

## **SUBCONTRACT TERMS**

### **1. Definitions and Interpretation**

*Approval:* means certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the carrying out of the Subcontract Works.

*Date of Substantial Completion:* When the Subcontractor has brought the Subcontract Works to the stage of Substantial Completion to the Contractor's satisfaction.

*Law:* includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local, common law or Approvals. The law governing the Subcontract is the law of Victoria.

*Subcontract Works:* means the whole of the work to be carried out and completed in accordance with the Subcontract, including variations. The general scope of the Subcontract Works is described in the Scope of Subcontract Works in Schedule 1.

*Substantial Completion:* means the stage in the performance and completion of the Subcontract Works when in the opinion of the Contractor the Subcontract Works are complete except for minor defects which cannot be promptly rectified and which will not, by either their existence or rectification, inconvenience or cause any legal impediment to the use of the Subcontract Works by any person.

### **2. Subcontractor to perform Subcontract Works and Provide Security**

#### **2.1 The Subcontractor must:**

- (a) carry out and complete the Subcontract Works to the reasonable satisfaction of the Contractor in accordance with the Subcontract; and the Construction Program;
- (b) indemnify and hold harmless the Contractor against any breach by the Subcontractor of its obligations in the Subcontract;
- (c) comply with directions from the Contractor; and
- (d) provide at its own expense all labour, materials, tools, plant and everything required to perform the Subcontract Works and bring the Subcontract Works to Substantial Completion by the Date for Substantial Completion.

#### **2.2 The Subcontractor shall provide security comprising either retention moneys in accordance with Schedule 1 or an unconditional undertaking in a form approved by the Contractor issued by a bank approved by the Contractor in the amount stated in Schedule 1 from the date of execution of this Subcontract. The Contractor may call upon the unconditional undertaking or apply the retention moneys (as applicable) in whole or in part, without notice and at any time, and the Subcontractor is not entitled to and shall not seek an injunction against either the Contractor or the issuer of the unconditional undertaking preventing a demand or payment under the security (whether the demand extends to the whole of the security or part thereof) or the use to which the proceeds of such a demand can be put. The security shall be reduced to half**

upon the Subcontract Works reaching Substantial Completion and the remaining balance returned to the Subcontractor at the end of the Defects Liability Period provided the Subcontractor has satisfied all of its obligations under the Subcontract.

### **3. Contractor to pay Subcontract Sum**

The Subcontractor will be paid on either a lump sum or schedule of rates basis, as set out in Schedule 1. The Contractor must pay the Subcontractor the Subcontract Sum which in the case of a lump sum subcontract, shall be the lump sum shown in Schedule 1 and in the case of a schedule of rates subcontract, shall be the amount calculated according to the schedule of rates shown in Schedule 1.

### **4. Documents**

The Contractor does not warrant, guarantee or make any representation about the accuracy or adequacy of the documents and information made available by the Contractor to the Subcontractor before or after execution of the Subcontract. This Subcontract contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier agreement, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before the Subcontract was executed. The Subcontractor must at its own cost comply with instructions given by the Contractor to resolve any ambiguity, error, omission or discrepancy.

### **5. Site Access, Setting Out and Previous Work**

The Contractor, subject to the terms of the Subcontract will allow the Subcontractor reasonable access to the site to comply with its obligations under the Subcontract. Should any delay occur in giving the Subcontractor access to the site the delay shall not be a breach of contract, but the Subcontractor may be entitled to claim an extension of time for that delay in accordance with the Subcontract. The Subcontractor may only perform work over other work if in its opinion the previous work is satisfactory. If the Subcontractor commences any work, the Subcontractor is treated as accepting the previous work and not requiring extra payments. If the Subcontractor commences any work over previous work which is not satisfactory, the Contractor may direct the Subcontractor to rectify the previous work and make good any resulting defects at the Subcontractor's own cost.

### **6. Compliance with Law, Protection of the Subcontract Works, Indemnities and Insurances**

The Subcontractor must comply with any requirement under any Law applicable to the Subcontract Works and the Subcontract. Where Australian Standards apply the Subcontractor must comply with them, unless the Subcontract requires compliance with a higher standard. The Subcontractor must pay all costs in making good, as required by the Contractor, any damage that it causes to other works. The Subcontractor is responsible for the care and maintenance of the Subcontract Works until 4:00 pm on the Date of Substantial Completion. The Subcontractor shall remain responsible for outstanding work and items remaining on Site until completion of outstanding work and removal of such items.

