

# QBCC COMMERCIAL SUBCONTRACT

This subcontract is intended to be used by Contractors and their Subcontractors to document their commercial building agreements (including subcontracts for residential building work).

**PLEASE NOTE:**

Under s67G(1) of the *Queensland Building and Construction Commission Act 1991* ('the QBCC Act') if the reasonable cost of the building work covered by this contract is more than \$10,000, this contract must be put in writing before the building work is started; if the reasonable cost is \$10,000 or less, the contract must be put in writing before the building work is finished.

**DISCLAIMER**

The QBCC does not make any representation as to the suitability of this Subcontract for your particular circumstances. Users of this Subcontract must make their own assessment or seek formal legal advice as to its appropriateness for their project.

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# COMMERCIAL SUBCONTRACT SCHEDULE

<b>NAME OF CONTRACTOR (as shown on licence card):</b>		
Licence number:	ACN: <i>(if company)</i>	ABN:
Telephone:	Fax:	
Email:		
Postal address:		

<b>NAME OF SUBCONTRACTOR (as shown on licence card):</b>		
Licence Number:	ACN: <i>(if company)</i>	ABN:
Telephone:	Fax:	
Email:		
Postal address:		

ITEM	SUBJECT	PARTICULARS
1.	<b>BRIEF DESCRIPTION OF HEAD CONTRACT</b>	Project Description:  Principal: Head Contract Date:
2. ( <b>Clause 1.1</b> of the General Conditions)	<b>SITE</b>	Address:  Local Government:



ITEM	SUBJECT	PARTICULARS
7. (Clauses 8.5 & 8.8 of the General Conditions)	<b>DELAY COSTS</b>	Subcontractor's maximum entitlement to delay costs:  \$_____ per day (excluding GST)
8. (Clauses 1.1 & 11.4 of the General Conditions)	<b>SUBCONTRACT PRICE</b>	Subcontract Price: \$_____ (excluding GST)  Subcontract Price: \$_____ (including GST)
9. (Clauses 9.2 & 22.7 of the General Conditions)	<b>REFERENCE DATE</b>	The last Business Day of each week / fortnight / month ( <i>delete those that do not apply</i> ) prior to Substantial Completion and upon Substantial Completion  OR  Other ( <i>specify</i> ):  <i>(if nothing stated, then the last Business Day of each month prior to Substantial Completion and upon Substantial Completion)</i>
10. (Clause 9.2 of the General Conditions)	<b>PAYMENT PERIOD</b>	Within _____ Business Days after the Contractor's receipt of a payment claim (up to a maximum of 25 Business Days)  <i>(if nothing stated, then 25 Business Days after the Contractor's receipt of a payment claim)</i>
11. (Clause 9.5 of the General Conditions)	<b>INTEREST RATE ON LATE PAYMENTS</b>	The greater of: (a) .....% per annum; or (b) the rate made up of the sum of the following - (i) 10% per annum; and (ii) the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills. <i>(If (a) is blank, the rate in (b) shall apply)</i>

ITEM	SUBJECT	PARTICULARS
12. ( <b>Clause 10</b> of the of the General Conditions)	<b>RETENTION OR OTHER SECURITY</b>	Retention per progress payment (% of progress payment) ____%  <i>(NOTE: Retention cannot be more than 10% of a single progress payment)</i>  Total of retention and any other security (% of Subcontract Price) ____%  <i>(NOTE: Prior to Substantial Completion, the total value of retention and any other security cannot be more than 5% of the Subcontract Price. After Substantial Completion, the total value of retention and any other security cannot be more than 2.5% of the Subcontract Price)</i>  <i>(NOTE: If nothing is specified here, no retention or other security applies to this Subcontract)</i>
13. ( <b>Clause 13</b> of the General Conditions)	<b>DEFECTS LIABILITY PERIOD</b>	____ weeks / months ( <i>delete the option that does not apply</i> ) after <i>practical completion</i> (as defined in s.67A of the QBCC Act) is reached under the Head Contract  <i>(if nothing stated, 12 months after practical completion (as defined in s.67A of the QBCC Act) is reached under the Head Contract)</i>
14. ( <b>Clause 7.8</b> of the General Conditions)	<b>LIQUIDATED DAMAGES</b>	\$____ per day (excluding GST)
15. ( <b>Clause 15.1(b)</b> of the General Conditions)	<b>SUBCONTRACTOR'S PUBLIC LIABILITY INSURANCE</b>	Insurer:  Policy no.:  Amount of Cover: \$  <i>(If no amount of cover is stated, the amount of cover is at least \$10 million)</i>

## EXECUTED AS AN AGREEMENT

<b>DATE OF SUBCONTRACT</b>	Dated this _____ day of _____ 20__
<b>SIGNED BY THE CONTRACTOR</b>	Contractor signature
	Witness signature
<b>SIGNED BY THE SUBCONTRACTOR</b>	Subcontractor signature
	Witness signature

