Subcontractor subject to prior arrangement with the Builder.

## **7. INSURANCE**

- (a) The Subcontractor must effect and maintain in its name, with the interest of the Builder and any Head Contractor and land owner included in the policy as a co-insured the insurances set out in Item 12 during the currency of this Contract, at a minimum the Subcontractor's insurances must include:-
  - (i) WorkCover or any other insurance required by law;
  - (ii) Public Liability Insurance in respect of third party personal injury or property damage to an amount not less than \$10,000,000 for any one occurrence, including an indemnity against any claims, loss or damage in favour of the Builder;
  - (iii) Personal Accident and Disability insurance for all on-site company directors or partnerships and their workers, which provides benefit levels which are reasonable having regard to industry standards.

## **8. GST**

- (a) It is agreed that the Contract Sum and any other money payable by the Builder under this Contract as consideration for any Supply made by the Subcontractor to the Builder under this Contract does not include the Subcontractors liability for GST on the Supply.
- (b) The Builder and the Sub-Contractor must throughout the term of this Contract:-
  - (i) be registered for GST under the GST Act; and
  - (ii) hold a current Australian Business Number.
- (c) The Subcontractor must as a pre-condition to payment issue to the Builder a tax invoice for the amount shown in the progress claim in a form which shows the amount of GST included in the progress claim and otherwise complies with the GST Act.
- (d) The Builder is not liable to pay any money under this Contract unless a tax invoice in a form which complies with the GST Act is first issued to the Builder.
- (e) If the Subcontractor complies with its obligations under this clause, each payment for a Supply made by the Builder to the Subcontractor must have added to it an amount equal to the GST payable on the Supply.
- (f) The Builder is entitled to input tax credits for the GST paid on the Supply.
- (g) It is agreed that Liquidated Damages and other moneys payable by the Subcontractor to the Builder are calculated without regard to GST and are exclusive of GST.
- (h) Each payment for a Supply made by the Subcontractor to the Builder must have added to it an amount equal to the GST.

## **9. PAYMENT**

- (a) The Subcontractor will submit progress claims to the Builder at the times set out in Item 9(1) of the Schedule 1.
- (b) A progress claim shall be fully and properly set out and must contain:
  - (i) details of the work carried out by the Subcontractor up to and including the date the Subcontractor submits its claim; and
  - (ii) such other information as the Builder may reasonably require, including a signed statutory declaration that all subcontractors, contractors and employees have been paid all amounts due in respect of the Works to the date of the progress claim.
- (c) On receipt of a progress claim the Builder must, subject to the Subcontract:
  - (i) pay the Subcontractor the amount of the claim within the time for payment set out in Item 9(2) of Schedule 1, or
  - (ii) where the Builder disputes the progress claim it must:
    - (A) give the Subcontractor a written notice setting out the amount and particulars of the dispute; and
    - (B) pay the Subcontractor the amount of the progress claim which is not disputed by the Builder; within the time for

payment set out in Item 9(2) of Schedule 1.

#### **10. VARIATIONS**

- (a) The Subcontractor must not vary the Works except in accordance with a direction in writing from the Builder.
- (b) The Subcontractor must notify the Builder immediately upon becoming aware that any Variation to the Works is required.
- (c) The Builder may direct the Subcontractor to carry out any Variation to the Works, including deletions or omissions to the Works providing however that such Variation is in writing.
- (d) The Contract Sum is to be adjusted by the price of a Variation and the adjustment is to be included by the Subcontractor in its next progress claim after the work or any part of the work, the subject of the Variation is carried out.
- (e) The price of a Variation will be determined by agreement between the Builder and the Subcontractor, or in the absence of such agreement, the Builder must make a fair and reasonable valuation of the Variation.
- (f) Unless otherwise agreed, the price of a variation that increases the Contract Sum must be agreed or valued before the Subcontractor carries out the Variation.