The Subcontract must keep the Site clean and tidy at all times, at its own expense and to the satisfaction of the Contractor. The Subcontractor indemnifies the Contractor and the Contractor's agents against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or cost (including legal costs on a full indemnity basis) that the Contractor incurs or suffers arising directly or indirectly as a result of or in connection with any act or omission or breach of the Subcontract by the Subcontractor or its employees or agents.

The Subcontractor must on and from the date of the Subcontract have in place the insurance policies stated in Schedule 1 in the amounts and for the periods and containing the provisions set out in Schedule 1 and otherwise upon terms and with an insurer approved by the Contractor and before the Subcontractor commences the Subcontract Works and it must provide the Contractor with certificates of currency for each policy referred to in Schedule 1.

## **7. Subcontractor's Employees**

The Subcontractor shall ensure that each of its employees and subcontractors who will be working on or near the Site holds a current assessment notice for the purpose of the Working with Children Act 2005 ("Current Assessment Notice") where under that Act a Current Assessment Notice is required or where the Contractor requires a Current Assessment Notice to be held by such employees and subcontractors.

At all times during the performance of the Subcontract Works, the Subcontractor must have a competent representative in charge. The Contractor may require the Subcontractor to remove (or cause to be removed) any person employed on the site or Subcontract Works, including the Subcontractor's foreman if applicable, who does not hold a Current Assessment Notice or who in the Contractor's opinion carries out duties incompetently or negligently or persists in any misconduct.

## **8. Quality and Defects**

The Subcontractor must unless otherwise provided in the Subcontract use new materials of merchantable quality, which are fit for their intended purpose as set out in or determined from the Subcontract and use proper and tradesmanlike workmanship. The Defects Liability Period for the Subcontract shall commence at 4:00 pm on the Date of Substantial Completion and end when the defects liability period under the head contract ends. Any defects, or other faults due to materials supplied or workmanship performed by the Subcontractor, which appear either before the Date of Substantial Completion or up to the end of the Defects Liability Period must be made good by the Subcontractor at its own expense, upon written instruction from the Contractor.

## **9. Working Hours, Times for commencement, Substantial Completion and Extensions of Time**

The Subcontract Works must not be performed on site outside the Contractor's normal working hours or the site working hours, as may be advised by the Contractor to the Subcontractor, except by prior arrangement with the Contractor. The Subcontractor must commence the Subcontract Works promptly or by such date as the Contractor may direct in writing. The Subcontractor must

carry out and complete the Subcontract Works in accordance with the Contractor's construction program as is advised or provided to the Subcontractor by the Contractor ("Construction Program") and must ensure that the Subcontract Works reach Substantial Completion by the Date for Substantial Completion. The Contractor may direct the sequence and timing of the Subcontract Works. The Contractor may at any time by notice to the Subcontractor, direct the Subcontractor to suspend performance of part or all of the Subcontract Works.

The Subcontractor may make a written claim for an extension of time to the Date for Substantial Completion if it is or will be delayed in reaching Substantial Completion by the Date for Substantial Completion by any act, default or omission of the Contractor or its agents, consultants or other contractors (not employed by the Subcontractor) or the direction by the Contractor to the Subcontractor to perform a Variation provided it submits such written claim strictly within 7 days of the occurrence of the event of delay ("Event of Delay").

The Subcontractor accepts and assumes the risk of and responsibility for all increased costs, losses, expenses and damages (including damages for breach of contract) howsoever suffered or incurred in the execution of the Subcontract Works resulting from delay or disruption in the progress of the Subcontract Works.

If the Subcontract Works do not reach Substantial Completion by the Date for Substantial Completion, the Subcontractor indemnifies the Contractor against liquidated damages payable by the Contractor to the Principal, any other damages payable by the Contractor to the Principal under the head contract and any other loss, expense or damage suffered or incurred by the Contractor as a result of the Subcontractor's failure to reach Substantial Completion by the Date for Substantial Completion.

## **10. Variations**

10.1 *Contractor may instruct variation:* The Contractor may give the Subcontractor a written instruction to vary the Subcontract Works ("Variation"). That instruction may require any of an addition, increase, decrease or omission in the extent of the Subcontract Works, a different character, quality or order of material or work, a change in the dimensions of the Subcontract Works or part of the Subcontract Works or a substitution of one class of work for another. The Subcontractor must comply with the instruction. A Variation does not invalidate the Subcontract.