# GENERAL CONDITIONS OF SUBCONTRACT

## 1. DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases in the Subcontract, mean the following:

- (a) **BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017*;
- (b) **Business Day** means a day that is not:
  - (i) a Saturday or a Sunday; or
  - (ii) a public holiday, special holiday, or bank holiday in the place in which any relevant act is to be or may be done; or
  - (iii) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;
- (c) **Date for Substantial Completion** is the date stated in Item 6, subject to adjustment in accordance with clause 8.2;
- (d) **Date of Substantial Completion** is the date on which Substantial Completion is attained;
- (e) **Defects** means any part of the Works that is defective, incomplete, or not otherwise carried out in accordance with the Subcontract;
- (f) **Defects Liability Period** is the period stated in Item 13 and as defined in Schedule 2 of the BIF Act;
- (g) **Head Contract** is the agreement entered into between the Contractor and the Principal for the Project;
- (h) **Item** means an Item in the Subcontract Schedule;
- (i) **Payment Period** is the period specified in Item 10;
- (j) **Principal** is the principal specified in Item 1;
- (k) **QBCC Act** means the *Queensland Building and Construction Commission Act 1991 (Qld)*;
- (l) **Reference Date** is a date or dates calculated in accordance with Item 9, or deemed to arise under clause 22.7, being the date from which a payment claim may be made;
- (m) **Site** is the land having the address specified in Item 2 upon which the contracted work is to be performed;
- (n) **Special Conditions** means any special conditions amending these general conditions;
- (o) **Start Date** is the date stated in or determined in accordance with Item 5;
- (p) **Subcontract** means this agreement for the Subcontractor to carry out and complete the Works for the Subcontract Price, comprised by the Subcontract Documents;
- (q) **Subcontract Documents** are the documents listed in Item 4;
- (r) **Subcontract Price** is the amount stated in Item 8, adjusted in accordance with this Subcontract;
- (s) **Substantial Completion** occurs when;
  - (i) the Works are complete apart from minor Defects and minor omissions which do not prevent or unreasonably interfere with work to be carried out by the Contractor in the completion of the Project described in Item 1; and
  - (ii) the Subcontractor has given to the Contractor all certificates, approvals, warranties, drawings, manuals, and guarantees required by the Subcontract, together with those documents necessary for the reasonable and lawful use of the Works for their intended purpose;
- (t) **Variation** means a change in the scope of the Works arising from:
  - (i) an increase, decrease, addition, substitution or omission of work from the Works;
  - (ii) a change in the method or process for, or the sequence of, the carrying out of the Works required by the Contractor;
  - (iii) an alteration to the specification of a material; or
  - (iv) changes in levels, dimensions, or the set out of the Works;
- (u) **Works** means the whole of the work to be carried out and completed by the Subcontractor in accordance with the Subcontract.

- 1.2 In the **Subcontract**, except where the context requires otherwise:
- (a) words importing the singular include the plural and vice versa;
  - (b) if a word or phrase is defined, similar words and phrases have a corresponding meaning;
  - (c) a reference to:
    - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
    - (ii) a body includes its successor;
    - (iii) a person includes its legal personal representatives, successors and assigns;
    - (iv) provisions or terms of the **Subcontract** or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
    - (v) a monetary sum is exclusive of GST unless stated otherwise; and
  - (d) headings are for reference only and do not affect the interpretation of the **Subcontract**.
- 1.3 If any provision or term of the **Subcontract** is prohibited or banned, or rendered or found to be invalid or unenforceable, such prohibition or banning, invalidity or unenforceability will not affect the validity or enforceability of any other provision or term of the **Subcontract** unless incapable of being operable in the absence of such provision or term.

## 2. AMBIGUITY IN SUBCONTRACT DOCUMENTS

- 2.1 If the Subcontractor discovers any ambiguity, discrepancy, error or inconsistency in the **Subcontract Documents**, it may, by written notice, request information or clarification from the Contractor detailing the ambiguity, error, discrepancy, or inconsistency.
- 2.2 Within 10 **Business Days** after receipt of any written notice provided by the Subcontractor pursuant to clause 2.1, the Contractor must give to the Subcontractor a written direction as to the resolution of the ambiguity, error, discrepancy, or inconsistency.
- 2.3 In resolving any ambiguity, discrepancy, error, or inconsistency between the **Subcontract Documents**, the order of precedence in Item 4 is to be applied.

- 2.4 In resolving any ambiguity, discrepancy, error or inconsistency between **Subcontract Documents** of the same precedence:
- (a) detailed drawings are to be relied on over any conflicting information contained in general plans, elevations and sections;
  - (b) figured dimensions are to be relied on over scaled dimensions; and
  - (c) drawings made to larger scales or those showing particular parts of the **Works** are to take precedence over drawings made to smaller scales or those made for more general purposes.

## 3. PRE-START MEETING

- 3.1 The parties must prior to commencing the **Works** on **Site**, attend a pre-start meeting to be held at an address and time mutually agreed.
- 3.2 The meeting will address the following matters:
- (a) **Site** specific issues;
  - (b) lines of communication;
  - (c) possession of the **Site**;
  - (d) frequency and venue of **Site** meetings;
  - (e) progress payments;
  - (f) working hours;
  - (g) safety requirements;
  - (h) insurance;
  - (i) workplace health and safety;
  - (j) scope of **Works**;
  - (k) environmental issues;
  - (l) program; and
  - (m) resources
- 3.3 If any matters remain outstanding, the parties may by agreement, change the **Start Date**. To avoid doubt, a delay in the **Start Date** under this clause will result in an extension of the **Date for Substantial Completion** of an equal number of **Business Days** to the delay.



#### 4. STANDARD OF WORKS

- 4.1. The Subcontractor must carry out and complete the **Works** in accordance with the **Subcontract**:
- (a) in an appropriate and skilful way using all reasonable care and skill;
  - (b) using only new materials, unless instructed otherwise in writing by the Contractor;
  - (c) in accordance with the **Subcontract Documents**; and
  - (d) in accordance with all applicable laws and legal requirements.
- 4.2. The Contractor will ensure that any work of the Contractor or its other subcontractors upon which the Subcontractor's work is to be placed or built, or is dependent, has been constructed in an appropriate and skilful way using all reasonable care and skill.