#### **11. DEFECTS**

- (a) The Subcontractor will, at its own cost, maintain the Works until Practical Completion and thereafter make good all defects that may appear in Works prior to the expiration of the Builder's Defects Liability Period details of which are contained in Item 10 of Schedule 1.
- (b) If the Subcontractor fails to comply with a direction from the Builder to rectify works, the Builder may have the work rectified or the materials removed and replaced by others and the cost is a debt due and payable by the Subcontractor to the Builder.

#### **12. WORK PROCEDURES**

- (a) The Subcontractor shall allow for working a minimum six (6) day week (excluding public holidays only) and shall where necessary to maintain the rate of progress required to complete the Works on a timely basis, work outside the above mentioned minimum working hours.
- (b) The Subcontractor will co-operate with the Builder, other Subcontractors and with others engaged by the Builder to co-ordinate the execution of the Works with the execution of the other Head Contract works and will comply with the Builders Construction schedule.
- (c) The Builder may direct the Subcontractor in what order and at what time the various stages or parts of Works are to be carried out.
- (d) The Subcontractor must at all times provide on Site a competent foreperson who has the technical skills and experience necessary to manage and co-ordinate the Subcontract works to the satisfaction of the Builder.
- (e) The Subcontractor shall be responsible for the payment of all wages and costs in connection with performance of the Works in accordance with the applicable industrial awards, agreements and orders from time to time in force (and whether in force at the time of this Contract or subsequently prevailing in force) including any additional costs as a result of any special site agreement, zone allowance, payments or conditions enforced from time to time (and whether in force at the date of this Contract or subsequently prevailing in force).
- (f) No allowance will be admitted reimbursed or paid for any special clothing, foot wear, trade protection, superannuation scheme, redundancy trust, site allowance or similar.

#### **13. COMPLIANCE WITH AUTHORITIES AND LEGISLATIVE REQUIREMENTS**

- (a) The Subcontractor must comply with the requirements of all Authorities and all Legislative Requirements relevant to the Works.
- (b) The Subcontractor must give all necessary notices, pay all necessary fees, arrange all inspections and obtain all approvals and certificates relevant to the Works.
- (c) The Subcontractor must advise the Builder of any notice, fee, approval or certificate that is necessary in order to comply with Clause 12(a) or 12(b).
- (d) The Subcontractor warrants that all relevant taxes, employee and worker benefits will be paid in accordance with all Legislative Requirements.
- (e) The Builder may issue a direction to the Subcontractor who shall be obliged to comply with the direction. All directions must be put in writing within three (3) days of issuing the direction. Should the Subcontractor fail to comply with such direction, the Subcontractor shall be deemed to be in substantial breach of the Contract.

#### **14. OBLIGATION TO COMPLY WITH BUILDER'S SAFETY, ENVIRONMENTAL AND QUALITY SYSTEM**

- (a) The Builder is accredited to the following standards:-
  - (i) ISO9001 (Quality);
  - (ii) AS4801 (Safety);
  - (iii) ISO14001 (EMS).

- (b) The Builder is committed to comply with the standards required by its accreditation and has developed the following systems and plans:-
  - (i) Multi Span Australia's Safety Management System; and
  - (ii) Multi Span Australia's Environmental Management System; and
  - (iii) Multi Span Australia's Quality Management System.
- (c) These documents are controlled documents and can be made available to the Subcontractor upon request, and will be current at the date provided.
- (d) The Builder will prepare for the Site and provide to the Subcontractor the following:-
  - (i) a site specific Construction Safety Management Plan
  - (ii) a site specific Construction Environmental Management Plan; and
  - (iii) a site specific Project Quality Management Plan.
- (e) The Subcontractor must at all times in the carrying out of the Works comply with:-
  - (i) Multi Span Australia's Safety Management System and the site specific Construction Safety Management Plan;
  - (ii) Multi Span Australia's Environmental Management System and site specific Construction Environmental Management Plan; and
  - (iii) Multi Span Australia's Quality Management System and site specific Project Quality Management Plan

