

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 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

NAME OF CONTRACTOR (as shown on licence card):		
Licence Number:	ACN: (if company)	ABN:
Telephone:	Fax:	
Email:		
Address:		

NAME OF SUBCONTRACTOR (as shown on licence card):		
Licence Number:	ACN: (if company)	ABN:
Telephone:	Fax:	
Email:		
Address:		

ITEM	SUBJECT	PARTICULARS
1.	BRIEF DESCRIPTION OF HEAD CONTRACT	Project Description: _____ _____ Principal: _____ Head Contract Date: _____ / _____ / _____
2. (Clause 1.1 of the <i>General Conditions</i>)	SITE	Address: _____ _____ _____ Local Government: _____
3. (Clause 1.1 of the <i>General Conditions</i>)	DESCRIPTION OF THE WORKS Insert a description of the Works . Refer to, and attach, any plans and specifications.	_____ _____ _____ _____ _____ (Attach an additional Schedule to this Subcontract if more space is required)

4. (Clause 1.1 of the <i>General</i> <i>Conditions</i>)	SUBCONTRACT DOCUMENTS IN ORDER OF PRECEDENCE	1. Subcontract Schedule 2. Special Conditions (if any) 3. General Conditions of Subcontract 4. Specifications (insert details, including date, or delete if not applicable) 5. Plans / Drawings (insert details, including date, or delete if not applicable) 6. _____ 7. _____ <i>(Attach an additional Schedule to this Subcontract if more space is required)</i>
5. (Clause 1.1 of the <i>General</i> <i>Conditions</i>)	START DATE	_____ / _____ / _____ OR Method for determining Start Date : _____
6. (Clause 1.1 of the <i>General</i> <i>Conditions</i>)	DATE FOR SUBSTANTIAL COMPLETION	_____ / _____ / _____ OR _____ days from the Start Date .
7. (Clauses 8.5 and 8.8 of the <i>General</i> <i>Conditions</i>)	DELAY COSTS	Subcontractor's maximum entitlement to delay costs: \$ _____ per day (<u>excluding GST</u>)
8. (Clauses 1.1 and 11.4. of the <i>General</i> <i>Conditions</i>)	SUBCONTRACT PRICE	Subcontract Price: \$ _____ (<u>excluding GST</u>)
9. (Clauses 9.2 & 22.7 of the <i>General</i> <i>Conditions</i>)	REFERENCE DATE	The last Business Day of each week / fortnight / month (delete those that do not apply) OR Other (specify): _____ <i>(A Reference Date must occur at least monthly)</i>
10. (Clause 9.2 of the <i>General</i> <i>Conditions</i>)	PAYMENT PERIOD	Within _____ Business Days after the Contractor's receipt of a payment claim (up to a maximum of 25 Business Days)

11. (Clause 9.5 of the <i>General Conditions</i>)	INTEREST RATE ON LATE PAYMENTS	_____ % per annum (but not less than the 90 day Reserve Bank Bill rate plus 10%)
12. (Clause 10 of the of the <i>General Conditions</i>)	RETENTION	Retention per progress payment (% of progress payment) _____ % (Retention cannot be more than 10% of a single progress payment) Maximum Total Retention (% of Subcontract Price) _____ % (Prior to Substantial Completion, the maximum total retention cannot exceed 5% of the Subcontract Price. After Substantial Completion, the maximum total retention cannot exceed 2.5% of the Subcontract Price) (NOTE: If nothing is specified here, no retention applies to this Subcontract)
13. (Clause 13 of the <i>General Conditions</i>)	DEFECTS LIABILITY PERIOD	_____ weeks / months (delete the option that does not apply) after practical completion is reached under the Head Contract
14. (Clause 7.8 of the <i>General Conditions</i>)	LIQUIDATED DAMAGES	\$_____ per day (excluding GST)
15. (Clause 15.1(b) of the <i>General Conditions</i>)	SUBCONTRACTOR'S PUBLIC LIABILITY INSURANCE	Insurer: _____ Policy no.: _____ Amount of Cover: \$ _____

EXECUTED AS AN AGREEMENT

DATE OF SUBCONTRACT	Dated this _____ day of _____ 20 _____
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SIGNED BY THE CONTRACTOR	_____ Contractor Signature
	_____ Witness signature
SIGNED BY THE SUBCONTRACTOR	_____ 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 local government locality in which the Site is located.
 - (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, and includes the Subcontract Schedule, the Subcontract Documents and these general conditions;
 - (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 its 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 Meetings

- 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 parties acknowledge the obligation to comply with all relevant legislation including, but not limited to, the *Building Act 1975*, the *Building Industry Fairness (Security of Payment) Act 2017* and the *Queensland Building and Construction Commission Act 1991*.
- 4.2 The Subcontractor must carry out and complete the **Works** in accordance with the **Subcontract**:
- (a) in an appropriate and skillful 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.
- 4.3 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 skillful way using all reasonable skill and care.