#### 5. SITE

- 5.1 The Contractor gives to the Subcontractor a nonexclusive licence to enter upon the **Site** for the sole purpose of carrying out the **Works**.
- 5.2 The Subcontractor, and its agents, employees, subcontractors, and consultants, must comply at all times with:
- (a) all applicable requirements of, or otherwise connected with, the *Work Health and Safety Act 2011 (Qld)*, including all directions given by the principal contractor of the **Site**; and
  - (b) all applicable requirements of the *Environmental Protection Act 1994 (Qld)*.
- 5.3 The Subcontractor acknowledges that the Contractor may immediately remove from the **Site** any person who fails, or is reasonably suspected of failing, to comply with the applicable requirements of the *Work Health and Safety Act 2011 (Qld)*, the *Environmental Protection Act 1994 (Qld)*, or any legal requirement arising out of, or otherwise connected with, either of those Acts.

#### 6. START OF WORKS

- 6.1 The Subcontractor will start carrying out the **Works** on, or on a date determined in accordance with, the **Start Date**, unless otherwise directed in writing by the Contractor.

#### 7. SUBSTANTIAL COMPLETION OF WORKS

- 7.1 The Subcontractor must diligently carry out the **Works** and bring the **Works** to **Substantial Completion** by the **Date for Substantial Completion**.
- 7.2 Not less than 7 **Business Days** before the date the Subcontractor anticipates **Substantial Completion**, the Subcontractor must give to the Contractor written notice advising when the **Works** will reach **Substantial Completion**.
- 7.3 The Contractor or its authorised representative must inspect the **Works** in time to enable the notice required under clause 7.4 to be given.
- 7.4 Within 5 **Business Days** of the date advised by the Subcontractor under clause 7.2 as the date when the **Works** will reach **Substantial Completion**, the Contractor must give the Subcontractor a written notice stating:
- (a) the Contractor does not dispute that the **Works** have been brought to **Substantial Completion** at that time; or
  - (b) the Contractor disputes that the **Works** have been brought to **Substantial Completion**, and detailing any further work to be carried out or further information to be provided as preconditions to **Substantial Completion**.
- 7.5 The Contractor may issue a written notice pursuant to clause 7.4 (a) even if no notice was provided by the Subcontractor.
- 7.6 If the Contractor gives to the Subcontractor written notice in accordance with clause 7.4 (b) the Subcontractor must carry out such further work or provide such further information as is outlined in the notice. The Subcontractor must then give the Contractor a further notice in accordance with clause 7.2.
- 7.7 If the Contractor fails to give the notice required under clause 7.4, the date advised by the Subcontractor under clause 7.2 as the date when the **Works** will reach **Substantial Completion** is deemed to be the **Date of Substantial Completion**.
- 7.8 If the **Works** do not reach **Substantial Completion** by the **Date for Substantial Completion**, and liquidated damages are specified in Item 14, the Contractor will be entitled to liquidated damages in Item 14 for every day after the **Date for Substantial Completion** up to and including the **Date of Substantial Completion**.

## 8. EXTENSION OF TIME

- 8.1 Within 15 **Business Days** after the Subcontractor becomes aware, or reasonably ought to have become aware, that the **Works** are being, or will be, delayed for any reason, it must give to the Contractor a notice stating:
- (a) the cause of delay;
  - (b) the length of the delay; and
  - (c) the extension, in **Business Days**, of the **Date for Substantial Completion** being claimed by the Subcontractor as a result of the delay.
- 8.2 Subject to the Subcontractor's compliance with this clause, the Subcontractor will be entitled to an extension of the **Date for Substantial Completion** for:
- (a) a delay caused by any act, default or omission of the **Principal**, the Contractor or other subcontractors or their respective agents; or
  - (b) any delay that is not reasonably foreseeable and is beyond the reasonable control of a competent and experienced subcontractor other than delays arising from industrial conditions or inclement weather occurring after the **Date for Substantial Completion**.
- 8.3 Within 15 **Business Days** after receipt of a notice in accordance with clause 8.1 the Contractor must issue to the Subcontractor a written notice, either:
- (a) granting the full extension of the **Date for Substantial Completion** requested by the Subcontractor; or
  - (b) stating the amount of time that the Contractor is granting as an extension of time to the **Date for Substantial Completion** together with the reasons why the Contractor is not granting the full extent of the extension claimed by the Subcontractor; or
  - (c) completely rejecting the extension of time requested by the Subcontractor and providing the reasons for doing so.
- 8.4 If the Contractor fails to give to the Subcontractor a written notice in accordance with clause 8.3, the extension of the **Date for Substantial Completion** claimed by the Subcontractor is taken to be granted.

- 8.5 If the Subcontractor's progress of the **Works** is delayed as a direct result of a cause of delay described in clause 8.2 (a) and the Subcontractor claims and is granted an extension of the **Date for Substantial Completion**, in accordance with this clause the Subcontractor is entitled to give to the Contractor a written claim, calculated on a daily basis, for any extra costs it incurred as a result of the delay during the period of the extension as part of its next progress claim after the extension is granted.
- 8.6 The Subcontractor must support any such claim with documentary evidence of the extra costs it has incurred.
- 8.7 The Contractor must pay to the Subcontractor, as part of its next progress payment, those delay costs claimed in accordance with this clause which are reasonably evidenced by the Subcontractor's documentary evidence.
- 8.8 Where an amount is specified at Item 7, the Subcontractor's maximum entitlement to delay costs shall be an amount equal to or less than the daily amount for delay costs set out in Item 7.
- 8.9 Notwithstanding this clause, at any time prior to **Substantial Completion**, the Contractor may for its own benefit, at its sole discretion and for any reason grant an extension of the **Date for Substantial Completion** regardless of whether the Subcontractor has made any claim in accordance with this clause.