#### **15. OBLIGATION TO PREPARE FOR AND PROVIDE TRAINING**

- a) The Subcontractor must:-
  - (i) prepare a structured training program in relation to the use of any plant, equipment and services included in the Works which outlines the following:-
    - design intent of the installation;
    - function of the installation;
    - emergency procedures associated with the installation;
    - risks of use and mitigation measures;
    - equipment breakdown contacts;
    - maintenance procedures and requirements;
    - information contained within the plant and equipment operation and maintenance manuals; and
  - (ii) provide a copy of the training program in hard copy and electronic form to the Builder for its approval; and
  - (iii) at a reasonable time nominated by the Builder, present the training program to the users of the plant and equipment as nominated by the Builder;
- (b) The Subcontractor must also be involved in the preparation of a project specific inspection and test plan, which must be developed prior to the commencement of Works on Site and the Subcontractor must in the installation of the Works, abide by and carry out all tests and inspections which are required by the Project inspection and test plan.

#### **16. WAGES AND CONDITIONS**

- (a) The Subcontractor must comply with the terms and conditions of any relevant award or industrial agreement relating to the wages and conditions of its workers and must observe the conditions of any industrial agreement relating to the Project.
- (b) The Subcontractor is responsible for maintaining harmonious industrial relations and shall pay to the Builder all costs and associated damages incurred by the Builder or by any other interested party as a result of the failure of the Subcontractor to comply with this clause.
- (c) The Subcontractor must not negotiate with Trade Unions or enter into any industrial agreement that may affect the performance of the Works without the prior approval of the Builder.

#### **17. INDEMNITY**

The Subcontractor must indemnify the Builder against:

- (a) loss or damage to property, including existing property on or around the Site; and
- (b) any claim against the Builder in respect of personal injury or death or loss or damage to any property, arising out of, or as a consequence of, the carrying out of the Works by the Subcontractor; and
- (c) any of the risks which the Subcontractor is obliged to insure against.

#### **18. DAMAGE AND SITE CLEANING**

- (a) The Subcontractor must:
  - (i) pay to the Builder the cost of making good any damage done by the Subcontractor, its agents, workers, employees or subcontractors to the Work or property of the Builder or of any other subcontractor;

- (ii) keep the Subcontractor's part of the Site clean and tidy; and
  - (iii) to the extent reasonably possible, leave the Works in a state fit for immediate use or occupation before vacating the Site.
- (b) The Subcontractor is responsible for the proper disposal of all solid liquid and gaseous wastes in accordance with all Legislative Requirements. The Subcontractor must provide its own bin with lid and must ensure that all waste and other deleterious matter is placed in this bin progressively during the Works. The subcontractor must ensure that no waste or other material is blown off site. All subcontractors must ensure that pollution and contamination are prevented or minimised and must comply with the following:-
- (i) the Environmental Protection Act;
  - (ii) Multi Span Australia Pty Ltd Environmental Management Plan.
- (c) If the Subcontractor fails to comply with Conditions 18(a) or 18(b) the Builder may have the rectification or cleaning carried out by others and the cost will be a debt due and payable by the Subcontractor to the Builder.

## **19. WORK PLACE HEALTH AND SAFETY/ENVIRONMENTAL PROTECTION**

- (a) The Subcontractor must ensure that any person carrying out the Works complies with:-
- (i) all relevant workplace health and safety laws including industry codes of practise and advisory standards; and
  - (ii) all environmental laws.
- (b) The Subcontractor must:
- (i) comply with all reasonable instructions of the Builder with respect to workplace health and safety and environmental protection;
  - (ii) undertake an assessment of the Works to determine possible risks and suitable control measures to minimise risks;
  - (iii) prepare a workplace health and safety plan and a Work Method Statement in respect of the Works at the Site which is specific to the Works at the Site all of which is to be included in a document known as the Site Induction Form;
  - (iv) provide a copy of the Site Induction Form to the Builder for approval at least 5 working days prior to the date that Work commences on Site;
  - (v) nominate a representative as the Subcontractor's Occupational Health and Safety representative to represent the Subcontractor on the Safety Committee and attend any toolbox talks which are required;
  - (vi) report all injuries, illnesses and dangerous events to the Builder;
  - (vii) ensure that:
    - (A) all plant, equipment and materials are used and maintained in accordance with manufacturer's specifications so as to minimise the risk of injury.
    - (B) adequate and appropriate workplace health and safety instruction and supervision is provided to persons carrying out the Works; and
    - (C) notify the builder in writing on receiving any notice from a statutory authority with respect to workplace health and safety or environmental protection.
- (c) The Subcontractor must adhere to the minimum safety standards for the Site and must ensure that each of its employees who attend the Site have read and understood them.
- (d) The Subcontractor must prior to allowing any employee or subcontractor on to the Site;
- (i) cause each individual worker who intends to enter the Site to undertake the training required to carry out the Works in accordance with the procedures set out in the project specific work method statement which is included in the Site Induction Form; and
  - (ii) provide evidence to the Builder that each worker who proposes to enter the Site has signed the Site Induction Form to acknowledge that the worker has been trained to carry out the Works in accordance with the project specific Work Method Statement included in the Site Induction Form.
- (e) The Builder may remove any person from the Site who fails to comply with the requirements of this clause.

