



# **GENERAL CONDITIONS OF CONTRACT (SW)**

## 1. Interpretation and construction of Subcontract

In the Subcontract, except where the context otherwise requires:

- approval** means any certificate, licence, consent, permit, approval, authorisation, assessment, determination, accreditation, registration, clearance, permission, exemption, notification, application, filing, lodgement, deed, direction, declaration, or requirement or the like required by:
- (a) any legislative requirements arising out of or in any way connected with the *Subcontract Works*; or
  - (b) any:
    - (ii) organisation; or
    - (iii) Authority,having jurisdiction in connection with the carrying out of *Subcontract Works*.
- authority** means:
- (a) governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.
  - (b) public, local or statutory authority including any Certification Authority; or
  - (c) Utility or telecommunication provide or owner having jurisdiction in connection with carrying out of the Subcontract Works.
- building code** means the Building Code of Australia as defined in the *Code for the Tendering and Performance of Building Work 2016*
- business day** means:
- (a) means any day which is a business day under the Building and Construction Security of Payment Act ; and
  - (b) otherwise, means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales
- certificate of practical completion** has the meaning given to it in clause 16

<b>claims</b>	<p>includes any request, claim, demand, action, entitlement, proceedings or suit arising out of or in connection with this Subcontract or Subcontract Works for:</p> <ul style="list-style-type: none"> <li>(a) Payment;</li> <li>(b) Extension of time or compensation;</li> <li>(c) in contract or in tort including negligence or under statute or for breach of fiduciary duty or statutory duty, by reason of any other principle whether legal, equitable or statutory;</li> <li>(d) unjust enrichment, restitution or under any other principle of law or equity;</li> <li>(e) asserted by action, claim, suit, proceeding, deduction, set-off or counterclaim or otherwise;</li> <li>(f) for breach of any provision, warranty, representation, obligation, indemnity or undertaking (express or implied); or</li> <li>(g) for costs whether ordered or not or assessed or taxed in relation to any proceedings or otherwise;</li> </ul>
<b>completion</b>	<p>means the stage when:</p> <ul style="list-style-type: none"> <li>(a) the Subcontract Works are complete in accordance with the Subcontract and Defect free</li> </ul>
<b>Contractor</b>	<p>means the Contractor stated in Item 1;</p>
<b>Contractor's Policies and Procedures</b>	<p>Has the same meaning in the Formal Instrument of Agreement which accompanies this Subcontract;</p>
<b>contractor's project requirements</b>	<p>means the <i>Contractor's</i> written requirements for <i>the Subcontract Works</i> described in the <i>Schedule of Contractor Documents</i> which:</p> <ul style="list-style-type: none"> <li>(a) shall include the stated purpose for which <i>the Subcontract Works</i> are intended;</li> <li>(b) may include the Contractor's design, timing and cost objects for the <i>Subcontract Works</i>.</li> </ul>
<b>construction programme</b>	<p>means the programme supplied by the Contractor to the Subcontractor as set out in <i>Schedule of Contractor Documents</i>;</p>
<b>date for completion</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) where <i>Item 5(a)</i> provides a date for <i>practical completion</i>, the date; or</li> <li>(b) where <i>Item 5(b)</i> provides a period of time for <i>practical completion</i>, the last day of the period,</li> </ul>

but if any *EOT* is directed by the *Contractor* or allowed in *dispute* resolution procedure, it means the date resulting therefrom;

- date of practical completion*** means:
- (a) the date evidenced in a certificate of practical completion as the date upon which practical completion was reached; or (
  - (b) where another date is determined in any arbitration or litigation as the date upon which practical completion was reached, that other date.
- defects** Includes any defect, shrinkage, fault or omission in the *Subcontract Works* including any aspect of the *Subcontract Works* which is not in accordance with the requirements of the *Subcontract*.
- defects liability period** means the period stated in Item 8
- design documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the *Subcontract* and created (and including, where the context so requires, those to be created by the *Contractor*) for the construction of the *Subcontract Works*;
- detail change** means any change to *Subcontract Works* considered necessary by the *Contractor* to:
- (a) ensure that the design, construction, finishes or other aesthetic aspects of the *Subcontract Works* are in accordance with the requirements of the *Subcontract*; or
  - (b) adequately detail the nature and extent of the *Subcontract Works*;
- direction** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- enforceable insolvency event** means:
- (a) in respect of a *Subcontractor* who is a natural person:
    - (i) the *Subcontractor* commits an act of bankruptcy as defined in section 40 of the Bankruptcy Act 1966 (Cth) ("Bankruptcy Act");
    - (ii) a creditor's petition is presented against the *Subcontractor* pursuant to the Division 2 of Part IV of the Bankruptcy Act;
    - (iii) the *Subcontractor* presents a petition against himself or herself pursuant to section 55 of the Bankruptcy Act;
    - (iv) a sequestration order is made in respect of the *Subcontractor*;

- (v) the Subcontractor signs an authority pursuant to section 188 of the Bankruptcy Act;
  - (vi) a meeting of creditors of the Subcontractor is convened for the purpose of Part X of the Bankruptcy Act;
  - (vii) the Subcontractor enters into any arrangement with creditors pursuant to Part X of the Bankruptcy Act;
- (b) in respect of a Subcontractor which is not a natural person:
- (i) the board of the Subcontractor passes a resolution under section 436A of the Corporations Act;
  - (ii) the Subcontractor is placed into administration pursuant to Part 5.3A of the Corporations Act 2001;
  - (iii) a deed of arrangement is entered into in respect of the Subcontractor;
  - (iv) an application is made to a court for the winding up of the Subcontractor;
  - (v) the Subcontractor resolves that it be wound up voluntarily;
  - (vi) a winding up order is made in respect of the Subcontractor;
  - (vii) a receiver or receiver and manager is appointed to the Subcontractor;
  - (viii) a court orders that there be a meeting of creditors or members of the Subcontractor for any purpose related to Part 5.1 of the Corporations Act 2001;
  - (ix) a liquidator or provisional liquidator is appointed to the Subcontractor
- (c) and in either case:
- (i) a mortgagee takes possession of any assets of the Subcontractor; or
  - (ii) the Subcontractor informs the Contractor or any creditor of the Subcontractor, in writing, that it is insolvent

**EOT (from 'extension of time')** means an adjustment to the Date for Completion in accordance with clause 7

**Final certificate** has meaning in subclause 13.3

**Final payment claim** has meaning in subclause 13.3

**fit for purpose** means the Subcontract Works:

- (a) are fit for its intended purpose, functions and uses specified in, or which can be reasonably ascertained from this Subcontract, Subcontract Documents and legislation;

**force majeure event**

means:

- (a) riot, war, invasion or act of foreign enemies, or hostilities;
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) earthquakes, fires, explosions or other catastrophes,

**Head Contract**

means the agreement between the Contractor and the principal for construction work, which the *Subcontract Works* under this Subcontract forms a part of.