10.2 *Subcontractor may give notice of variation:* If the Subcontractor considers a variation exists but the Contractor has not given a written instruction for the variation under this clause 10 the Subcontractor must give written notice to the Contractor specifying the details of the claimed variation within the period specified in Schedule 1.

Notwithstanding any other provision of this Subcontract, unless the Subcontractor is given a written instruction for a Variation under clause 10.1 or gives the notice of a Variation in accordance with this clause the Subcontractor shall not be entitled to any adjustment to the Subcontract Sum in respect of the variation.

10.3 *Valuing Variations*: The Contractor shall value each Variation using the order of precedence set out below:

- (a) prior agreement between the Contractor and the Subcontractor;
- (b) any rates or prices specified in the Subcontract that the Contractor determines should apply to the valuation of the variation; and
- (c) reasonable rates or prices, which shall include a reasonable amount for profit and overheads. Any deductions shall include a reasonable amount for profits and overheads.

## 11. Guarantees and warranties

The Subcontractor must obtain and provide for the benefit of the Contractor and the Principal the guarantees and warranties as may be required under the head contract as is advised by the Contractor.

## 12. Payment

12.1 *Progress Payments*: The Subcontractor may claim a progress payment by giving all relevant information required by the Contractor for Subcontract Works properly performed, including details of the value of Subcontract Works performed and documentary evidence (including a statutory declaration if required by the Contractor) of the payment of moneys due to employees of the Subcontractor and of its subcontractors in respect of the work the subject of the claim for a progress payment.

The Subcontractor must submit each progress claim in the form set out in Schedule 5 by the date stated in Schedule 1 to the address of the Contractor specified in Schedule 1 and in accordance with clause 12.3 (*Goods and services tax*). An early progress claim shall be deemed to have been submitted on the date the Subcontractor was entitled to submit it. The Contractor must pay the Subcontractor, on or after the 37<sup>th</sup> day from the end of the month for which the progress claim was submitted, the amount assessed by the Contractor that represents the value of the Subcontract Works performed to the Contractor's reasonable satisfaction, subject to the extent permitted by Law to the Subcontractor's compliance with clause 12.3 (*Goods and services tax*).

If the Contractor performs or procures the performance of any part of the Subcontract Works or the provision of labour or supervision or materials or plant, whether at the request of the Subcontractor or as determined by the Contractor to be required as a consequence of the Subcontractor's acts, omissions or default (including breach), any amount incurred by the Contractor in doing so will be a debt due from the Subcontractor to the Contractor.

12.2 *Final Claim*: The Subcontractor must serve its final claim for payment within 15 days after the Date of Substantial Completion.

12.3 *Goods and services tax*: Except for terms which are defined in this Subcontract, capitalised expressions set out in this clause bear the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*. Unless this Subcontract provides otherwise, and subject to this clause, any consideration that may be provided for under the Subcontract is exclusive of GST. If a party makes a Taxable Supply in connection with this

Subcontract for a consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. Despite any other clause of this Subcontract, it is agreed that:

- (a) the Contractor is entitled to issue Tax Invoices in the form of a Recipient Created Tax Invoice in respect of Taxable Supplies the Subcontractor makes to the Contractor; and
- (b) the Subcontractor will not issue Tax Invoices in respect of the Taxable Supplies the Subcontractor makes to the Contractor.

12.4 *Effect of payment*: Payment of any progress payment to the Subcontractor is not an acknowledgment by the Contractor that the work to which the progress claim relates complies with the Subcontract and is agreed to be a payment on account only.

12.5 *Set Off*: Despite any other provision of this Subcontract and without limiting the Contractor's other rights and remedies, the Contractor may at any time, and from time to time, deduct or set off from either or both of any money payable by the Contractor to the Subcontractor under the Subcontract and the security provided by the Subcontractor under the Subcontract any money due or claimed to be due from the Subcontractor or from any corporation which is a subsidiary of or related entity of the Subcontractor within the meaning of the *Corporations Act 2001 (Cth)* to the Contractor whether under or in connection with this Subcontract or otherwise.