## **20. DESIGN OBLIGATIONS**

- (a) If item 12 is marked Yes then this clause 20 applies
- (b) The Subcontractor:-
- (i) has examined any design of the Works included in the Plans and Specifications and is satisfied that the design of the Works is suitable for the purpose stated in the Plans and Specifications;

- (ii) must complete all working drawings and design detail which is necessary to enable the Subcontractor to complete the Works;
- (iii) is responsible for the design and installation of the Works notwithstanding that the design or part of the design may already be included in the Plans and Specifications for the Works and have been designed by others;
- (iv) warrants that the design of the Works is fit for their stated purpose and complies with all Legislative Requirements.
- (v) warrants that the Design Risk Management obligations of the Workplace Health and Safety Act have been met.

## 21. RETENTION FUND

- (a) The Builder may deduct and retain 10% of any progress payment to the Subcontractor until the total amount retained ("the Retention Fund") equals 5% of the Contract Sum.
- (b) The Builder may hold the Retention Fund until the expiration of the Defects Liability Period, provided that on Practical Completion of the Works the Builder must release to the Subcontractor any part of the Retention Fund which is in excess of 2.5 % of the Contract Sum.
- (c) The Subcontractor may substitute a Bank Guarantee or Bank Guarantees which in aggregate equal 5% of the Contract Sum (or following Practical Completion 2.5% of the Contract Sum) in place of the Retention Fund provided such Bank Guarantee is in a form acceptable to the Builder in its discretion.
- (d) The Retention Fund, or any Bank Guarantee substituted by the Subcontractor, secures the Subcontractor's performance of its obligations under this Subcontract, including its obligations to rectify defects and replace materials.
- (e) Any amount due to the Builder by the Subcontractor as a result of the Subcontractor's failure to perform its obligations under the Subcontract or otherwise may be recoverable by the Builder from the Retention Fund or any Bank Guarantee upon demand.
- (f) The Builder may call up, convert and use any security or any part of the Retention Fund provided by the Subcontractor pursuant to Clause 21 or otherwise.

## 22. DEFAULT

If:-

- (a) the Subcontractor wholly suspends the Works before completion;
- (b) the Subcontractor fails to proceed with the Works with reasonable diligence or in a competent manner, the determination of which shall be at the sole discretion of the Builder;
- (c) the Subcontractor fails to comply with a written notice from the Builder requiring him to remove and replace defective work or improper materials, the determination of which is at the sole discretion of the Builder;
- (d) the Subcontractor commits any breach of a covenant, condition or obligation of this Contract, the determination of which shall be at the sole discretion of the Builder;
- (e) the Subcontractor being a natural person or a partnership including a natural person and that person:-
  - (i) is made bankrupt; or
  - (ii) enters into a deed of arrangement, assignment or composition pursuant to Part X of the Bankruptcy Act 1966;
- (f) the Subcontractor being a company:-
  - (i) enters into liquidation;
  - (ii) appoints an administrator pursuant to the provisions of the Corporations Law (or otherwise);
  - (iii) is placed into official management; or
  - (iv) has a receiver and/or a manager of any of its assets appointed; or
- (g) the Subcontractor is required to be registered or licensed pursuant to any Legislative Requirements for the purposes of or incidental to execution of the Works and that registration or licence is cancelled, withdrawn, suspended or lapsed; then the Builder may at any time (without prejudice to any other rights or remedies it may have) by notice in writing to the Subcontractor determine this Subcontract. No period of time for the notice to be effective shall be required. Any such notice given shall be effective immediately.