**insurance cover**

means the insurances stated in item 9

**Intellectual property rights**

Means any intellectual property rights, being all rights conferred under statute, common law and equity, including those in and in relation to inventions, patents, designs, copyright, registered and unregistered trademarks, trade names, brands, logos and get up, names circuit layouts and confidential information and all other rights resulting from intellectual activity in the industry, scientific, literary or artistic fields, or other protected right and any application or right to apply for registration of any of those rights;

**Legislative Requirements**

includes:

- (a) Acts, Ordinances, rules, regulations, by-laws, orders, policies, guidelines, standards, schemes, principles, memorandums, subordinated legislation, awards and proclamations of an Authority, the Commonwealth of Australia or of the jurisdiction (including outside of Australia) where the Subcontract Works or the particular part thereof is being carried out;
- (b) Local laws, by laws, orders, ordinances and legal requirements of any relevant Authority, including local government;
- (c) Approvals and requirements of obligations having jurisdiction in connection with the carrying out of the Subcontract works;
- (d) the Building Code;
- (e) those principles of common law and equity established decision of courts; and
- (f) fees and charges payable in connection with the foregoing

**Liquidated Damages**

means amount stated in Item 10

**Policies**

means all standards, codes, specifications, policies and requirements to be complied with in accordance with, and subject to, the terms of this *Subcontract* including:

- (a) the standards, codes, specifications, policies, requirements, guidelines, procedures, protocols and plans set out in, or otherwise expressly referred to in, the *Contractor's project requirements*
- (b) to the extent not inconsistent with the *Building Code, Australian Standards* current as at the date of the *Contract* and the date of commencement of *Subcontract Works*, or, if they are different dates, whichever is earlier;
- (c) all *Approvals* (including any conditions or requirements under them) and;
- (d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the *Subcontract Works*:
  - (i) which is notified to the *Subcontractor* prior to the date of the *Subcontract*;
  - (ii) which is publicly available or otherwise available to the *Subcontractor*; or
  - (iii) with which the *Subcontractor* is expressly required by the terms of this *Subcontract*, by *legislative requirements* or by *direction* of the *Contractor* to comply,

unless the *Contractor* gives notice to the *Subcontractor* that any *Approval*, standard, code, specification, policy or requirement does not constitute a *Policy* for the purposes of this *Subcontract*;

**Practical completion**

means when:

- (a) the *Subcontract Works* are complete in accordance with the *Subcontract* except for minor omissions and minor Defects:
- (b) those tests which are required by the *Contractor* to be carried out and passed before the *Subcontract Works* reach Completion, have been carried out and passed to the satisfaction of the *Contractor*; and
- (c) documents and other information required under the *Contract* which, in the opinion of the *Contractor*, are essential for the use, operation and maintenance of the *Subcontract Works*, have been supplied;
- (d) any other certificate or approval, which must be issued or given by an authority to lawfully occupy or use the *Subcontract Works* has been issued or given by that authority and provided to the *Contractor* and the conditions of all planning approvals complied with; and

- (e) all rubbish, surplus material and minor items of plant and equipment have been removed from the Site so as to leave the Site in a clean and tidy condition;
- (f) all keys, electronic access mechanisms and security coding have been handed to the Contractor
- (g) all plant and equipment forming part of the Subcontract Works of any public area or public open space or used for human services is tested and operational;
- (h) the Subcontractor has provided to the Contractor all warranties, guarantees, operation manuals and other documents and information required under the Subcontract which, in the opinion of the Contractor, are essential for the use, operation and maintenance of the Subcontract Works have been supplied;
- (i) to the extent applicable, the Subcontract Works are compliant with all Legislative Requirements and all required Approvals and certificates have been issued and provided by the Subcontractor to the Contractor;

**Principal Contractor**

Means the person or entity so identified in the Head Contract.

**Procore**

means the Procore construction management software (as updated from time to time) accessible at and downloadable from <https://www.procore.com/en-au>.

**Provisional sum**

has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item

**Qualifying causes**

means:

- (1) a breach of the Subcontract by the Contractor;
- (2) a qualifying cause of delay (or equivalent definition) as defined in the Head Contract,
- (3) but does not include:
  - (a) industrial conditions limited to matters and issues arising specifically on the Site or specifically in relation to the Subcontractor or any related bodies corporate (as defined in the Corporations Act 2001 (Cth));
  - (b) Force Majeure event;
  - (c) the COVID-19 pandemic or any other pandemic or epidemic or the effects of the COVID-19 pandemic or any other pandemic or epidemic; or

- (d) any act, default or omission of the Subcontractor or their employees, consultants, agents or any other party, other than the Contractor;

<b>Schedule of Contractor Documents</b>	has meaning in the Formal Instrument of Agreement which references these General Conditions of Subcontract
<b>Scope of works</b>	means the scope of works in the <i>Schedule of Contractor's Documents</i>
<b>Security</b>	means: <ul style="list-style-type: none"><li>(a) cash;</li><li>(b) retention money;</li><li>(c) an approved unconditional undertaking (in the form approved by the Contractor) or an approved performance undertaking given by an approved financial institution which is an Authorised Deposit-taking institution in Australia; or</li><li>(d) other form approved by the party having the benefit of the security</li></ul>
<b>Security Amount</b>	means the amount(s) of Security stated in Item 6(b) of the Schedule.
<b>site</b>	means the lands and other places to be made available and any other lands and places made available to the <i>Subcontractor</i> by the <i>Contractor</i> for the purpose of the <i>Subcontract</i> ;
<b>Subcontract</b>	means this contract between the Contractor and Subcontractor
<b>Subcontract Works</b>	means the works and services described in the Subcontract Documents, including though not limited to: <ul style="list-style-type: none"><li>(1) provision of all necessary labour, plant, equipment, materials and competent supervision required to complete the Subcontract Works;</li><li>(2) out of hours work necessary to maintain progress in accordance with the Principal's Construction Program, as amended by the Principal from time to time;</li><li>(3) Site co-ordination, Site measurement and Site set-out, as required to complete the Subcontract Works;</li><li>(4) testing and tagging of all electrical leads and equipment used by the Subcontractor in connection with the Subcontract Works;</li><li>(5) minor items not expressly described in the Subcontract Documents but which are necessary for, or incidental to, Completion of the Subcontract Works; and</li><li>(6) all other things or tasks which are necessary for the Subcontractor to do to comply with its obligations under the</li></ul>

Subcontract including variations, remedial work, construction plant and temporary works.