## 9. PAYMENT

- 9.1 The Contractor must pay to the Subcontractor the **Subcontract Price**.
- 9.2 The Contractor must pay to the Subcontractor the **Subcontract Price** progressively in accordance with this **Subcontract** and within the period set out in Item 10 of the Schedule or, if no period is stated, within 25 **Business Days** after the Contractor's receipt of a payment claim. Payment is on account only.
- 9.3 From each **Reference Date**, the Subcontractor is entitled to give to the Contractor a written payment claim. Each payment claim must be compliant with the **GST Act**, be given in writing to the Contractor and must include details of the value of work done up to and including the **Reference Date** and may include details of other monies then due to the Subcontractor pursuant to the **Subcontract**.

9.4 If the Contractor is given a payment claim, the Contractor must respond to the payment claim by giving the Subcontractor within 15 **Business Days** of receipt of the payment claim a payment schedule which:

- (a) identifies the payment claim to which it responds; and
- (b) states the amount of the payment, if any, that the Contractor proposes to make; and
- (c) if the amount proposed is less than the amount stated in the claim – states why the amount proposed to be paid is less, including the Contractor’s reasons for withholding any payment.

9.5 The Contractor must pay to the Subcontractor interest on any overdue payment, up to, and including, the day of payment, at the interest rate stated in Item 11.

## 10. RETENTION AND OTHER SECURITY

10.1 If retention is specified in Item 12, then the Contractor may retain from any payment due to the Subcontractor, the percentage of retention specified until the total value of retention and any other security held by the Contractor is 5% of the **Subcontract Price**.

10.2 Any retention or other security is to secure the performance of the Subcontractor’s obligations under the **Subcontract**.

10.3 At any time prior to the release of all of the retention, the Subcontractor may give to the Contractor security to take the place of all or any part of the retention, which security shall be in the form of a valuable instrument from a financial institution that is an approved security provider under the *Financial Accountability Act 2009*.

10.4 On the Contractor’s receipt of the security in accordance with clause 10.3, the Contractor must release to the Subcontractor retention equal to the value of the security received.

10.5 On the **Works** being brought to **Substantial Completion** in accordance with clause 7, the Contractor must release to the Subcontractor any amount of retention and other security in excess of 2.5% of the **Subcontract Price** by the due date for payment of a payment claim made on or after the **Works** have been brought to **Substantial Completion**.

10.6 On the expiry of the **Defects Liability Period**, the Contractor must release to the Subcontractor any remaining amount of retention or other security.

10.7 Subject to clause 10.9, if the Contractor intends to use the whole or any part of any retention or other security to obtain any amount owed under this **Subcontract** by the Subcontractor to the Contractor, the Contractor must give to the Subcontractor written notice of the intended use, and the amount owed, within 28 days after the Contractor becomes aware, or ought reasonably to have become aware, of the Contractor’s right to obtain the amount owed. The term “amount owed” has the meaning given in section 67J of the **QBCC Act**.

10.8 Where retention or other security is held, the Contractor must within 10 **Business Days** before the end of the **Defects Liability Period** give written notice to the Subcontractor advising:

- (a) the date that the **Defects Liability Period** ends; and
- (b) for retention –
  - (i) the amount to be released to the Subcontractor at the end of the **Defects Liability Period**; and
  - (ii) the date on which the retention amount is proposed to be released to the Subcontractor;
- (c) for any other security, a description of the other security held and the date on which the other security is proposed to be released to the Subcontractor.

10.9 If:

- (a) all or part of the **Works** have been taken out of the hands of the Subcontractor; or
- (b) the **Subcontract** has been terminated; or
- (c) the Contractor intends to use the retention or any other security to make a payment into court to satisfy a notice of claim of charge under the **BIF Act**,

then the Contractor can use the retention or any other security on giving the Subcontractor 5 **Business Days** prior written notice.

## 11. VARIATIONS

- 11.1 At any time prior to **Substantial Completion**, the Contractor may give to the Subcontractor a written direction to carry out a **Variation**.
- 11.2 If the Contractor proposes a **Variation**, the Contractor may give to the Subcontractor a written request for advice on:
- (a) the feasibility of the proposed **Variation**;
  - (b) if the proposed **Variation** would increase any part of, or add to, the **Works**, the scope of work necessary to carry out and complete the proposed **Variation**;
  - (c) the effect of the proposed **Variation** on the **Date for Substantial Completion**, if any; and
  - (d) the adjustment to the **Subcontract Price** if the Subcontractor is prepared to carry out and complete the proposed **Variation**.
- 11.3 Within 3 **Business Days** after receipt of the Contractor's written request, the Subcontractor must give to the Contractor a written notice advising the Contractor of the matters requested.
- 11.4 Where the Contractor directs the Subcontractor in writing to carry out a **Variation**, the **Subcontract Price** is adjusted by:
- (a) if the Contractor and the Subcontractor have agreed a price for the **Variation**, that price; or
  - (b) if the Contractor and the Subcontractor have not agreed a price for the **Variation**, the reasonable value of the **Variation**, including a reasonable allowance for profit, overheads and administrative costs.
- 11.5 The Subcontractor is not required to carry out a **Variation** unless a written direction to carry out the **Variation** is provided to the Subcontractor by the Contractor.
- 11.6 The Subcontractor's entitlement to claim payment for a **Variation** is not affected by the Contractor's failure to issue a written direction to carry out the **Variation**.