## 13. Defaults and Termination

13.1 *Acts of default by the Subcontractor*: Acts of default by the Subcontractor include where the Subcontractor commits a breach of the Subcontract or an Insolvency Event happens in relation to the Subcontractor or the Subcontractor advises the Contractor that it is unable to pay its debts or part of them as they fall due. An Insolvency Event happens in relation to the Subcontract where the Subcontractor informs the Contractor or other creditors by any means that it is insolvent or is financially unable to proceed with the Subcontract, the Subcontractor fails to comply with a statutory demand or, where a controller (as defined in the *Corporations Act*) is appointed, where the Subcontractor becomes an externally administered body corporate under the *Corporations Act* or where the Subcontractor commits an act of bankruptcy.

If an act of default by the Subcontractor occurs, the Contractor may by hand or by registered post give the Subcontractor a written notice terminating the Subcontract and then the following paragraph applies.

Upon giving the notice the Contractor may suspend payments to the Subcontractor and the Contractor may ensure the proper execution and completion of the Subcontract Works. All resulting reasonable costs incurred become a debt due from the Subcontractor to the Contractor. At the Contractor's request, the Subcontractor must assign or hand over to the Contractor the benefit of any agreement for the supply of materials or labour which the Subcontractor is party to and any materials, plant, facilities, shop drawings, design documents and other things that were being used by the Subcontractor for the Subcontract Works. No further payment is to become due to the Subcontractor until the Subcontract Works are completed. If the total cost incurred by the Contractor

(including amounts paid or allowed to the Subcontractor and any liquidated or other damages payable by the Contractor to the Principal and any other loss, expense or damage suffered or incurred by the Contractor as a result of the Subcontractor's act of default and the termination) ("Total Cost Incurred") exceeds the amount which would otherwise have been paid to the Subcontractor if the Subcontractor had not defaulted and had completed the Subcontract Works, the excess becomes a debt due to the Contractor from the Subcontractor. If the Total Cost Incurred by the Contractor is less than the amount which would otherwise have been paid to the Subcontractor if the Subcontractor had not defaulted and had completed the Subcontract Works, the Contractor shall pay the Subcontractor that difference.

**13.2 Termination for any reason other than Subcontract default:** The Contractor may terminate this Subcontract by written notice to the Subcontractor at any time for any reason (including where the head contract is terminated) and may in its absolute discretion then either itself or by engaging other contractors, complete any of the works under the Subcontract remaining to be completed. At the Contractor's request, the Subcontractor must assign or hand over to the Contractor the benefit of any agreement for the supply of materials or labour which the Subcontractor is party to and any materials, plant, facilities, shop drawings, design documents and other things that were being used by the Subcontractor for the Subcontract Works.

Subject to and without prejudice to any other rights of the Contractor, the Contractor must pay the Subcontractor for the following if it terminates the Subcontract under this clause 13.2:

- (a) for Subcontract Works performed before the date of termination, being the amount which would have been payable if this Subcontract had not been terminated and the Subcontractor had made a progress claim on the date of termination;
- (b) the cost of materials reasonably ordered by the Subcontractor to perform the Subcontract Works which the Subcontractor is legally liable to accept, but only if the materials become the property of the Contractor on payment and are not included in any other payment or money paid or payable by the Contractor; and
- (c) subject to clause 2, any security held by the Contractor.

The Subcontractor must make a claim for payment for any amount due to it under this clause 13.2 within 28 days after receiving the Contractor's written notice of termination. The claim must be made in accordance with clause 12. The Subcontractor's entitlement to payment under this clause 13.2 is its sole right in connection with the Contractor's exercise of its rights under this clause 13.2. Following the Contractor's exercise of this right the Subcontractor releases the Contractor from any claim by it for any cost, expense, loss or damage on any basis whatsoever including under the Subcontract, in tort (including negligence), under any statute, on a quantum meruit, under quasi contract, for unjust enrichment, for frustration or under any other principle of Law, to the maximum extent permitted by Law.

If the Contractor terminates the Subcontract under this clause 13.2, the Subcontractor must take all steps necessary to mitigate any expense, cost or loss incurred by it as a result of the termination; and immediately return or

provide to the Contractor all copies of documents provided by or on behalf of the Contractor under or in respect of the Subcontract and any documents prepared by the Subcontractor (or its consultants or subcontractors) to the date of termination to which the Contractor would be entitled under the Subcontract but for the termination.