In the event of determination of this Contract the Builder may engage other persons (whether in the employ of the Builder or not) to complete the Works and the following will apply:-

- (i) the Subcontractor will if required by the Builder assign to the Builder the benefit of any agreement for the supply of materials or goods and/or for the execution of any of the Works and for such purpose the Subcontractor irrevocably appoints the Builder and its officers to be the true and lawful attorney of the Subcontractor with full power and authority to execute such assignment on behalf of the Subcontractor;

- (j) until completion of the Works the Builder shall not be obliged to make any further payment to the Subcontractor pursuant to the provisions of this contract or otherwise but as soon as reasonable thereafter the Builder shall ascertain the costs incurred to complete the Works and the amount of any loss and/or damage caused to the Builder and/or the Head Contractor by the determination of the Subcontract and any other liability of the Subcontractor to the Builder under this Subcontract and if such amounts when added to the money already paid by the Builder to the Subcontractor before determination exceed that which would have been payable under the Subcontract, the difference shall be a debt due and payable by the Subcontractor to the Builder. If such amounts when added to the said money do not exceed the said amount which would have been payable under the Contract then the difference shall be a debt due and payable by the Builder to the Subcontractor.

### **23. HEAD CONTRACT DETERMINATION**

If the Head Contract is determined for any reason the Builder may determine this Subcontract and will only be liable to reimburse the Subcontractor in respect of work already carried out and any other loss properly and necessarily incurred in connection with the Works and in respect of which the Subcontractor is unable to mitigate against and the Subcontractor shall not be entitled to recover loss of profit on the part of the Works not executed at the date of determination.

### **24. DISPUTE RESOLUTION**

- (a) By agreement between the parties, a domestic building dispute or a commercial building dispute may be referred to the Queensland Master Builders Association (QMBA) for conciliation at any time provided that one of the parties is a member of the QMBA. A major commercial building dispute may be referred to arbitration - either party may give to the other notice in writing clearly setting out the matters in dispute or difference and at the expiration of seven (7) days after such notice has been issued, unless the dispute or difference has otherwise been settled, such dispute is subject to Clause 24(b)(ii) referred to arbitration. The President (or his nominee) of the Queensland Master Builders Association shall appoint the Arbitrator to hear and settle the dispute.
- (b) If conciliation in accordance with Clause 24 is unsuccessful, then
  - (i) A domestic building dispute or a "minor" commercial building dispute must be referred to the Queensland Building Tribunal for resolution; and.
  - (ii) A "major" commercial building dispute may be referred to the Queensland Building Tribunal for resolution subject to agreement by both parties.
- (c) For the purposes of this Clause, the meaning of "domestic building dispute", "minor commercial building dispute", and "major commercial building dispute" is that provided for in the Queensland Building Tribunal Act 2000.
- (d) Nothing prejudices the right of a party to institute proceedings in a court to enforce a payment due under the Contract or to seek injunctive or declaratory relief.

### **25. GENERAL**

#### **(a) Enter Agreement**

This Subcontract constitutes the entire final and concluded agreement between the Builder and the Subcontractor relating to the execution of the Subcontract Works.

#### **(b) Assignment and Subletting**

The Subcontractor may not sublet or otherwise assign the Subcontract or any right, benefit or interest thereunder without the Builder's prior written consent which may require like and similar provisions as contained in this Contract to be incorporated into any other terms of engagement.

#### **(c) Severability**

If a provision of this Contract is found to be illegal invalid or unenforceable that provision may at the option of the Builder be read down to the extent necessary to ensure that it is not illegal invalid or unenforceable so as to give it a valid operation of a partial character. In the event that any provision cannot be so read down the provision must be taken to be void and severable so that the remaining provisions of this Contract are not affected or impaired by that clause.