<b>Subcontract Documents</b>	means all of the documents listed at the Schedule of Contractor Documents
<b>Subcontract sum</b>	means the subcontract sum at Item 4, as adjusted in accordance with the Subcontract.
<b>Subcontract Superintendent</b>	means the person stated in Item 3 as the Subcontract Superintendent or other person from time to time appointed in writing by the <i>Contractor</i> to be the Subcontract Superintendent and notified as such in writing to the <i>Subcontractor</i> by the <i>Contractor</i> .
<b>Subcontractor</b>	means the Subcontractor stated in Item 2
<b>Subcontractor's Associates</b>	means any person or entity associated with the Subcontractor whereby authority is given by the Subcontractor to perform obligations under the Subcontract including, but not limited to, employee, agent, representative or subcontractors contracting to the Subcontractor.
<b>Subcontractor's Representative</b>	means the individual appointed in writing by the Subcontractor under subclause 2.8
<b>Tax Invoice</b>	has the meaning given to that expression under the GST Act
<b>Temporary work</b>	Means work (including the provision of materials) used in carrying out and completing the <i>Subcontract Works</i> , but not forming part of the Subcontract Works.
<b>Tests</b>	means:  (a) the tests and procedures specified in the Scope of Works (if any); (b) any other tests required by the Subcontract Superintendent; and (c) any other tests required to ascertain whether the Subcontract Works or a specified part thereof meet the requirements of the Subcontract,  and each of them is a Test.
<b>Variation</b>	means any one or more of the following:  (a) increase, decrease or omission of any part of the Subcontract Works; (b) change in character or quality of the Subcontract Works; (c) change in levels, lines or dimensions; (d) additional work; (e) demolition or removal of material or work no longer required by the Contractor.

## 2. Nature of Subcontract

## 2.1 Performance

- (a) The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Subcontract and directions authorised by the Subcontract, and in doing so, shall cause practical completion to occur by the date for practical completion.
- (b) Subject to the provisions of the *Subcontract*, the *Contractor* shall pay the *Subcontract Sum*.
- (c) The Subcontract sum is fixed and is not subject to any rise and fall or any other adjustment, except as expressly provided for in this Subcontract.

## 2.2 Subcontractor's warranties

The *Subcontractor* represents and warrants to the *Contractor* that:

- (a) It has examined all information relevant to the risks, contingencies and other circumstances which might have an adverse or beneficial effect on the Subcontract Works, the Subcontractor's obligations and, in particular, the existing conditions on the site by making all reasonable enquiries;
- (b) It at all times shall be, and ensure the Subcontractor's Associates be, suitably qualified and experienced, and shall carry out the Subcontract Works professionally and exercise due skill, care and diligence which may reasonably be expected of a skilled professional person suitably qualified and experienced in the performance of obligations similar to the Subcontractor's obligations under this Contract;
- (c) it possesses all relevant authorisations, permits and licences required by law to complete the *Subcontract Works*;
- (d) It shall carry out and complete Subcontract Works in accordance with the *Schedule of Contractor's Documents* so that the Subcontract Works when completed shall:
  - (i) be *fit for purpose* and free from *defects*; and
  - (ii) Comply with clause 2.2(e)(i).
- (e) The Subcontractor has the resources and capability to carry out the Subcontract Works :
  - (i) comply with all the requirements of the Subcontract, Subcontract Documents, *policies*, *Contractor's project requirements* and all legislative requirements, approvals and standards and codes issued from time to time by the Contractor, including all building codes and any other standards and codes relating to quality assurance or otherwise applicable to the Subcontract Works;
  - (ii) in a commercial, prudent and reasonable manner;
  - (iii) in a timely manner so as to achieve practical completion by the date for practical completion
  - (iv) in a proper and workmanlike manner;
  - (v) with due care and skill;
  - (vi) with due expedition and without unnecessary or unreasonable delays;

- (vii) in a manner which allows for the Subcontract Works to be performed efficiently; and
- (viii) using good quality, new and undamaged materials unless otherwise specified by the Contractor.
- (f) it is familiar with all current *legislative requirements* affecting the Subcontract Works, or which may affect the Subcontract Works, and there is nothing in the Contractor's Project Requirement
- (g) it has taken into account the facilities on the site, the times permitted for carrying out the Subcontract works, the means of access to and egress from the *site*, transport facilities for deliveries to the site (if required), the constraints on access, egress or deliveries.
- (h) it has relied on its own investigations and enquiries in relation to the accuracy, suitability and completeness of any information, data or material provided by the Contractor; and
- (i) at all times commits sufficient resources to ensure timely progress of the Subcontract Works.

### **2.3 Warranties unaffected**

The Subcontractor acknowledges that the warranties in subclause 2.2 remain unaffected notwithstanding:

- (a) any receipt or review of, or comment or *direction* on the *Subcontract documents* by the *Contractor*; or
- (b) any variation under clause 10; or
- (c) any Detail Change directed by the Contractor.

### **2.4 Subcontractor's acknowledgements**

The subcontractor acknowledges that:

- (a) it has carefully examined the Subcontract Documents and the site and its surroundings to the extent necessary to perform its obligations under the Subcontract,
- (b) the Subcontract Documents are suitable, appropriate and adequate for the purposes stated in the Contractor's project requirements.
- (c) it has examined all information relevant to the risks, contingencies and other circumstances affecting its obligations under the Subcontract; and
- (d) it has satisfied itself as to:
  - (i) the correctness and sufficiency of the subcontract sum and that it includes an allowance for the cost of complying with the Subcontract; and
  - (ii) all other matters and things necessary for the due and proper execution and completion of the Subcontract Works and the performance of the subcontractor's obligations under the Subcontract.