#### **14. Notification of Claims and Dispute Resolution**

The Subcontractor shall give to the Contractor a detailed written notice in respect of any claim in connection with the Subcontract within 7 days after the Subcontractor becomes, or ought reasonably to have become, aware of the claim. This clause 13.1 shall not apply to any claim, including a claim for payment, the communication of which is required by and provided for in another clause of the Subcontract. If the Subcontractor fails to comply with this clause then to the extent permitted by Law the Contractor will not be liable on any claim by the Subcontractor and the Subcontractor will be absolutely barred from making any claim against the Contractor arising out of, or in any way in connection with the direction or fact, matter or circumstance as the case may be.

#### **15. Health and Safety**

The Subcontractor must ensure that the Subcontract Works are delivered in accordance with safe practices applicable in the relevant industry and as required by all applicable Laws, including the provisions of the *Occupational Health & Safety Act 2004 (Vic)* and any regulations, relevant codes of practice and/or compliance codes prescribed thereunder. If the Contractor has been appointed as the principal contractor under the *Occupational Health & Safety Regulation 2007 (Vic)* the Subcontractor must also comply with the Contractor's health and safety co-ordination plans.

#### **16. National Code of Practice for the Construction Industry**

##### **Alternative 1 – Subcontracts up to \$25,000**

The National Code of Practice for the Construction Industry (the "Code") and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry revised September 2005 reissued June 2006 or successor instrument ("Implementation Guidelines"), apply to this project. By agreeing to undertake the Subcontract Works the Subcontractor is deemed to have read and agreed to comply with the Code and Implementation Guidelines.

##### **Alternative 2 – Subcontracts over \$25,000**

16.1 The Subcontractor must, and must ensure that its Related Entities ("Related Entities" in this clause means as that term is defined in the Implementation Guidelines), employees, secondary subcontractors and agents comply with the Code and the Implementation Guidelines. Copies of the Code and the Implementation Guidelines are available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)

16.2 Compliance with the Code or the Implementation Guidelines shall not relieve the Subcontractor from responsibility to perform the Subcontract, or from liability for any defect in the works arising from compliance with the Code or the Implementation Guidelines

16.3 Where a change in the Subcontract is proposed and that change would affect compliance with the Code or the Implementation Guidelines, the Subcontractor shall submit a report to the Contractor and the Commonwealth specifying the extent to which the Subcontractor's compliance with the Code or the Implementation Guidelines will be affected.

16.4 The Subcontractor shall maintain adequate records of the compliance with the Code and Implementation Guidelines by:

- a) the Subcontractor;
- b) its employees and agents;
- c) its subcontractors; and
- d) its Related Entities.

16.5 The Subcontractor shall permit the Commonwealth, or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commission (or any successor), full access to construction sites or places covered by the Code and Implementation Guidelines to:

- a) inspect any work, material, machinery, appliance, article or facility;
- b) inspect and copy any record relevant to the project and Works the subject of this Subcontract;
- c) interview any person; and
- d) request a party to this Subcontract to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post,

as is necessary to allow validation of its progress in complying with the Code and Implementation Guidelines.

16.6 For the avoidance of doubt, Clause 16.5 applies in relation to the Subcontractor's work performed on privately funded construction sites, and that of its Related Entities.

16.7 The Subcontractor agrees to require that its employees, agents, subcontractors and Related Entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (or any successor), with access to:

- a) inspect any work, material, machinery, appliance, article or facility;
- b) inspect and copy any record relevant to the Project and Works the subject of this Subcontract;
- c) interview any person; and
- d) request a party to this Subcontract to produce a specified document within a specified period, being not less than 14 days, in person, by fax or by post,

as is necessary to allow validation of its progress in complying with the Code and Implementation Guidelines.

16.8 The Subcontractor shall not appoint a subcontractor, consultant or supplier in relation to

the Project where the appointment would breach a sanction imposed by the Code Monitoring Group as that term is defined in the Implementation Guidelines.

16.9 The Subcontractor will ensure that it complies with the practices and procedures regarding right of entry that are outlined in the Code and Implementation Guidelines, as well as in the relevant provisions of the *Fair Work Act 2009* (Cth).

16.10 The Subcontractor will ensure that it complies with the practices and procedures regarding the protection of freedom of association outlined in the Code and Implementation Guidelines as well as the relevant provisions of the *Fair Work Act 2009* (Cth). In particular, the Subcontractor will ensure that:

- a) its personnel records are securely stored and not provided to third parties;
- b) posters, signs and other promotional material implying that union membership is compulsory are not displayed on the Site;
- c) personnel not be required to display union logos or badges on their clothing and property;
- d) Site induction processes are undertaken by Site management; and
- e) personnel not be required to identify their union status in any way.