5. Site

- 5.1 The Contractor gives to the **Subcontractor** a non-exclusive 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 complete and 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 all amounts owing pursuant to this Subcontract plus any applicable GST.
- 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 GST legislation, 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, that day of payment, at the higher of:
- (a) the interest rate stated in Item 11; or
 - (b) 10% plus the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills.

10. Retention

- 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 retention held by the Contractor is 5% of the **Subcontract Price**.
- 10.2 Any retention 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. All security must be in a form acceptable to the Contractor.
- 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.
- 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, or security, in excess of 2.5% of the **Subcontract Price**.
- 10.6 On the expiry of the **Defects Liability Period**, the Contractor must release to the Subcontractor any remaining amount of retention or security.
- 10.7 Subject to clause 10.9, if the Contractor intends to use the whole or any part of any retention of security to obtain any amount due by the Subcontractor to it under the **Subcontract**, the Contractor must give to the Subcontractor written notice of the intended use, and of the amount due, within 28 days after the Contractor becomes aware, or ought reasonably to have become aware, of its right to obtain the amount due.
- 10.8 Where retention or 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 a retention amount -
 - (i) the amount to be paid to the Subcontractor at the end of the **Defects Liability Period**; and
 - (ii) the date the retention amount is proposed to be paid 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 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 security on giving the Subcontractor 2 **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**, it 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 price, exclusive of GST, for which the Subcontractor is prepared to carry out and complete the proposed **Variation**.
- 11.3 Within 3 **Business Days** after its 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 for the duration of the **Subcontract** the following insurance policies:
- (a) all insurance policies required for the Subcontractor to comply with the *Workers Compensation and Rehabilitation Act 2003* (Qld); and

- b) a public liability insurance policy:
 - (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 **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 policies required in accordance with this clause, the Subcontractor must within 5 **Business Days** give to the Contractor such documentary evidence.

16. Compliance with Statutes

- 16.1 Without limitation, the **Subcontract** is subject to the provisions of the **QBCC Act** and the **BIF Act**.
- 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 **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 in respect of the **Works** under 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 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 is the "principal contractor" for the **Site** within the meaning of the *Work Health and Safety Act 2011* (Qld) and the regulations in force under that Act.
- 21.2 The Subcontractor must ensure that it and its employees and agents carry out the **Works** safely and in accordance with the Act or other applicable legislation.

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 failure by:
 - (a) the Contractor to pay to the Subcontractor a progress payment in accordance with clause 9;
 - (b) the Subcontractor to diligently carry out and complete the **Works** in an appropriate and skilful way using all reasonable care and skill, in accordance with the **Subcontract**, or in accordance with all applicable laws;
 - (c) the Subcontractor to effect or maintain any insurance policy required in accordance with clause 15;
 - (d) the Subcontractor to hold or retain all qualifications necessary to carry out the **Works**, including any licences required under the **QBCC Act**; or

- (e) either party to comply with the applicable requirements of, or otherwise connected with, the *Work Health and Safety Act 2011* or the *Environmental Protection Act 1994* (Qld).
- 22.3 If either 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 by the stated date and time 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 If the Contractor fails to show reasonable cause by the date and time stated in the notice given by the Subcontractor:
- (a) the Subcontractor may, by further written notice to the Contractor, suspend the whole or any part of the **Works**;
 - (b) the Subcontractor must remove the suspension if the Contractor remedies the breach;
 - (c) the Subcontractor may, by written notice to the Contractor, terminate the **Subcontract** if within 20 **Business Days** of the date of suspension under this clause 22.5, the Contractor fails to remedy the breach.
- 22.6 The right of a party to terminate this **Subcontract** in accordance with this clause is in addition to any other power, right, or remedy that the party may have at law or in equity.
- 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.

THE FOLLOWING TEMPLATES ARE PROVIDED TO ASSIST THE PARTIES TO COMPLY WITH THE SUBCONTRACT.

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	\$
TOTAL AMOUNT CLAIMED (inclusive of GST)	\$

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)
TOTALS:	\$	\$	\$

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:	
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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

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:	

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 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

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.

QBCC SUBCONTRACT - Q&A

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 particular circumstances, especially contractual matters, you should seek independent legal advice.

WHAT IS THE QBCC SUBCONTRACT?

The QBCC Subcontract is designed to be used for a typical engagement of a Subcontractor by a Contractor. The QBCC Subcontract has been drafted in a balanced way which clearly outlines the rights and obligations governing Contractor-Subcontractor relationships.