- (e) it is responsible for the timely progression, evaluation and monitoring of the progress of the Subcontract Works including the proper sequencing and timely management of all activities, supplies, materials to coincide with the requirements of the construction programme.

#### **2.4A Contractor's Policies and Procedures**

- (a) The Contractor may at any time vary the Contractor's Policies and Procedures without the consent of the Subcontractor. The Contractor must, as soon as reasonably practicable, give written notice to the Subcontractor of any variation made to the Contractor's Policies and Procedures.
- (b) If the Contractor varies the Contractor's Policies and Procedures, the Subcontractor shall comply with any such reasonable requirements made by the Contractor under this clause and carry out and complete the Subcontract Works in accordance with the revised Policies and Procedures.
- (c) If the Subcontractor considers that a variation to the Contractor's Policies and Procedures under subclause 2.4A constitutes a variation or gives rise to a claim by the Subcontractor for additional payment or time under the Subcontract, the Subcontractor must give written notice to the Contractor within 5 days after receiving a notice from the Contractor under subclause 2.4A(a).
- (d) A notice given by the Subcontractor under this subclause 2.4A(c) must include: -
  - (i) particulars of the additional costs;
  - (ii) its effect on the *date for completion*;
  - (iii) any warranty required to be supplied by the Subcontractor; and
  - (iv) whether the variation would be inconsistent with any legislative requirements.
- (e) A Subcontractor will have no claim whatsoever against the Contractor arising out of or in any way in connection with a variation to the Contractor's Policies and Procedures, unless the Subcontractor has strictly complied with subclause 2.4A, and the Contractor has confirmed in writing that the variation in the Contractor's Policies and Procedures constitutes a variation.
- (f) For the avoidance of doubt, if the Subcontractor carries out work, which it considers to be a variation without obtaining the Contractor's prior written approval, then the performance of and the cost of such works will be at the Subcontractor's sole risk and the Subcontractor will have no Claim whatsoever against the Contractor, including for any delay or disruption and/or any related claims for additional cost or time.

#### **2.5 No Responsibility**

Without limiting subclause 2.6:

- (g) the *Contractor* does not warrant, guarantee or make any representation about the accuracy or adequacy of any information, data or document made available to the *Subcontractor* by the *Contractor* or anyone on behalf of the *Contractor* before the date of commencement of *Subcontract Works* that does not form part of the *Subcontract*; and

- (h) to the extent permitted by law, the *Contractor* shall not be liable upon any claim by the *Subcontractor* arising out of, or in any way connected with, such information, data and documents.

## 2.6 Non-reliance

- (a) The *Subcontractor*:
  - (i) warrants that it did not in any way rely upon:
    - (A) any information, data, representation, statement or document (not forming part of the *Subcontract*) made available to the *Subcontractor* by the *Contractor* or anyone on behalf of the *Contractor*; or
    - (B) the accuracy or adequacy of any such information, data, representation, statement or document,for the purposes of entering into the *Subcontract*; and
  - (b) warrants that it enters the *Subcontract* based on its own investigations, interpretations, deductions, information and determinations.

## 2.7 Subcontract Superintendent

- (a) The Contractor may from time to time appoint individuals, including Subcontract Superintendent, to exercise the functions and duties of the Contractor under the Subcontract (**Subcontract Superintendent**).
- (b) The Contractor may change the Subcontract Superintendent at any time and will give the Subcontractor notice in writing of the appointment of the new Subcontract Superintendent.
- (c) The Subcontract Superintendent must carry out the duties and functions of the Principal, not as an independent certifier, valuer, or assessor, but as the agent of the Principal and its duly authorized representative.

## 2.8 Subcontractor's Representative

- (a) The Subcontractor shall superintend *Subcontract Works* personally or by a competent representative. Matters within a *Subcontractor's representative* knowledge (including directions received) shall be deemed to be within the Subcontractor's knowledge.
- (b) The Subcontractor shall forthwith give the Contractor and the Subcontract Superintendent written notice of the representative's name and any subsequent changes.
- (c) If the Contractor or Subcontract Superintendent makes a reasonable objection to the appointment of a representative, the Subcontractor shall terminate the appointment and appoint another representative.

## 3. Provisional sums

A *provisional sum* included in the *Subcontract* shall not itself be payable by the *Contractor* but where pursuant to a *direction*, the *Subcontract Works* or item to which the *provisional sum* relates is carried out or supplied by the *Subcontractor*, the *Subcontract work* or item

shall be priced by the *Subcontract Superintendent*, and the difference shall be added to or deducted from the *subcontract sum*.

#### **4. Security**

##### **4.1 Provision**

Security shall be provided in accordance with Item 6

##### **4.2 Recourse**

- (a) Security shall be subject to recourse by the Contractor if:
  - (i) the Contractor has a bona fide claim that the Subcontractor:
    - (A) is in default under the Subcontract; or
    - (B) has suffered an Enforceable Insolvency Event;
  - (ii) the Contractor exercises its rights under clause 19.1
- (b) The Contractor is required to give not less than three (3) business days' prior written notice to the Subcontractor of its intention to have recourse to security or to convert security into money.

##### **4.3 Change of security**

The *Contractor* may, in its absolute and sole discretion, agree to the substitution of the then current form of the *security* with another form of *security*. To the extent that another form of *security* is provided, the *Contractor* shall promptly release and return the then current form of the *security*.

##### **4.4 Reduction and release**

Subject to the Contractor utilising the security pursuant to subclause 4.2, then:

- (a) within 10 Business Days after:
  - (i) the issue of the certificate of practical completion;
  - (ii) rectification of all defects identified up to the time of practical completion, submission of all operation and maintenance manuals as requested by the Contractor,

the Contractor's entitlement to security shall be reduced to the percentage amount in Item 6(e), and the reduction shall be released and returned within 5 Business Days to the Subcontractor.

- (b) the balance of the security will be released upon the latest of
  - (i) the issue of the final certificate for the whole of the Subcontract Works;
  - (ii) the rectification of all defects identified during the defects liability period.
- (c) upon the Contractor's entitlement to security ceasing, the Contractor shall release and return any part of the security it still holds to the Subcontractor.

