

SPECIAL CONDITIONS: PART A

The following **Special Conditions** are made in addition to or in amendment of the **General Conditions of the Period Subcontract (General Conditions)**:

1. In all clauses of the General Conditions delete the words “Work Order” and replace them with the words “Purchase Order”.
2. In clause 1 of the General Conditions:

- (a) Delete the definition of **Date for Completion** in its entirety and replace with the following:

means the date stated in the **Purchase Order**, under “Scheduled Completion” by which the **Subcontract Works** are to be brought to **Completion**, as adjusted from time to time under the **Subcontract**.

- (b) Amend the definition of **Defects Liability Period** as follows:

- i. at item (a), by deleting the words “the period stated in Item 8 of the **Work Order**”, and replacing them with the following words, “the period stated in the **Purchase Order**”.

- (c) Delete the definition of **Drawings** in its entirety and replace it with the following:

means the plans (including, but not limited to, elevations, sections and details relating to the **Subcontract Works**) and designs relating to the **Subcontract Works** described in the **Purchase Order** or in the Appendix.

- (d) Delete the definition of **Land** in its entirety and replace it with the following:

means the land described in the **Purchase Order** on which the **Subcontract Works** are to be carried out.

- (e) Delete the definition of **Schedule of Rates** in its entirety and replace with the following:

means the rates stated in the **Purchase Order** to be applied to the **Subcontract Works** carried out by the **Subcontractor** if applicable as stated in the **Purchase Order**.

- (f) Delete the definition of **Specifications** in its entirety and replace with the following:

means the specifications relating to the **Subcontract Works** described in the **Purchase Order**, if any.

- (g) Delete the definition of **Subcontractor** in its entirety and replace it with the following:

means the person stated in Item 2 of the **Schedule** and includes the **Subcontractor's** permitted assignees and transferees and the word “Vendor” may also be used interchangeably with the word “Subcontractor”.

- (h) Delete the definition of **Subcontract Price** in its entirety and replace it with the following:

means the amount worked out in accordance with Clause 3.2 or 3.3, as applicable, as adjusted from time to time under the **Subcontract**. The terms "Total Price" and/or "Remaining Balance" as used in the **Purchase Order** shall also mean the **Subcontract Price**.

- (i) Delete the definition of **Subcontract Works** in its entirety and replace it with the following:

means the whole of the work to be carried out by the **Subcontractor** under the **Subcontract**, a description of which is contained in the scope of works in the **Purchase Order**, including **Variations** to the **Subcontract Works**

3. In clause 3 of the General Conditions:

- (a) Delete clause 3.2 in its entirety and replace with the following:

If the **Subcontract Price** is designated as a lump sum in the **Purchase Order**, the **Subcontract Price**, at the **Date of the Formation of the Subcontract**, is the lump sum amount stated in the **Purchase Order**.

- (b) Amend clause 3.3 as follows:

- i. Delete the words, "If Item 3(b) of the **Work Order** is selected", and replace with the following words "If the **Purchase Order** states that the **Subcontract Price** is based in a **Schedule of Rates**, then".

4. In clause 4 of the General Conditions:

- (a) Delete the clause title in its entirety and replace it with the following; **"DISCREPENCIES, AMBIGUITIES, CONFIDENTIAL INFORMATION AND MEDIA"**.

- (b) Insert new clause 4.4 as follows:

Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after expiry or earlier termination of the **Subcontract**.

(c) Insert new clause 4.5 as follows:

Media

The **Subcontractor** agrees that any images/video or media taken from the **Site** that they wish to publish in any format or use on any platforms including but not limited to Facebook, Instagram, LinkedIn, Houzz, Pinterest, YouTube, Snapchat, Twitter, Outlook or the **Subcontractor's** Website; will first be approved in writing by the **Contractor** or a nominated representative of the **Contractor**.

The **Subcontractor** indemnifies the **Contractor** for any damages or loss to the **Contractor** for the use of any content that has not been approved by the **Contractor** or the **Contractor's** representative. Damage may include but is not limited to:

- i) fines or penalties being imposed on the **Contractor** for any reason,
- ii) images or any content that may effect the good reputation of the **Contractor**;
- iii) images or any content that may be deemed as defamatory and/or affecting the reputation of the Contractor; and
- iv) any images or content that may infringe any intellectual property rights.

5. In clause 5 of the General Conditions:

(a) Amend clause 5.1(a) as follows:

- i. Delete the words, "Item 9 of".

(b) Amend clause 5.1(b) as follows:

- i. Delete the words, "Item 9 of" and "Item 10 of".