16.11 The Subcontractor shall ensure that all subcontracts impose obligation on its subcontractors equivalent to the obligations under this clause.

## 17. Compliance – Employment & Industrial issues

Without limiting the generality of other clauses contained in the Subcontract, the Subcontractor must and must ensure that its personnel, other employees and subcontractors at all times comply with all industrial relations and employment related legislation and statutory requirements, including but not limited to legislation dealing with workers' compensation, long service leave, superannuation, taxation and the engagement of any independent contractors, industrial instruments, including but not limited to any awards and workplace arrangements which have been certified, registered or otherwise approved under relevant industrial relations legislation and common law agreements and policies or procedures (such as site safety and induction procedures), that are applicable to the execution and delivery of the Subcontract Works and binding on them. This obligation has no effect to require a Subcontractor or its subcontractors to enter into any particular type of workplace arrangement. The cost of such compliance, including any variations to the cost of such compliance, is deemed to have been included in the Subcontract Sum. The Subcontractor will provide evidence of such compliance as reasonably required by the Contractor.

## 18. Provision of amenities, services and facilities

The respective responsibilities of the Subcontractor and the Contractor for the provision of amenities, services and facilities shall be in accordance with the attached Provision of Amenities Services and Facilities Schedule. If the

Subcontractor requires more or additional amenities, services or facilities not referred to in the attached Schedule it must provide those amenities, services or facilities at its own expense, after obtaining the Contractor's approval. Where any amenities, services or facilities are or are required to be provided by the Contractor, the Subcontractor shall not be entitled to make any claim or receive any extension of time to the Date for Substantial Completion or other compensation for any inconvenience, delay or disruption which may result from such amenities, services or facilities being unavailable whether temporarily or otherwise and whether as a result of breakdown of equipment, temporary loss of supply or maintenance or otherwise.

#### 19. Labour-only Subcontract

19.1 Where Item 17 of Schedule 1 provides that this Subcontract is a Labour-only Subcontract, this clause 19 applies.

19.2 Where the Subcontract is a Labour-only Subcontract the following amendments are made to Schedule 1 and the Subcontract Terms:

- (a) the words "materials plant and equipment" and "materials, tools, plant and everything" are deleted from Item 4 of Schedule 1 and clause 2.1(d) respectively;
- (b) the words of clause 8 are deleted and are replaced with:

8.1 The Subcontractor must use proper and tradesmanlike workmanship. The Defects Liability Period for the Subcontract shall commence at 4:00 pm on the Date of Substantial Completion and end when the defects liability period under the head contract ends. Any defects or other faults due to workmanship performed by the Subcontractor, which appear either before the Date of Substantial Completion or up to the end of the Defects Liability Period must be made good by the Subcontractor at its own expense, upon written instruction from the Contractor.

8.2 The Subcontractor shall advise the Contractor immediately upon becoming aware that any materials provided by the Contractor are not fit for their intended purpose as set out in or determined from the Subcontract.

- (c) the words "material or" are deleted from clause 10.1; and
- (d) the words "or materials or plant" are deleted from clause 12.1.

19.3 Where the Subcontract is a Labour-only Subcontract the Contractor agrees to provide to the Subcontractor materials required for the Subcontract Works (except to the extent the Subcontractor is obliged to do so as set out in the Scope of Subcontract Works in Schedule 1) and the Subcontractor agrees to use the materials in the performance of the Subcontract Works.

#### 20. Labour-only Subcontract

20.1 Where Item 17 of Schedule 1 provides that this Subcontract is a Labour-only Subcontract, this clause 20 applies.

20.2 Where the Subcontract is a Labour-only Subcontract the following amendments are made to Schedule 1 and the Subcontract Terms:

- (a) the words "materials plant and equipment" and "materials, tools, plant and everything" are deleted from Item 4 of Schedule 1 and clause 2.1(d) respectively;
- (b) the words of clause 8 are deleted and are replaced with:

8.1 The Subcontractor must use proper and tradesmanlike workmanship. The Defects Liability Period for the Subcontract shall commence at 4:00 pm on the Date of Substantial Completion and end when the defects liability period under the head contract ends. Any defects or other faults due to workmanship performed by the Subcontractor, which appear either before the Date of Substantial Completion or up to the end of the Defects Liability Period must be made good by the Subcontractor at its own expense, upon written instruction from the Contractor.