#### **5. Legislative requirements**

- (a) The Subcontractor shall comply with all legislative requirements except those in item 7 or directed by the Contractor.
- (b) The Subcontractor, upon finding that a legislative requirement is at variance with the Subcontract or the Contractor's project requirements, shall promptly give the Subcontract Superintendent notice thereof.
- (c) If a legislative requirement:
  - (i) necessitates a change:
    - (A) to the Contractor's project requirements;
    - (B) to the Subcontract Works;
    - (C) to so much of the *Subcontract Works*;
    - (D) being the provision of services by a municipal, public or other statutory authority in connection with the *Subcontract Works*; or
    - (E) in a fee or charge or payment of a new fee or charge;
  - (ii) comes into effect after the date of the Subcontract but could not reasonably then have been anticipated by a competent Subcontractor; and
  - (iii) causes the Subcontractor to incur more or less cost than otherwise would have incurred,the difference shall be assessed by the Contractor and added to or deducted from the Subcontract Sum.

## **6. Discrepancies**

- (a) If the several documents which constitute the Subcontract provide for differing standards of product, workmanship, finish or quantum, then, unless otherwise directed by the Subcontract Superintendent in this clause 6, the Subcontractor shall be obliged to provide the product, workmanship, finish or quantum of the highest standard.
- (b) If either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *Subcontract Works*, that party shall give the Subcontract Superintendent written notice of it. The Subcontract Superintendent, thereupon, and upon otherwise becoming aware, shall direct the Subcontractor as to the interpretation and construction to be followed.
- (c) The Subcontractor shall bear the cost of compliance with a direction under this subclause notwithstanding any inconsistency, ambiguity or discrepancy in the design documents or between the design documents and the Contractor's project requirements necessitates the direction.
- (d) If compliance with any other direction under this subclause causes the Subcontractor to incur more or less cost than otherwise would have been incurred had the direction not been given, the difference shall be assessed by the Subcontract Superintendent and added to or deducted from the subcontract sum.

## **7. Time and Progress**

### **7.1 Progress**

The Subcontractor must bring the *Subcontract Works* to *practical completion* by the *date for completion*.

## 7.2 Time

- (a) If the Subcontractor will be or is likely to be delayed in reaching *practical completion* by a *qualifying cause* which is on the critical path of the *Subcontract Works*, the *Subcontractor* must give the *Subcontract Superintendent* within 2 business days of the start of the event giving rise to the delay, a written notice setting out:
- (i) the cause of the delay;
  - (ii) the extent of the delay and the EOT claimed;
  - (iii) the facts on which the EOT claim is based and the reasons why the Subcontractor claims to be entitled to an EOT;
  - (iv) the steps undertaken by the Subcontractor to overcome or mitigate the delay; and
  - (v) the effect of the delay on the Date for Completion.
- (b) The *Subcontract Superintendent* may, upon receipt of written notice under clause 7.2 request from the *Subcontractor* any further information in relation to the cause of the delay or the delay itself that the Contractor reasonably considers necessary, and the *Subcontractor* must respond to any such request within 3 Business Days of its receipt.

## 7.3 Assessment of EOT

The Subcontractor is only entitled to an EOT if:

- (a) the Subcontractor has:
- (i) taken all proper and reasonable steps to anticipate, minimise and mitigate or prevent the occurrence of the delay and otherwise minimise the effect of the delay;
  - (ii) demonstrated that the Subcontractor cannot reach Completion by the Date for Completion without an EOT;
  - (iii) strictly complied with the requirements of clause 7,
- (b) the cause of the delay, and the delay itself, was beyond the reasonable control of the Subcontractor and did not arise out of any act or omission of the Subcontractor; and
- (c) the delay was caused by a qualifying cause.

Where one or more events causes concurrent delays and the cause of at least one of the events, but not all of them, is not a qualifying cause, then to the extent that the delays are concurrent, the Subcontractor shall not be entitled to an EOT.

The Subcontract Superintendent will determine what, if any, extension of the Date for Completion is to be granted to the Subcontractor (being its sole remedy for any delay encountered) and, if the Contractor does not grant the full EOT claimed, it must provide reasons for that decision.

## **8. Liquidated Damages**

- (a) If *Subcontract Works* does not reach practical completion by the date for practical completion, the Subcontract Superintendent shall certify, as due and payable to the Contractor, liquidated damages in Item 10 for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Contractor taking *Subcontract Works* out of the hands of the Subcontractor.
- (b) If, in any court or other proceedings, the liquidated damages set out in item 10 of the Schedule are found to be a penalty or are otherwise void or unenforceable (either whole or in part), then the Subcontractor will be liable to pay general damages at common law for failure or breach for which liquidated damages would have otherwise been payable.

If an EOT is directed after the Subcontractor has paid or the Contractor has set off liquidated damages, the Contractor shall forthwith repay to the Subcontractor such of those liquidated damages as represent the days the subject of the EOT.

- (c) The liability of the Subcontractor under this clause 8 is not and is not deemed to be a limitation on the Contractor's rights to recover general damages at common law, where the rate at Item 10 of the Schedule is less than the actual damages suffered by the Contractor, in which circumstances the Contractor can recover at its election either liquidated damages and general law damages for any shortfall or general damages as an alternative to liquidated damages

## **9. Suspension**

The Subcontract Superintendent may direct the Subcontractor to suspend the carrying out of the whole or part of the *Subcontract Works*:-

- (a) for such time as the Subcontract Superintendent thinks fit, if the Subcontract Superintendent is of the opinion that it is necessary:
  - (i) because of an act, default or omission of:
    - 1. the Subcontract Superintendent, the Contractor or its employees, the Contractor's consultants, agents or other subcontractors.
    - 2. the Subcontractor, a Subcontractor's consultant, a subcontractor or Subcontractor's Associate;
  - (ii) protection of persons or property; or
  - (iii) to comply with an order of a Court or an Authority.
- (b) at the direction of the Contractor.

The Subcontract Superintendent may direct the Subcontractor to recommence the *Subcontract Works* once it is satisfied that the reasons for any suspension no longer exist.

The Subcontractor shall bear the costs of suspension pursuant to sub-clause 9(a)(i)(2) .If the Subcontractor made the protection, safety, court order or suspension of work necessary, the Subcontractor shall bear the cost of suspension pursuant to sub-clause 9(a) and shall not be entitled to an extension of time for the suspension. If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the Subcontract Superintendent and added to or deducted from the subcontract sum.