(c) Delete clause 5.2 in its entirety and replace with the following:

If stated in **Purchase Order** that **Security** is to be provided in the form of a cash retention, and subject to the **Subcontract**, the **Contractor** may deduct from any amount due to the **Subcontractor**, and retain, a percentage of the amount of each progress payment due, in accordance with the **Purchase Order**, until the total amount retained by the **Contractor** equals the amount of the value of the **Security** stated in the **Purchase Order**.

(d) Amend clause 5.6 as follows:

- i. Delete the words, "Item 12 of".

6. In clause 6 of the General Conditions:

(a) Amend clause 6.1 as follows:

- i. Delete the words, “Part A or Part B of the **Appendix**”, and replace with the words “the **Purchase Order**”.

(b) Amend clause 6.4 as follows:

- i. Delete the words, “Part A or Part B of the **Appendix**”, and replace with “the **Purchase Order**”.

(c) Amend clause 6.5 as follows:

- i. Delete the words, “Part A or Part B of the **Appendix**”, with “the **Purchase Order**”.

7. Delete clause 7 of the General Conditions in its entirety and replace with the following:

The **Subcontractor** accepts the risk of all **Latent Conditions**, including all time and cost implications and is not entitled to any extension of time, costs (including delay, disruption or prolongation costs), losses, expenses or damages arising from, relating to or in connection with any such conditions or things.

8. In clause 10 of the General Conditions:

(a) Insert new clause 10.5 as follows:

Subcontractor’s further warranties

Without limiting any other warranties provided by the **Subcontractor** to the **Contractor**, the **Subcontractor** warrants that it:

- a) has examined and has actual knowledge of the **Site** and all information made available to, or provided to, or obtained by, the **Subcontractor**;
- b) shall, upon request, provide to the **Contractor** all documents and information necessary and incidental to the carrying out, completion and occupation (if applicable) of the **Subcontract Works**, including, without limitation, all as installed / built drawings and service manuals, warranties and guarantees, testing and calibration records, shop drawings, samples, and certificates of compliance;
- c) shall carry out the **Subcontract Works** pursuant to the **Subcontract** within working hours and days as the **Contractor** may instruct from time to time; and
- d) shall comply with all of its obligations under the **Subcontract**.

(b) Insert new subclause 10.6 as follows:

Commencement on Site

The **Subcontractor** shall not proceed to carry out any **Subcontract Works** on **Site** if in the **Subcontractor's** opinion the previous work on **Site** is unsatisfactory. If the **Subcontractor** is of the opinion that the previous works on **Site** are unsatisfactory, the **Subcontractor** shall give the **Contractor** prompt notice of the same, specifying the detailed reasons that support the **Subcontractor's** opinion that the previous works on **Site** are unsatisfactory. Where the Subcontractor has issued such notice, the **Subcontractor** shall only commence work on **Site** if the **Contractor** has issued a written instruction expressly overriding such opinion and/or accepting responsibility for the **Subcontract Works** proceeding. Commencement of any **Subcontract Works** on **Site** shall be evidence that the **Subcontractor** accepts all previous work on **Site** and requires no additional payment and that the **Subcontractor** shall be liable for any resultant or consequent defects or damage in the **Subcontract Works**.

9. In clause 11 of the General Conditions:

- (a) Delete clause 11.2 in its entirety.
- (b) Delete clause 11.5 in its entirety.

10. In clause 14 of the General Conditions:

- (a) Amend the first sentence of clause 14(a) by inserting the words, "to the satisfaction of the **Contractor**", after the words, "the **Subcontractor** must".
- (b) Delete subclause 14(c) in its entirety and replace with the following:

The Subcontractor must ensure that as at the **Date of Completion**, the **Site** is clean and tidy and that there is no rubbish, surplus material, constructional plant and equipment or tools and temporary works left on **Site**.

- (c) Insert new subclause 14(e) as follows:

There is to be no smoking anywhere on the **Site** at any time.

- (d) Insert new subclause 14(h) as follows:

All individuals attending or working on the **Site** or representing the **Contractor** are to be respectful to those around them.

11. In clause 15 of the General Conditions:

- (a) Insert new subclause 15 (e) as follows:

The **Subcontractor** is responsible for ensuring no materials or other objects are left or stored outside the **Site** boundary, including but not limited to the following locations:

- i) Private or public Footpaths;
- ii) Driveways;
- iii) Verge or Nature Strips; and
- iv) Curb or Road in any form.

(b) Insert new subclause 15 (f) as follows:

The **Subcontractor** is responsible for ensuring none of the employees or individuals associated with the **Subcontract Works** they are providing, enter into any neighboring properties or complete any works outside of the **Site** boundaries. The only works that are permitted outside of the **Site** boundaries is that work which can be performed in a factory or warehouse.