8.2 The Subcontractor shall advise the Contractor immediately upon becoming aware that any materials provided by the Contractor are not fit for their intended purpose as set out in or determined from the Subcontract.

- (c) the words "material or" are deleted from clause 10.1; and
- (d) the words "or materials or plant" are deleted from clause 12.1.

20.3 Where the Subcontract is a Labour-only Subcontract the Contractor agrees to provide to the Subcontractor materials required for the Subcontract Works (except to the extent the Subcontractor is obliged to do so as set out in the Scope of Subcontract Works in Schedule 1) and the Subcontractor agrees to use the materials in the performance of the Subcontract Works.

#### 21. Industrial and workplace relations matters

21.1 The Subcontractor will keep the Contractor informed as soon as reasonably practicable of any industrial and workplace relations matters that could directly or indirectly affect the performance of the Subcontract Works or the works under the Head Contract or otherwise impact on the Contractor's business, or the Contractor's personnel as and when they arise.

21.2 The Subcontractor shall be solely responsible for any loss and damage caused by any threatened, probable or impending industrial action engaged in by the Subcontractor's personnel or its subcontractors at or in relation to the Site, or impacting on the Site or delivery of the Subcontract Works.

21.3 The Subcontractor shall have no entitlement to an extension of time to the Date for Substantial Completion and shall bear its costs in respect of delays to the Subcontract Works due to industrial disputes or stoppages.

- 21.4 The Subcontractor must ensure that any persons it engages to carry out any task or duty associated with the Subcontractors Works is appropriately skilled, licensed, experienced and qualified to carry out any such task or duty.
- 21.5 Nothing in this Subcontract is intended to create, or is evidence of, a relationship between either the Contractor and the Subcontractor or between the Contractor and the Subcontractor's employees, subcontractors or agents, of employment, partnership, agency or joint venture.
- 21.6 The Contractor must not, and will ensure that its employees, subcontractors or agents do not, without prior specific written authorisation by the Contractor:
- (a) charge debts or accounts in the name of the Contractor;
  - (b) commit the Contractor to contracts or arrangements of any kind;
  - (c) release or discharge debts due to the Contractor or
  - (d) act or speak on behalf of, or bind the Contractor in any other way.
- 21.7 The subcontractor must in relation to its employees and subcontractors:
- (a) pay remuneration and any other employment related entitlements, including termination payments and leave entitlements, and make superannuation contributions;
  - (b) deduct and remit PAYG income tax instalments;
  - (c) pay fringe benefits tax, and other statutory charges or taxes required by law including but not limited to:
    - (i) workers' compensation; and
    - (ii) payroll tax.
- 21.8 If the Contractor is required by law, or decides for any other reason, to make any of the payments described in clause 22.7, to or in respect of the Subcontractor's employees or subcontractors:
- (a) the Contractor may adjust the Subcontract Sum to reflect these liabilities; and
  - (b) the parties acknowledge this does not give rise to an employment relationship between the Contractor and the Subcontractor's employees or subcontractors.
- 21.9 The Subcontractor must immediately notify the Contractor of any change in the circumstances of the Subcontractor that may affect the Contractor's liability to pay any employee entitlement, tax or other statutory charges in connection with the Subcontract

## 22. Indemnity

- 22.1 The Subcontractor indemnifies the Contractor against any liability in connection with:
- (a) any failure to comply with the terms of the Code, the Industry Guidelines and the Implementation Guidelines;
  - (b) any threatened, probable or impending industrial action engaged in by the Subcontractor's personnel or its subcontractors at or in relation to the Site or impacting on the Site or delivery of the Subcontract Works; and
  - (c) any statutory charge or penalty, withholding obligation, employee or contractor entitlement arising from the Subcontractor's performance of the Subcontract Works (including payroll tax, workers' compensation, PAYG withholding, leave entitlements and superannuation).
- 22.2 The Subcontractor acknowledges that the Subcontract Sum has been calculated on the basis that the Contractor is not required to make any of the payments described in clause 22.7 to or in respect of the Subcontractor's employees or subcontractors and agrees that should the Contractor incur any such liability, the amounts of the liability may be deducted by the Contractor from any payments due to the Subcontractor under the Subcontract (without limitation to the Contractor's other rights to recover the liability from the Subcontractor).