## 10. Variations

- (a) The *Subcontractor* shall not vary the *Subcontract Works* except as expressly directed in writing by the Subcontract Superintendent pursuant to this clause.
- (b) By written notice pursuant to this clause 10, the *Subcontract Superintendent*, before the *date of practical completion*, may direct the *Subcontractor* to vary the *Subcontract Works*.
- (c) If the *Subcontract Superintendent* gives the *Subcontractor* written notice of a proposed *variation*, the Subcontract must within 5 business days after receiving such a notice notify the *Subcontract Superintendent* of:
  - (i) any EOT required to carry out the *Subcontract Works*;
  - (ii) any change in the trade cost; and
  - (iii) any change in the cost of preliminaries as a result of the *Subcontract Works*.
- (d) Upon receipt of a variation proposal in response to a notice under clause 10, the Subcontract Superintendent may in its sole and absolute discretion do any one of the following:
  - (i) direct the Subcontractor to provide further information; or
  - (ii) accept the variation proposal and give the Subcontractor a direction to carry out the variation under clause 10; or
  - (iii) negotiate different terms with the Subcontractor upon which the variation shall be carried out; or
  - (iv) reject the variation proposal, in which case, the Contractor may retain another person to carry out the variation contemplated by the variation proposal.
- (e) A *variation* will be priced by the Subcontract Superintendent using the following order of precedence:
  - (i) prior agreement;
  - (ii) applicable rates or prices in this Subcontract;
  - (iii) reasonable rates or prices, which shall include a reasonable amount for profit and overheads.
- (f) The price shall be added to or deducted from the *Subcontract Sum* as the case may be on completion of each such *variation*.

- (g) If the Subcontractor requests the Contractor to direct a variation for the convenience of the Subcontractor, the Subcontract Superintendent may do so. The direction shall be written and may be conditional. Unless the direction provides otherwise, the Subcontractor shall not be entitled to neither extra time or extra money.

## **11. The Site**

### **11.1 Access to the Site**

- (a) The Contractor shall give the Subcontractor access to the site sufficient to enable the Subcontractor to commence and carry out the *Subcontract Works*.
- (b) The Subcontractor acknowledges and agrees that it:
  - (i) shall have non-exclusive access to and/or use of the site, and may be required to share possession and/or use of the site with others including the *Contractor*, the Subcontract Superintendent, consultants, or other contractors.
  - (ii) is its sole responsibility and obligation to procure access to those areas which do not compromise the site, which it requires for the purposes of being able to carry out the *Subcontract Works*.

### **11.2 Cleaning up**

The Subcontractor shall keep the site and *Subcontract Works* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the date of practical completion, the Subcontractor shall remove temporary works. The Subcontract Superintendent may extend the time to enable the Subcontractor to perform remaining obligations.

If the Subcontractor fails to comply with the preceding obligations in this clause, the Subcontract Superintendent may direct the Subcontractor to rectify the non-compliance and the time for rectification. If:

- (a) the Subcontractor fails to comply with such a direction; and
- (b) that failure has not been made good within 3 days after the Subcontractor receives written notice from the Subcontract Superintendent notifying the Subcontractor of its failure to comply with the direction under clause 11.2,

the *Contractor* may have carried out by others what was required by the direction under subclause 11.2 but without prejudice to any other rights and remedies the Contractor may have. The Subcontract Superintendent shall certify the cost incurred as moneys due from the *Subcontractor* to the *Contractor*.

## **12. Latent Conditions**

- (a) If the Subcontractor encounters on the Site or its surroundings physical conditions, including artificial obstructions, which the Subcontractor considers:
  - (i) differ materially from those which would have been ascertainable to them at the time of tendering for the *Subcontract Works*; and

- (ii) could not reasonably have been anticipated at the date of the Subcontractor's tender by a subcontractor experienced and competent in carrying out work of the type with which the Subcontract is concerned,

the Subcontractor must forthwith and where possible before the conditions are disturbed notify the Subcontract Superintendent in writing of the conditions encountered.

- (b) The *Subcontractor* agrees to assume all risk for latent conditions and the *Subcontractor* acknowledges and agrees that it has made all allowances in the *contract sum* for the assumption of the risk for latent conditions. The *Subcontractor* shall have no *claim* arising out of or in connection with latent conditions discovered or encountered in, on or under the *site* (or in the vicinity of the *site*) or in the course of carrying out *Subcontract Works*.

### 13. Testing

- (a) The Subcontractor must perform all Tests (including a reset) required by the Subcontract.
- (b) All Tests are to be carried out in accordance with any procedure:
  - (i) set out in the Subcontract which may apply to the Tests; or
  - (ii) if no procedure exists, as reasonably directed by the Subcontract Superintendent.
- (c) Unless otherwise specified, the Subcontractor bears the costs of all Tests directed by the Subcontract Superintendent under this clause.

### 14. Payment

#### 14.1 Draft Progress Claim

- (a) The Subcontractor must provide to the Contractor a draft progress claim, one (1) business day prior to the day in Item 11. The draft progress claim is to include the following:
  - (i) titled "Draft Progress Claim";
  - (ii) details of the value of the *Subcontract Works* done in the performance of the Subcontract to that time;
  - (iii) details of other moneys then due to the Subcontractor pursuant to the provisions of the Subcontract; and
  - (iv) accompanied by any other documentation reasonably requested by the Contractor under the Subcontract. Without limiting the generality of this subclause, "other documentation" may include "as constructed" drawings, operating and maintenance manuals and/or instructions, test date, certifications, and warranties, as applicable to the *Subcontract Works*.

#### 14.2 Progress Claims

- (a) The Subcontractor shall be entitled to make a claim for payment at the time stated in Item 11.

- (b) Each progress claim shall be given in writing to the Subcontract Superintendent and shall:
  - (i) include details of the value of the *Subcontract Works* done in the performance of the Subcontract to that time;
  - (ii) include details of other moneys then due to the Subcontractor pursuant to the provisions of the Subcontract; and
  - (iii) be accompanied by any other documentation reasonably requested by the Contractor under the Subcontract. Without limiting the generality of this subclause, "other documentation" may include "as constructed" drawings, operating and maintenance manuals and/or instructions, test data, certifications, and warranties, as applicable to the Subcontract Works.