The QBCC Subcontract and associated forms contain all the information that needs to be filled out for the agreement to comply with the *Queensland Building and Construction Commission Act 1991* ('QBCC Act').

IS THE QBCC SUBCONTRACT SUITABLE FOR ALL PROJECTS AND ARRANGEMENTS?

The QBCC Subcontract is designed to be used for engagements on projects of any value and size.

CAN I USE THE QBCC SUBCONTRACT AS A SUB-SUBCONTRACT?

Yes. If a Subcontractor contracts the work out to another Subcontractor, a written agreement must be entered into.

The QBCC Subcontract can be used in these circumstances, with the Subcontractor becoming the Contractor for the purpose of that Subcontract. The Sub-Subcontractor will be the Subcontractor under the Subcontract.

WHAT IF THERE IS NO HEAD CONTRACT?

The QBCC Subcontract is designed to be used as a subcontract and not as a 'head' contract. This means that the Subcontractor is only able to contract to do work with a Contractor who holds a QBCC licence to do that work.

WHAT IS CONTAINED IN THE QBCC SUBCONTRACT?

The QBCC Subcontract contains a front page, the Subcontract Schedule, the General Conditions and 6 forms to assist with implementing the agreement.

WHERE DO I ENTER THE DETAILS OF THE AGREEMENT?

The Subcontract Schedule contains the details of your particular agreement. It is essential that you consider these items and ensure they are all filled in accurately.

If you need more space to complete any item write "see attached" and complete the item on a separate page which is then attached to the QBCC Subcontract.

WHAT ARE THE GENERAL CONDITIONS?

The General Conditions include the detailed clauses which govern your rights and obligations under the Subcontract.

WHAT IF I HAVE SPECIAL CONDITIONS?

If you have any Special Conditions these should be attached to the QBCC Subcontract. Take care (and if you're unsure, seek legal advice) to ensure that the Special Conditions do not conflict with the General Conditions.

CAN I SIGN THE SUBCONTRACT WITHOUT FILLING OUT ALL SECTIONS OF THE SUBCONTRACT SCHEDULE?

You should not sign the Subcontract until all sections of the Subcontract Schedule are considered and completed and you understand the General Conditions.

HOW DO I SIGN THE SUBCONTRACT?

Both parties to the Subcontract should initial all pages of the Subcontract Documents and sign the signing panel on the page following the Subcontract Schedule. If you have attached any documents to the Subcontract these should be initialed at the bottom of each page.

WILL A SUBCONTRACTOR BECOME AN EMPLOYEE IF A QBCC SUBCONTRACT IS USED?

Not by itself. If the QBCC Subcontract is properly used and completed it will be evidence tending against an employment relationship. However, if a Subcontractor is consistently engaged by the Contractor it will be a question of reviewing the relationship as a whole to determine if an employment relationship had arisen. If in doubt, you should seek formal legal advice.

MUST THE OTHER PARTY'S QBCC LICENCE NUMBER BE SHOWN ON THE SUBCONTRACT?

Yes. If the other party's QBCC licence number is not shown you should confirm that they are in fact licensed and insert these details before the Subcontract is signed. You should remember that Contractors engaged by a Subcontractor may not need a licence, but other Contractors doing building work do require a licence.

There are different licence classes for different types of building work. Refer to QBCC's website: qbcc.qld.gov.au or telephone QBCC 139 333 to conduct a free online licence search. The licence search allows you to download a free report on the other party's licence history and past performance, including details of past projects and disputes.

CAN I START WORK WITHOUT A WRITTEN SUBCONTRACT?

Under the QBCC Act, subcontracts for work over \$10,000 must be in writing before work commences. If the building work is valued at \$10,000 or less, a written subcontract must be in place before the work is completed.

MUST THE WORKS BE CLEARLY DESCRIBED IN THE SUBCONTRACT SCHEDULE?

Yes. The description of the Works should be as detailed as possible, particularly if there are no plans or specifications listed in Item 4 of the Subcontract Schedule. If you need more space or need to refer to specific drawings or specifications, write "see attached" and ensure the relevant documents are attached to the QBCC Subcontract, initialed by both parties and referred to in the description of the contracted work.

SHOULD THE DATE FOR SUBSTANTIAL COMPLETION IN THE SUBCONTRACT SCHEDULE BE REALISTIC?

Yes. You should ensure that you take into account non-working days, wet weather and any other likely delays in determining the Date for Substantial Completion. An unrealistic time frame may lead to dispute and late completion (liquidated) damages.

HOW SHOULD THE DAILY AMOUNT OF LIQUIDATED DAMAGES BE CALCULATED?