12. In clause 16 of the General Conditions:

(a) Insert new clause 16A as follows:

The **Subcontractor** is responsible for the care of the **Subcontract Works**, which includes the responsibility to adequately cover up, protect or put other reasonable measures in place to ensure that the **Subcontract Works** are not impacted or damaged in any way by other trades or third parties. In the event of any damage or impact that is a result of a failure to adequately cover up, protect or put other reasonable measures in place, the **Contractor** may issue a **Direction** to the **Subcontractor** to rectify the damage or impact and provide a time for rectification. If the **Subcontractor** fails to comply with such a **Direction** by the time stated in the **Direction** for rectification, the **Contractor** may perform that obligation on the **Subcontractor's** behalf or have that work carried out by other persons. The reasonable costs incurred by the **Contractor** in doing so may be recovered by the **Contractor** as a debt due and payable from the **Subcontractor** to the **Contractor**. The rights given to the **Contractor** by this Clause are in addition to any other right of the **Contractor**.

13. In clause 18 of the General Conditions:

(a) Delete clause 18.1 in its entirety and replace it with the following:

Subcontractor to have access to the Site and existing buildings

The **Contractor** must provide to the **Subcontractor** access to the **Site**, and all reasonably required access to any existing buildings on the Land necessary to carry out the **Subcontract Works**, by the date stated in the **Purchase Order**.

If the **Contractor** is not in a position to provide the **Subcontractor** with access to the **Site** by the date stated in the **Purchase Order** for any reason, the **Contractor** shall give the **Subcontractor** written notice, at least seven (7) days prior the date for access to the **Site** stated in the **Purchase Order**, specifying:

- (i) a new date for access to the **Site (Revised Date for Access)**; and
- (ii) a new **Date for Completion (Revised Date for Completion)**.

The parties agree that the:

- (iii) **Subcontractor** shall not be entitled to claim damages and/or compensation if the **Contractor** issues a Revised Date for Access to the **Site** and/or a Revised Date for Completion; and
- (iv) **Contractor** need not provide any reasons for issuing a Revised Date for Access to the **Site** and/or a Revised Date for Completion; and
- (v) **Contractor** may, if required, change the Revised Date for Access and the Revised Date for Completion by giving the **Subcontractor** reasonable notice in writing.

- (b) Amend clause 18.2 (a) as follows:

In the first sentence, delete the words “Item 13 of”.

- (c) Deleted clause 18.2(b) in its entirety.

14. In clause 20 of the General Conditions:

- (a) Amend clause 20.2 as follows:

In the second and third sentence, delete the words “the time provided by Item 14 of the **Work Order**” and replace them with the following words, “two (2) **Business Day**”

- (b) Amend clause 20.3 as follows:

In the second sentence:

- (i) delete the words, “Item 15 of”; and
- (ii) add the words “or limit” in between the words “allowance” and “for”

- (c) Delete clause 20.5 in its entirety.

15. Delete clause 21 in its entirety.

16. In clause 23 of the General Conditions:

- (a) Delete clause 23.5 in its entirety.
- (b) Delete clause 23.7 in its entirety.

17. In clause 24 of the General Conditions:

- (a) Amend clause 24.1 as follows:

- i. Delete the words, "Item 17 of".

(b) Amend clause 24.2 as follows:

- i. In the third sentence, delete the words, "Item 17(a) of".

(c) Delete clause 24.5 in its entirety and replace it with the following:

If the **Purchase Order** provides for a limit on liquidated damages, the **Subcontractor's** liability under Clause **24.2** is limited to the amount stated in the **Purchase Order**.

18. In clause 26 of the General Conditions:

(a) Delete clause 26.2 in its entirety and replace with the following:

The **Contractor** may request a **Variation** to the **Subcontract Works**.

(b) Delete clause 26.4 in its entirety.

(c) Delete clause 26.5 in its entirety.

(d) Delete clause 26.9 in its entirety.

(e) Insert new clause 26.10 as follows:

No payment unless agreed

For the avoidance of doubt, any variation to the **Subcontract Works** performed that do not strictly comply with the requirements of this clause 26 and/or have not been agreed in written form between the **Contractor** and **Subcontractor** will not be paid.

19. In clause 27 of the General Conditions:

(a) Amend subclause 27.1(b)(i) as follows:

- i. Insert new subclause 27.1(b)(i)(E) as follows:

the **Purchase Order** number.

- ii. Insert new subclause 27.1(b)(i)(F):

The name of the **Contractor's** supervisor having control of the job.