### 14.3 Certificates

- (a) The Subcontract Superintendent shall, within 10 business days after receiving such a progress claim issue to the Contractor and Subcontractor:
  - a. a progress certificate evidencing the Subcontract Superintendent's opinion of the moneys due from the Contractor to the Subcontractor pursuant to the progress claim and reasons for any difference ('progress certificate'); and
  - b. a certificate evidencing the Subcontract Superintendent's assessment of retention moneys and moneys due from the Subcontractor to the Contractor pursuant to the Subcontract.
- (b) If the Subcontractor does not make a progress claim in accordance with item 11, the Subcontract Superintendent may issue the progress certificate.
- (c) The Subcontractor must give the Contractor a tax invoice for the balance of the progress certificate issued by the Subcontract Superintendent pursuant to this subclause 14.3 within 2 business days of receipt of that progress certificate.
- (d) Subject to the satisfaction of any pre-conditions to payment set out in this clause 14 and this Subcontract, the Contractor must pay the Subcontractor the amount certified for payment to the Subcontractor in the payment certificate provided by the Contractor within the time provided in item 13 after the provision of a Progress Claim under clause 14.2.
- (e) Where the balance of the progress certificate in the progress certificate identifies an amount to be paid by the Contractor to the Subcontractor, the Contractor within 60 business days after the date the claim was submitted shall pay to the Subcontractor the balance of the progress certificate after setting off such amount as it is entitled to set off as the Contractor elects to set off.
- (f) If the balance of the progress certificate identifies an amount to be paid by the Subcontractor to the Contractor, the Subcontractor shall pay that balance to the Contractor within 5 business days of receiving the progress certificate.
- (g) Neither a progress certificate nor a payment of monies shall be evidence that the subject *Subcontract Works* has been carried out satisfactorily.

#### **14.4 Final payment claim and certificate**

- (a) Within 28 days after the expiry of the last defects liability period, the Subcontractor shall give the Subcontract Superintendent a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other Claims whatsoever in connection with the subject matter of the Contract.
- (b) All such *claims* by the subcontractor, whether under clause 14 or this subclause which have not already been barred, shall be barred after expiration of the period for lodging a final payment claim pursuant to this clause 14.4
- (c) Within 10 business days after receipt by the Subcontract Superintendent of the Subcontractor's final payment claim, the Subcontract Superintendent shall issue to both the Contractor and the Subcontractor a payment schedule endorsed "final certificate" (the final certificate) evidencing the moneys finally due and payable between the Contractor and the Subcontractor on any account whatsoever in connection with the subject matter of the Subcontract.
- (d) The Subcontractor must give the Contractor a tax invoice for the balance of the final certificate issued by the Subcontract Superintendent pursuant to this clause 14.4 within 2 business days of receipt of that final certificate.
- (e) Those monies certified as due and payable shall be paid by the Contractor or the Subcontractor, as the case may be, within 10 business days after the Subcontract Superintendent issues the final certificate.

#### **14.5 Interest**

Interest in Item 12 shall be due and payable after the date of default in payment. If nothing is stated in item 12 then interest is \$0.00.

#### **14.6 Other moneys due**

- (a) The Contractor may set off or deduct at any time from any money payable to the Subcontractor under the Subcontract:
  - (i) any debt or other moneys due from the Subcontractor to the Contractor under the Subcontract;
  - (ii) any other money which the Contractor reasonably believes is payable from the Subcontractor to the Contractor under the Subcontract; or
  - (iii) any moneys due and owing otherwise than in connection with the subject matter of the Subcontract.
- (b) A failure or delay in the Contractor exercising any of its rights under this subclause, shall not prejudice any of the Contractor's rights to subsequently exercising its rights under this subclause.

#### **15. Defects Liability Period**

- (a) The *defects liability period* stated in Item 8 shall commence on the date of practical completion at 4:00pm.
- (b) the Subcontractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Subcontract Works as is reasonably possible.
- (c) As soon as possible after the date of practical completion, the Subcontractor shall rectify all defects existing at the date of practical completion in accordance with the program approved by the Contractor.
- (d) During the defects liability period, the Contractor may give the Subcontractor a direction to rectify a defect which:
  - (i) shall identify the defect and the date for completion of its rectification; and
  - (ii) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefore (not exceeding that in Item 8, commencing at 4:00pm on the date of rectification is completed and governed by this clause).
- (e) If the rectification is not commenced or completed by the stated dates, the Contractor may have the rectification carried out by others but without prejudice to any other rights and remedies the Contractor may have. The cost thereby incurred by the Contractor will be certified by the Subcontract Superintendent as moneys due and payable to the Contractor.

## **16. Practical Completion**

- (a) The Subcontractor must give to the Subcontract Superintendent at least 10 business days written notice of the date upon which the Subcontractor anticipates that practical completion will be achieved.
- (b) When the Subcontractor is of the opinion that practical completion has been reached, the Subcontractor shall in writing request the Subcontract Superintendent to issue a certificate of practical completion. Within ten business days after receiving the request, the Subcontract Superintendent shall give the Subcontractor and the Contractor either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.
- (c) If the Subcontract Superintendent is of the opinion that practical completion has been reached, the Subcontract Superintendent may issue a certificate of practical completion even though no request has been made.

## **17. Indemnities and Insurance**

- (a) The Subcontractor is liable for any loss or claim in respect of any personal injury or property loss or damage, which arises out of the negligence of the Subcontractor, Subcontractor's Associates or subcontractors in the course of the *Subcontract Works*.
- (b) The Subcontractor indemnifies the Contractor against any and all liability, loss or claim of that type. The Subcontractor's indemnity will be reduced in proportion to the extent (if any) that the Contractor has contributed to the liability, loss or claim.

- (c) The Subcontractor will, prior to commencement of the Subcontract Works, effect and maintain the Insurance Cover. Additionally, the Subcontractor must prior to commencement of the Subcontract Works:
  - (iii) ensure that all insurances taken out by it shall also be taken out by its subcontractors, in similar terms
  - (iv) ensure that the Contractor is a named party on the Public Liability and Product Liability policies of insurances; and
  - (v) ensure the Contractor is provided copies of all insurances taken out in accordance with this Subcontract. If the Subcontractor fails to provide copies of all insurances, the Contractor will not permit the Subcontractor access to the Site.

## **18. Assignment and Novation**

- (d) The Subcontractor shall not, without the prior written consent of the Contractor and except on such terms and conditions as are determined in writing by the Contractor, assign the Subcontract or any other right or benefit or interest under this Subcontract.
- (e) The Contractor may assign and/or novate its rights and obligations and any other interest under the Subcontract without the approval of the Subcontractor and the Subcontractor will execute such documents as may be reasonably required by the Contractor to effect such assignment or novation.
- (f) A change in the shareholding of either party altering the effective control of the either party will be deemed to be an assignment for the purpose of this clause.