The liquidated damages amount should be a genuine estimate at the time the Subcontract is signed of the likely extra costs or loss the Contractor will suffer if the Works are not substantially completed on time.

Under Clause 7.8 of the General Conditions the Subcontractor will be required to pay this amount to the Contractor for each day after the Date for Substantial Completion until the Date of Substantial Completion.

ARE THE DELAY COSTS FOR THE SUBCONTRACTOR PROVIDED IN THE SUBCONTRACT SCHEDULE REASONABLE?

Under Clause 8.8 of the General Conditions this is the maximum amount per day the Subcontractor is entitled to for delay costs.

IS THE SUBCONTRACT PRICE SHOWN IN THE SUBCONTRACT SCHEDULE?

The Subcontract Price is shown at Item 8. You should note, however, that this price can be varied in accordance with Clause 11.4 of the General Conditions due to variations to the original scope of work.

CAN THE SUBCONTRACTOR CLAIM AN EXTENSION OF TIME TO COMPLETE THE WORK?

Clause 8 of the General Conditions outlines the process for claiming extensions of time to the Date for Substantial Completion.

HOW DOES THE SUBCONTRACTOR GET PAID?

From each Reference Date (see Subcontract Schedule Item 9), the Subcontractor is entitled to give the Contractor a progress claim for work carried out up to and including the Reference Date. A progress claim must comply with the requirements in Clause 9.3 of the General Conditions.

CAN THE CONTRACTOR DISPUTE THE AMOUNT THE SUBCONTRACTOR HAS CLAIMED?

If the Contractor disputes the amount of the progress payment claimed by the Subcontractor, the Contractor must give the Subcontractor a payment schedule in accordance with s76 of the BIF Act. An example of a Contractor's Payment Schedule is provided in Appendix - Form 2.

WHEN SHOULD THE SUBCONTRACTOR BE PAID?

By the end of the Payment Period (see Subcontract Schedule Item 10) the Contractor must pay the Subcontractor in accordance with Clause 9.2 of the General Conditions.

CAN THE SUBCONTRACTOR CLAIM INTEREST ON OVERDUE PAYMENTS?

Yes. See Clause 9.5 of the General Conditions.

HOW CAN MONEY BE RETAINED FROM PROGRESS PAYMENTS OWED, AND WHEN IS THE SUBCONTRACTOR ENTITLED TO RELEASE OF THOSE AMOUNTS?

Retention cannot be more than 10% of the amount of a progress payment. **Prior to Substantial Completion, the maximum total for all retentions cannot exceed 5% of the Subcontract Price. After Substantial Completion, the maximum total retention amount cannot exceed 2.5% of the Subcontract Price.** Refer to Subcontract Schedule Item 12 and Clause 10 of the General Conditions.

By law, Contractors are not able to withhold more than these sums, regardless of the Subcontract terms. If retention or security is held, the provisions of sections 67NA-67NC of the QBCC Act must be complied with. This includes releasing the retention amount in accordance with the contract and notifying the Subcontractor, in the approved form, of the end of the Defects Liability Period within 10 Business Days before the end of the period. Appendix - Form 6 may be used for this notification.

CAN WORK BE SUSPENDED?

There are limited circumstances under which the Subcontractor may suspend work or the Contractor may direct the Subcontractor to suspend work. The circumstances are outlined in Clauses 12 of the General Conditions.

WHAT ARE THE OBLIGATIONS IN RELATION TO DEFECTS?

The Subcontractor must ensure any defects are fixed prior to the expiry of the Defects Liability Period. See Clause 13 of the General Conditions.

WHAT ARE THE OBLIGATIONS IN RELATION TO INSURANCE?

Before the Subcontractor starts work, the Subcontractor must have paid for, and have in place, the insurance policies outlined in Clause 15 of the General Conditions. The Subcontractor must maintain these policies for the duration of the Subcontract.

ARE THERE ANY RIGHTS TO SET OFF PAYMENTS?

Yes. The Contractor may be entitled to set-off against any amount due to the Subcontractor under the Subcontract, provided the requirements outlined in Clause 18 of the General Conditions are met.

WHERE DO I GO IF THE OTHER PARTY BREACHES THE QBCC SUBCONTRACT?

You should refer to Clause 22 of the General Conditions. You should also seek legal advice.

WHAT EFFECT DOES SUSPENSION OR TERMINATION OF THE HEAD CONTRACT HAVE?

The Contractor may respectively suspend or terminate the QBCC Subcontract in accordance with Clauses 12.4 and 20.1 of the General Conditions.

NOTE: The QBCC Subcontract documentation includes sample forms to assist the parties with contract administration.

These documents are available for free download from QBCC's website: qbcc.qld.gov.au.

Need more information?

Visit qbcc.qld.gov.au or call us on 139 333.