#### **(d) Applicable Law**

The Law of Queensland is to apply to this Contract.

#### **(e) Time**

Time shall be in all cases of the essence of this Contract.

#### **(f) No Waiver**

No consent or waiver, express or implied, by the Builder to or of any breach of any covenant, condition, obligation or duty of the Subcontractor shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition, obligation or duty.

### **26. NOTICES**

Any notices from the Builder to the Subcontractor is taken to be served if:-

- (a) mailed by prepaid letter addressed to the Subcontractor's address noted on the first page of the Subcontract and such notice shall be deemed to have been served 24 hours after the date of such posting;
- (b) delivered to the Subcontractor personally;
- (c) sent to the Subcontractor by facsimile;
- (d) by any other method of service prescribed by law.

## 27. DEFINITIONS

In this Contract the following words and phrases have the following meanings:-

"*Authorities*" means all public, governmental, municipal and local authorities having jurisdiction over the Project.

"*Bank Guarantee*" means an unconditional undertaking from a bank to pay a particular sum on demand in a form satisfactory to the Builder.

"*the Builder*" means the builder specified in Item 1 of Schedule 1 together with its successors and assigns.

"*the Completion Date*" means the date set out in Item 8 of Schedule 1.

"*Construction Schedule*" means a statement in writing showing the dates by which, or the times within which, the various stages or parts of the Works under the Subcontract are to be executed or completed.

"*Contract Documents*" includes the formal agreement, the Schedule and these terms and conditions of Contract.

"*this Contract*" means the agreement constituted by the Contract Documents for the carrying out of the Works.

"*the Contract Sum*" means the amount set out in Item 6 of Schedule 1.

"*Date of Commencement*" means the date specified in Item 7 of Schedule 1.

"*GST*" means the goods and services tax payable under the GST Act.

"*the GST Act*" means a New Tax System (Goods and Services Tax) Act 1999 as amended and includes any regulations and rulings issued pursuant to the GST Act. The terms used in this Contract have the meanings defined in the GST Act.

"*the Head Contract*" means the contract between the Builder and the Head Contractor for the carrying out of the Project.

"*Legislative Requirements*" the requirements of all acts of parliament, ordinances, regulations, local laws, by-laws, orders and proclamations, including without limitation, the requirements of the Building Act 1975, the Building Regulation and the Building Code of Australia.

"*Liquidated Damages*" means the amount set out in Item 11 of Schedule 1.

"*Practical Completion*" means that the subcontract Works are complete except for minor omissions and defects:-

- (i) which do not prevent the Builder and other subcontractors from proceeding with the Project;
- (ii) in relation to which the Builder determines that the Subcontractor has reasonable grounds for not promptly rectifying;
- (iii) all Legislative Requirements necessary for the use and operation of the Works have been complied with;
- (iv) all services, plant, equipment and installations have been connected, tested and commissioned;
- (v) all manufacturers and suppliers warranties for plant and equipment included in the Works have been assigned to the Builder and a hard copy of the warranty provided to the Builder;
- (vi) all operation and maintenance manuals required for any plant and equipment included in the Works have been provided to the Builder together with maintenance schedules and the contact number of a service contractor qualified to provide maintenance during any warranty period;
- (vii) as constructed drawings, specifications and photographs of the Works have been provided to the Builder.

"*Plans and Specifications*" means the plans and specifications for the Works more particularly described in Schedule 2.

"*the Project*" means the project generally described in Item 3 of Schedule 1 of which these works form part.

"*the Site*" means the site described in Item 3 of Schedule 1.

"*the Subcontractor*" means the subcontractor mentioned in Item 2 of Schedule 1 together with its successors and permitted assigns.

"*Supply*" means any taxable supply of goods or services as defined by the GST Act.

"*the Works*" means the works required to be undertaken by the Subcontractor in respect of the Project more particularly specified in

Item 4 of Schedule 1.