## 12. SUSPENSION OF THE WORKS

- 12.1 If the Contractor fails to pay the whole or any part of an amount due to be paid to the Subcontractor in accordance with clause 9, the Subcontractor may serve a written notice on the Contractor of the Subcontractor's intention to suspend carrying out the **Works** in accordance with section 78 of the **BIF Act**.

- 12.2 If the Subcontractor, in exercising the right to suspend carrying out the **Works**, incurs any loss or expenses as a result of the removal by the Contractor from the **Works** of any part of the **Works**, the Contractor must pay to the Subcontractor, as part of its next progress claim, the losses or expenses which are reasonably evidenced by the Subcontractor's documentary evidence.
- 12.3 If the Subcontractor suspends carrying out the **Works** pursuant to clause 12.1, or the Contractor directs the Subcontractor to suspend the whole or part of the **Works** under clause 12.4 due to a cause outside the reasonable control of the Subcontractor, the Subcontractor is not liable for any loss or damage suffered by the Contractor because of the Subcontractor not carrying out the **Works** during the period of suspension.
- 12.4 The Contractor may direct the Subcontractor to suspend carrying out the whole or part of the **Works**:
- (a) because of an act, default or omission of the Subcontractor or its agents or employees;
  - (b) for the protection or safety of any person or property;
  - (c) to comply with a court order; or
  - (d) because of suspension of work under the **Head Contract**.

## 13. DEFECTS LIABILITY PERIOD

- 13.1 The Subcontractor must ensure that any **Defects** are remedied prior to the expiry of the **Defects Liability Period**.
- 13.2 At any time prior to the expiry of the **Defects Liability Period**, the Contractor may give to the Subcontractor a written direction to remedy **Defects** within a reasonable period.
- 13.3 If the Subcontractor fails to comply with a written direction given to it in accordance with clause 13.2, the Contractor may have the **Defects** remedied by others, and will be entitled to the costs it reasonably incurred in having the **Defects** remedied.

## 14. DAMAGE, SITE CLEANING AND REINSTATEMENT

- 14.1 The Subcontractor must ensure that at any given time the part of the **Site** in or on which it is carrying out work is kept reasonably clean and tidy.
- 14.2 If the Subcontractor fails to keep its part of the **Site** reasonably clean and tidy, the Contractor may give to the Subcontractor a written direction to clean and tidy its part of the **Site** within a reasonable period.

14.3 If the Subcontractor fails to comply with a written direction given to it in accordance with clause 14.2, the Contractor may have the Subcontractor's part of the **Site** cleaned and tidied by others, and will be entitled to the costs it reasonably incurred in having the Subcontractor's part of the **Site** cleaned and tidied.

## 15. INSURANCE

15.1 By the **Start Date**, the Subcontractor must, at its own cost, effect and maintain the following insurances:

- (a) all insurance required for the Subcontractor to comply with the *Workers Compensation and Rehabilitation Act 2003* (Qld); and
- (b) public liability insurance with a reputable and financially sound insurer upon usual and reasonable terms which name as an insured the Contractor and the Subcontractor for their respective rights:
  - (i) covering against any liability for personal injury or death to a person, or damage to property, arising out of, or otherwise in connection with, the Subcontractor carrying out the **Works**;
  - (ii) for at least the amount specified in Item 15 of the **Subcontract** Schedule in respect of any one event and in aggregate; and
  - (iii) which includes a cross-liability provision or term where the insurer waives all right of subrogation or action that the insurer may have against any of the persons named in the policy as the insured.

15.2 If the Contractor gives to the Subcontractor a written request for documentary evidence that the Subcontractor has effected and maintained the insurance required in accordance with this clause, the Subcontractor must within 5 **Business Days** give to the Contractor such documentary evidence.

15.3 The Subcontractor warrants that, as at the date of the **Subcontract**, it has the public liability insurance as described in Item 15.

## 16. COMPLIANCE WITH STATUTES

16.1 Subject to clause 4.2, the parties agree to comply with all relevant laws and legal requirements.

16.2 The Subcontractor warrants it holds and will retain all qualifications necessary to carry out the **Works**, including any licences required under the **QBCC Act**.

## 17. INDEMNITY

17.1 The Subcontractor indemnifies the Contractor against any liability for personal injury or death of a person, or damage to property, arising out of, or in connection with, the Subcontractor carrying out the **Works** except to the extent that the injury, death, or damage was caused, or contributed to, by an act or omission of the Contractor, its agents, employees, other subcontractors, or consultants.

## 18. SET OFF

18.1 Subject to clauses 10.7 and 10.9, the Contractor is entitled to set-off against any amount due to the Subcontractor in accordance with the **Subcontract**, any amount due to the Contractor from the Subcontractor under or for breach of the **Subcontract**.

## 19. DISPUTE RESOLUTION

19.1 Nothing in this clause 19 prejudices a party's rights under the **BIF Act** or otherwise, to enforce payment due under this **Subcontract**, or to seek injunctive or urgent declaratory relief.