(b) Delete clause 27.6 in its entirety.

(c) Delete clause 27.7 in its entirety.

20. In clause 28 of the General Conditions:

(a) Amend clause 28.2 as follows:

i. Insert new subclause (c):

If the **Subcontractor** remains in default of the **Subcontract** ten (10) business days after the **Contractor** has given it a written notice requiring the default to be remedied as required then, without prejudice to any other rights or remedies under the **Subcontract** or at law, the **Contractor** may itself or by others remedy the default, and the costs of remediation (including but not limited to any administrative, supervision and legal costs on an indemnity basis) shall be a debt due and payable by the **Subcontractor** to the **Contractor**.

(b) Delete clause 28.3 in its entirety.

(c) Amend clause 28.4 as follows:

i. Insert the following at the end of clause 28.4:

The reasonable costs incurred by the **Contractor** in doing so may be recovered by the **Contractor** as a debt due and payable from the **Subcontractor** to the **Contractor**. The rights given to the **Contractor** by this Clause are in addition to any other right of the **Contractor**.

(d) Delete clause 28.6 in its entirety.

21. Amend clause 29.1 as follows:

i. in the sentence that appears after sub-paragraph f) add the following words "or email" after the word "post"

22. Delete clause 29.4 in its entirety.

23. In clause 33 of the General Conditions:

(a) Delete clause 33.2 (a) in its entirety and replace with the following:

i. Upon receipt of the notice of dispute pursuant to **clause 33.1**, the parties may arrange, and participate in, a 'without prejudice' conference between them, or their authorized representatives, in an attempt to resolve the dispute.

(b) Delete subclause 33.2(b) in its entirety.

(c) Delete subclause 33.2(c) in its entirety.

(d) Delete clause 33.3 in its entirety.

(e) Delete clause 33.4 in its entirety.

- (f) Delete clause 33.5 in its entirety and replace with the following:

If the parties fail to conduct or agree to the 'without prejudice' conference under **clause 33.2(a)** within five (5) **Business Days** of receipt of the notice of dispute pursuant to **Clause 33.1** for any reason or if the 'without prejudice' conference under **clause 33.2(a)** takes place and it does not resolve the dispute, either party may commence legal proceedings in relation to the dispute or any part of the dispute.

For the avoidance of doubt, the notice of dispute under **clause 33.1** and the 'without prejudice' conference under **clause 33.2(a)** shall not be regarded as or deemed to be a precondition or a step necessary prior to either party commencing legal proceedings.

- (g) Delete clause 33.6 in its entirety.

24. In clause 35 of the General Conditions:

- (a) Insert new clause 35.4 as follows:

Contractor's lawful direction

- a) The **Contractor** can at any time request the **Subcontractor** move any equipment or materials or objects if they believe it:
 - i) creates a health and safety hazard or risk;
 - ii) will cause delay in construction progress;
 - iii) has been stored incorrectly and will in some way damage the materials.
- b) If the **Subcontractor** has not relocated the equipment or materials or objects as per the **Contractor's Direction** pursuant to Clause 35.4 (a), by the time nominated by the **Contractor**, the **Contractor** may arrange to have the materials or equipment or object relocated at the **Subcontractor's** expense. Any charges to the **Contractor** directly related to the relocation of the materials or equipment or objects will be a deduction from the total owing to the **Subcontractor** or as an invoice with the costs to compensate the **Contractor**.

25. In clause 36 of the General Conditions:

- (a) Amend clause 36.4 as follows:

- i. Insert the following at the end of clause 36.4:

Where the **Subcontractor** Subcontracts any part of the **Subcontract Works** pursuant to this clause, the **Subcontractor** is liable to the **Contractor** for the acts and omissions of any of its subcontractors,

employees and agents of those subcontractors as if they were acts or omissions of the **Subcontractor**.

(b) Insert new clause 36.10 as follows:

Survives Termination

All its obligations, all warranties, representations and indemnities given by the **Subcontractor** and rights of the **Contractor**, arising out of or in connection with the **Subcontract** capable of surviving termination or expiration of the **Subcontract**, shall survive the termination or expiration of the **Subcontract**, each constitute separate and independent obligations from its other obligations under the **Subcontract** and are given with the intent that liability is not confined to breaches discovered prior to the date of the **Subcontract**.

(c) Insert new clause 36.11 as follows:

Work Hours

The **Subcontractor** must, unless otherwise agreed in writing between the parties, complete the **Subcontract Works** during the following site hours:

- a) 6:30am – 4:00pm | Monday to Friday; and
- b) 8:00am – 1:00pm | Saturday.