## **19. Termination**

### **19.1 Subcontractor's default**

- (g) If the Subcontractor:
  - (i) wrongfully suspends the whole or any part of the Subcontract works; or
  - (ii) substantially departs from a program without reasonable cause or the Subcontract Superintendent's approval; or
  - (iii) fails to proceed with due expedition and without delay; or
  - (iv) commits and Enforceable Insolvency Event; or
  - (v) fails to comply with any of the Subcontractor's obligations under the Subcontract;
  - (vi) fails to proceed with the Subcontract Works in a diligent manner, or
  - (vii) is otherwise in default under this Subcontract,

the Contractor may give written notice to the Subcontractor under subclause 19.1 of the alleged default, and a direction to remedy the default within a reasonable period.

- (b) If the Subcontractor fails to remedy the default to the satisfaction of the Contractor by the stated date and time, the Contractor may by written notice to the Subcontractor:

- (i) take out of the Subcontractor's hands the whole or part of the Subcontract Works remaining to be completed, or
  - (ii) terminate the Subcontract.
- (c) If the Contractor exercises its rights under subclause 19.1, the Contractor may deduct, back charge or retain all money incurred in completion of the Subcontract Works from monies otherwise due to the Subcontractor. The Subcontractor shall provide to the Contractor or any third party engaged by the Contractor all assistance necessary to complete the Subcontract Works.

## **19.2 Termination for convenience**

- (a) Notwithstanding any other provision of the Subcontract but to the extent permitted by law, the Contractor may at any time, in the Contractor's absolute and sole discretion, terminate the Subcontract by giving notice to the Subcontractor.
- (b) If the Subcontract is terminated pursuant to subclause 19.2
  - (i) the Subcontract Superintendent shall issue a progress certificate for *Subcontract Works* carried out to the date of termination, evidencing the amount which would have been payable had the Subcontract not been terminated, and had the Subcontractor been entitled to and made a progress claim on the date of termination;
  - (ii) the Contractor shall pay the Subcontractor:
    - (A) the amount due to the Subcontractor evidenced by all unpaid certificates;
    - (B) the cost of materials and equipment reasonably ordered by the Subcontractor for the *Subcontract Works* and which the *Subcontractor* is liable to accept, but only if they will become the *Contractor's* property upon payment; and
    - (C) the costs reasonably incurred removing *temporary works* and *construction plant*;
  - (iii) Subject to any right to have recourse to security under clause 4, the Contractor shall promptly release and return all security provided by the Subcontractor;
  - (iv) The Subcontractor shall have no other right or entitlement to claim any other costs, expenses, losses, damages or other liabilities arising out of, or in any way connected with such termination; and
  - (v) The Contractor may employ and pay any third party to perform the uncompleted part of *Subcontract Works* and the Contractor or those persons may do anything necessary to perform the uncompleted part of *Subcontract Works*.

## **20. Disputes**

- (a) If any dispute or difference arises between the Contractor and the Subcontractor in relation to the Subcontract Works or this Subcontract, then either party may give notice to the other in writing of such dispute or difference. If the dispute or difference is not resolved with 10 days thereafter, the dispute shall be referred to arbitration in

accordance with the provisions of the *Commercial Arbitration Act 2010* (NSW) as amended.

- (b) The Subcontractor must indemnify the Contractor against all damage, loss or liability suffered or incurred by the Contractor (including legal costs incurred by the Contractor on an indemnity basis) arising out of or in connection with a dispute in this clause 20.

## **21. Procure Obligations**

- (a) Without limiting the generality of the other warranties or the Subcontractor's obligations in this Subcontract, the Subcontractor further warrants to the Contractor that:
  - (i) the Subcontractor must ensure that it has, at all times, access to Procure;
  - (ii) the Subcontractor must access, obtain, and have full knowledge of all drawings, specifications, reports and other documents or information relating to or in connection with the Subcontract Works, that are made available via Procure;
  - (iii) the Subcontractor must carry out and complete the Subcontract Works, and comply with all other obligations under this Subcontract, in accordance with the requirements stated in or to be inferred from Subcontract Documents;
  - (iv) the Contractor or Subcontract Superintendent may, at any time, record on Procure any Defect, and direct the Subcontractor to rectify, remove or replace the Defect, at the Subcontractor's own expense, and within such time as directed by the Contractor. The Subcontractor must comply with the Contractor's direction;
  - (v) if the Subcontractor has complied with the Contractor's direction given under the Subcontract, then it must notify the Contractor via Procure that it has complied with the Contractor's direction; and
  - (vi) if the Subcontractor has not complied with the Contractor's direction given pursuant to clause 21(a)(iv), then the Contractor may have the rectification, removal or replacement work carried out by others with the cost incurred in so doing to be a debt due from the Subcontractor to the Contractor.

## **22. Intellectual Property**

Any and all Intellectual Property Rights of the Subcontractor, in relation to the Subcontract Works and any documents relating to the Subcontract Works and this Subcontract (including but not limited to manuals and drawings), will be passed on to the Contractor once a Certificate of Practical Completion has issued.

## **23. Working Hours**

The Subcontractor will carry out the Subcontract Works during the working hours directed by Subcontract Superintendent. If such working hours and working days are not ascertained, they shall be in accordance with legislative requirements. The working hours shall not be varied without the Subcontract Superintendent's prior written approval, except when, in the interests of safety of persons or property, the Subcontractor finds it necessary to carry out the Subcontract Works, otherwise the Subcontractor must give the Subcontract Superintendent written notice of those circumstances as early as possible.

## 24. Notices

Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to the Contract:

- (a) shall be legible, in writing and in English addressed as specified in the Schedule of Items or as specified to the sender by any party by notice;
- (b) shall be regarded as being given by the sender and received by the addressee:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post, 3 business days from and including the date of postage; or
  - (iii) if by email, when received by the addressee,

but if the delivery or receipt is on a day which is not a business day or is after 5.00 pm (addressee's time) it shall be regarded as received at 9.00 am on the following business day; and

- (c) is ineffective if sent by facsimile transmission.

In this clause 24, a reference to an addressee includes a reference to an addressee's officers, agents or employees. Notices sent by email shall be deemed to be ineffective and not delivered if the sender receives an 'out of office' return email, or some other email or message indicating that the email was not delivered or received.