19.2 If a dispute arises out of, or otherwise in connection with, the **Subcontract** either party may give to the other party a written notice of dispute stating the details of the dispute.

19.3 Within 7 **Business Days** after a party receives a notice of dispute, the parties must confer at least once to attempt to resolve the dispute or to agree on methods of doing so.

19.4 If the dispute has not been resolved, or the parties have not agreed on methods to resolve the dispute, within 14 **Business Days** after a party receives a notice of dispute, either party may, without limiting its rights, start proceedings in a court of competent jurisdiction, or for a payment dispute, in accordance with Chapter 3 of the **BIF Act**.

19.5 Notwithstanding the commencement of proceedings in accordance with clause 19.4, the parties must continue to comply with their obligations in accordance with the **Subcontract**.

## 20. TERMINATION UNDER THE HEAD CONTRACT

- 20.1 If the **Head Contract** is terminated for any reason, the Contractor may give to the Subcontractor a written notice terminating the **Subcontract**.
- 20.2 If the **Subcontract** is terminated in accordance with clause 20.1, the Subcontractor is entitled to give to the Contractor a progress claim for the unpaid value of the **Works** carried out by the Subcontractor up to, and including, the date on which it received the Contractor's written notice of termination, including for materials reasonably ordered by the Subcontractor which the Subcontractor cannot return or use elsewhere, but only if those materials become the property of the Contractor or its nominee upon payment.

## 21. WORKPLACE HEALTH AND SAFETY

- 21.1 The Contractor and the Subcontractor agree that each of them is a *person conducting a business or undertaking* within the meaning of the *Work Health and Safety Act 2011 (Qld)* and each must comply with its obligations under the *Work Health and Safety Act 2011 (Qld)* and any other legislation relating to workplace health and safety.

## 22. DEFAULT AND TERMINATION

- 22.1 If either party becomes bankrupt or goes into liquidation, the other party may give that party a written notice terminating the **Subcontract**.
- 22.2 A substantial breach of the **Subcontract** includes, but is not limited to:
- (a) for the Contractor, a failure by the Contractor to:
    - (i) pay to the Subcontractor a progress payment in accordance with clause 9; or
    - (ii) comply with its obligations under clause 21 (Workplace Health and Safety).
  - (b) for the Subcontractor, a failure by the Subcontractor to:
    - (i) diligently carry out and complete the **Works**;
    - (ii) carry out and complete the **Works** in an appropriate and skilful way using all reasonable care and skill, and in accordance with the **Subcontract**;
    - (iii) carry out and complete the **Works** in accordance with all laws and legal requirements;

- (iv) effect or maintain any insurance required in accordance with clause 15;
- (v) hold or retain all qualifications necessary to carry out the **Works**, including any licences required under the **QBCC Act**; or
- (vi) comply with its obligations under clause 21 (Workplace Health and Safety).

- 22.3 If a party is in substantial breach of the **Subcontract**, the other party may give to the party in substantial breach a written notice to show cause, stating:

- (a) the details of the substantial breach or breaches including, where applicable, the relevant clause of these General Conditions; and
- (b) that the party in substantial breach is required to remedy the substantial breach or breaches, or otherwise show reasonable cause in writing to the other party why the **Subcontract** should not be terminated within the period stated in the notice, which must not be less than 10 **Business Days** after the date on which the notice is given.

- 22.4 If the party in substantial breach fails to show reasonable cause in writing by the date and time stated in the notice given by the other party, the other party may by further written notice to the party in substantial breach terminate the **Subcontract**.

- 22.5. This clause 22.5 applies if:

- (a) the Contractor is in substantial breach of the **Subcontract**; and
- (b) the Subcontractor gives the Contractor a written notice to show cause in accordance with clause 22.3; and
- (c) the Contractor fails to show reasonable cause in writing by the date and time stated in the notice given by the Subcontractor why the **Subcontract** should not be terminated:

then the Subcontractor may, rather than terminating the **Subcontract**, by written notice given to the Contractor, suspend the whole or any part of the **Works**.

If the Subcontractor suspends the whole or any part of the **Works** in accordance with this clause 22.5, the Subcontractor must remove the suspension if the Contractor remedies the substantial breach or breaches at any time prior to the Subcontractor terminating the **Subcontract** in accordance with this clause 22.5.

If the Subcontractor suspends the whole or any part of the **Works** in accordance with this clause 22.5, the Subcontractor shall not be entitled to terminate the **Subcontract** pursuant to this clause 22 for a period of 20 **Business Days** after the date of suspension under this clause 22.5. If the Contractor fails to remedy the substantial breach or breaches within 20 **Business Days** after the Subcontractor gives the Contractor a written notice suspending the whole or part of the **Works**, the Subcontractor may terminate the **Subcontract**.

22.6. The right of a party to terminate this **Subcontract** in accordance with this clause 22 is in addition to any other power, right, or remedy that the party may have at law or in equity. Nothing in this clause 22 (including, in the case of the Subcontractor, the exercise by the Subcontractor of any rights under clause 22.5) prevents a party from terminating at law or in equity or terminating pursuant to clause 22.1.

22.7 On termination of the **Subcontract** (on any basis whether under this **Subcontract**, or at law or in equity), a **Reference Date** is deemed to arise at the date of termination.

### 23. WAIVER

23.1 No provision or term of the **Subcontract** may be waived, varied, discharged, or released by a party unless such waiver, variation, discharge, or release is evidenced in writing.

### 24. ENTIRE AGREEMENT

24.1 The **Subcontract** embodies the entire agreement entered into between the parties and supersedes all previous agreements between them relating to the subject matter of the **Subcontract**.

### 25. ASSIGNMENT

25.1 Neither party may assign its rights or obligations under the **Subcontract** without the prior written consent of the other party.

### 26. GST

26.1. Unless otherwise specified, all amounts payable under this **Subcontract** are exclusive of **GST** and shall be calculated without regard to **GST**.

26.2. The parties agree that:

- (a) if a supply made under this **Subcontract** is a taxable supply, the recipient of that taxable supply (**recipient**) shall, in addition to any other consideration, pay to the party making the taxable supply (**supplier**) the amount of **GST** in respect of the supply;

- (b) the **recipient** will only be required to pay an amount of **GST** to the **supplier** if and when the **supplier** provides a valid tax invoice to the **recipient** in respect of the taxable supply;
- (c) if there is an adjustment to a taxable supply made under this **Subcontract** then the **supplier** shall provide an adjustment note to the **recipient**; and
- (d) the amount of a party's entitlement under this **Subcontract** to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

26.3. In this **Subcontract**, except where the context otherwise requires:

- (a) **GST** is a goods and services tax, as governed by the GST Act.
- (b) **GST Act** means the 'A New Tax System (Goods and Services Tax) Act 1999 (C'th).

### 27. NOTICES

27.1. Any notice under this **Subcontract** must, unless otherwise stated, be given in writing. For clarity, a notice includes a payment claim.

27.2. Any notice may be given to the party to whom the notice is to be given by delivering the notice to:

- (a) the party's Last Address by hand; or
- (b) the party's Last Address by prepaid post; or
- (c) the party's Last Number by facsimile; or
- (d) the party's Last Email Address by email.

27.3. The time when the notice to a party is given to the party is the time at the **Site** when the party receives the notice.

27.4. If a notice to a party is delivered by hand or by pre-paid post to the party's Last Address, the notice shall be deemed to have been received by the party at the time when the notice is so delivered.

27.5. If a notice is given by delivering the notice to the party's Last Number, the notice shall be deemed to have been received by the party at the time set out in the sender's written confirmation of the completed transmission of the facsimile.

- 27.6. If a notice is given by delivering the notice by email to the party's Last Email Address, the notice shall be deemed to have been received by the party at the time when the email reaches the party's system for generating, sending, receiving, storing or otherwise processing emails.
- 27.7. A party's Last Address means the postal address of a party stated in the Schedule or, if the party has subsequently advised to the other party another address, then the last address advised in writing to the other party. A party's Last Number means the facsimile number of the party stated in the Schedule or, if the party has subsequently advised to the other party another facsimile number, then the last facsimile number advised in writing to the other party. A party's Last Email Address means the email address of the party stated in the Schedule or, if the party has subsequently advised to the other party another email address, then the last email address advised in writing to the other party.



## APPENDIX – FORM 1 SUBCONTRACTOR’S PAYMENT CLAIM (TAX INVOICE)

(Condition 9 of the General Conditions of QBCC Commercial Subcontract)

### TO (CONTRACTOR):

Name:			
Company Name:			
ACN (if company):	ABN:		
Address:			
Phone:			

### FROM (SUBCONTRACTOR):

Name:			
Company Name:			
ACN (if company):	ABN:		
Address:			
Phone:			
Site Address:			
Project:			

### DESCRIPTION OF THE WORKS FOR WHICH A PROGRESS PAYMENT IS CLAIMED:

Amount claimed for payment	\$
Minus retention (if any)	\$
Net amount claimed (excluding GST)	\$
Plus GST	\$
<b>TOTAL AMOUNT CLAIMED (inclusive of GST)</b>	<b>\$</b>

**NOTE TO CONTRACTOR:** You must pay this payment claim (or a lesser amount if scheduled within 15 Business Days of receipt of a Subcontractor’s Progress Claim) within the period stated in Item 10 of the Schedule or, if no period is stated, within 25 Business Days after you receive this payment claim.

Date: \_\_ / \_\_ / \_\_\_\_

Signed (Subcontractor).....

## APPENDIX – FORM 2 CONTRACTOR’S PAYMENT SCHEDULE

(Condition 9 of the General Conditions of QBCC Commercial Subcontract)

### TO (SUBCONTRACTOR):

Name:

Company Name:

ACN (if company):  ABN:

Address:

Phone:

### FROM (CONTRACTOR):

Name:

Company Name:

ACN (if company):  ABN:

Address:

Phone:

Site Address:

Project:

PAYMENT CLAIM/ INVOICE #	PAYMENT CLAIM/ INVOICE DATE	DUE DATE	TOTAL CLAIMED AMOUNT	SCHEDULED AMOUNT
			\$	\$

DESCRIPTION Describe work or goods and services claimed for	CLAIMED AMOUNT	SCHEDULED AMOUNT	AMOUNT WITHHELD (IF ANY)
<b>TOTALS:</b>	\$	\$	\$

AMOUNT WITHHELD	REASONS FOR WITHHOLDING PAYMENT

ATTACHMENTS (IF ANY)

**NOTE TO CONTRACTOR:** You must provide this Payment Schedule within 15 Business Days of the receipt of the Subcontractor’s Payment Claim whenever an amount is proposed to be withheld.

Date: \_\_ / \_\_ / \_\_\_\_

Signed (Contractor): .....

## APPENDIX – FORM 3 SUBCONTRACTOR’S REQUEST FOR INFORMATION (RFI)

(Condition 2 of the General Conditions of QBCC Commercial Subcontract)

RFI No:

### TO (CONTRACTOR):

Name:

Company Name:

ACN (if company):

ABN:

Address:

Phone:

### FROM (SUBCONTRACTOR):

Name:

Company Name:

ACN (if company):

ABN:

Address:

Phone:

Site Address:

Project:

The Subcontractor requests information or clarification from the Contractor in relation to ambiguity, discrepancy, error or inconsistency in the Subcontract Documents.

SUBCONTRACT DOCUMENT

DETAILS OF AMBIGUITY, DISCREPANCY,  
ERROR OR INCONSISTENCY

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Date: \_\_ / \_\_ / \_\_\_\_

Signed (Subcontractor): .....

## APPENDIX – FORM 4 SUBCONTRACTOR’S EXTENSION OF TIME CLAIM FORM

(Condition 8 of the General Conditions of QBCC Commercial Subcontract)

### TO (CONTRACTOR):

Name:			
Company Name:			
ACN (if company):		ABN:	
Address:			
Phone:			

### FROM (SUBCONTRACTOR):

Name:			
Company Name:			
ACN (if company):		ABN:	
Address:			
Phone:			
Site Address:			
Project:			

The Subcontractor requests information or clarification from the Contractor in relation to ambiguity, discrepancy, error or inconsistency in the Subcontract Documents.

CAUSE OF DELAY (WHERE APPROPRIATE, ATTACH SUPPORTING MATERIAL)	LENGTH OF DELAY (BUSINESS DAYS)	EXTENSION TO DATE FOR SUBSTANTIAL COMPLETION CLAIMED (BUSINESS DAYS)

**NOTE TO SUBCONTRACTOR:** You must give this form to the Contractor within 15 Business Days after the Subcontractor becomes aware, or reasonably ought to have become aware, that the Works will be delayed.

Date: \_\_ / \_\_ / \_\_\_\_

Signed (Subcontractor): .....

## APPENDIX – FORM 5 SUBCONTRACTOR’S NOTICE OF ANTICIPATED SUBSTANTIAL COMPLETION

(Condition 7 of the General Conditions of QBCC Commercial Subcontract)

### TO (CONTRACTOR):

Name:

Company Name:

ACN (if company):

ABN:

Address:

Phone:

### FROM (SUBCONTRACTOR):

Name:

Company Name:

ACN (if company):

ABN:

Address:

Phone:

Site Address:

Project:

The Subcontractor gives notice that the Works will reach Substantial Completion on: Date: \_\_ / \_\_ / \_\_\_\_

**NOTE TO SUBCONTRACTOR:** Under clause 7.2 of the General Conditions of this Subcontract, this Notice must be given to the Contractor not less than 7 Business Days before you anticipate Substantial Completion of the Works.

Date: \_\_ / \_\_ / \_\_\_\_

Signed (Subcontractor): .....

## APPENDIX – FORM 6 CONTRACTOR’S NOTICE OF END OF DEFECTS LIABILITY PERIOD

(Condition 10 of the General Conditions of QBCC Commercial Subcontract)

### IMPORTANT INFORMATION ABOUT THE NOTICE

#### WHERE THE NOTICE IS REQUIRED

The Notice advises contracted parties when the Defects Liability Period ends and the amount of retentions, if any, proposed to be paid. Under section 67NC of the *Queensland Building and Construction Commission Act 1991* (the QBCC Act), and clause 10.8 of the General Conditions of this Subcontract, this Notice is required if either of the following applies –

- a. a retention amount is withheld;
- b. a security is held after practical completion in relation to the need to correct defects in the building work under the contract.

#### TIMEFRAMES WITHIN WHICH THE NOTICE MUST BE GIVEN TO THE SUBCONTRACTED PARTY

Where it is required, the **Notice must be provided to the Subcontractor within 10 Business Days before the end of the Defects Liability Period, unless:**

- The Defects Liability Period is for a Sub-Subcontract (i.e. where a Subcontractor contracts with another contractor who will perform work for the Subcontractor as a Sub-Subcontractor) and is linked to the Defects Liability Period for another higher Subcontract; and
- The Contractor (higher Subcontractor) is NOT given notice of the Defects Liability Period for the higher Subcontract in sufficient time to enable them to notify the Sub-Subcontractor within the 10 Business Day period.

Where the above circumstances apply, the Contractor (higher Subcontractor) must give this notice to the Sub-Subcontractor within 5 Business Days of the Contractor (higher Subcontractor) receiving its notice under the higher Subcontract.

#### HOW TO GET THE CURRENT VERSION OF THE NOTICE

QBCC has not provided a copy of this Notice of End of Defects Liability Period because the content and format of the Notice may vary from time to time in response to changes in Queensland legislation.

**To ensure you use the current and appropriate form of the Notice, please visit the following link/address on the QBCC website:** [https://www.qbcc.qld.gov.au/sites/default/files/S67NC\\_Notice\\_End\\_Defect\\_Period.pdf](https://www.qbcc.qld.gov.au/sites/default/files/S67NC_Notice_End_Defect_Period.pdf)

#### IF YOU ARE UNSURE ABOUT YOUR OBLIGATIONS...

**You should seek formal legal advice if you are unsure of your obligations with regard to this Notice.**

#### DISCLAIMER

**These questions and answers contain information of a general nature. You should not rely upon these questions and answers as providing specific legal advice. For specific advice on your particular circumstances, especially contractual matters, you should seek independent legal advice.**



**Need more information?**

Visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or call us on 139 333.

