



22 January 2018

Attention: «CONTACT_Construction»
«SUBBIE»
«Mailing_Address»
«Mailing_Suburb» «Mailing_State» «Mailing_PCode»

Dear Sirs,

Project at: «PROJECT»
(«Site_Address»)
Subcontract Works: «Trade»

We hereby accept your fixed lump sum price (not subject to rise and fall) dated «Tender_Letter_Dated» as clarified or revised by us for the above subcontract works in the sum of «Contract_Sum».

The formal Subcontract Agreement is enclosed for execution and return, please return the contract duly signed prior to commencement on Site.

Until the formal agreement is returned to us signed by you, you shall not be entitled to payment of any payment claims but the following documents shall constitute the agreement between us:

- (a) the Invitation to Quote;
- (b) the documents and drawings listed in the Document Register attached.

You will note that the documents listed in the Document Register annexed to the Subcontract Agreement as defining the scope of subcontract works are the most up-to-date list of “for construction” documents for the Project.

Within 7 days, please let us know, in writing, if there are any variations between the documents on which you tendered and the documents listed as being the scope of subcontract works for construction.

You must identify the reason for any variation and provide us with a detailed breakdown of the costs associated with it. Should we not hear from you, it will be deemed that no variations exist between the tender documents and the “for construction” documents.

You should address any queries by facsimile or by email to the Construction Manager, Bill O’Flaherty. **Please note that telephone enquires will not be answered. Only queries addressed in facsimile/email format will be responded to.**

Please do not amend the subcontract agreement in any way.



You must supply your Work Method Statement prior to commencing work on Site and we confirm your warranty that, based on your tender, your insurance details and licence details are valid and in force. Please contact the relevant Project Manager to discuss Work Method Statement requirements and any programming requirements.

Please remember that the Subcontract Agreement Number «**Contract Number**» must be quoted on all payment claims and similarly, any variation claims to the Subcontract Works must quote a Site Instruction Number. Failure to do so will result in your payment claim or variation claim being returned to you, delayed or rejected.

In the meantime, we look forward to working with you on what we hope will be a successful project.

Yours faithfully,
SPACEFRAME BUILDINGS PTY LTD

“**NAME**”
Construction Manager
Encl



SUBCONTRACT AGREEMENT
«Contract_Number»
«Subbie»

FORMAL INSTRUMENT OF AGREEMENT

Contractor	Spaceframe Buildings Pty Ltd
ABN	42 009 930 554
Mailing Address	PO Box 452 MORNINGSIDE QLD 4170 Australia
Fax Number	+61 7 3890 9533
Email	mail@spaceframe.com

Subcontractor	«Subbie»
ABN	«ABN»
Attention	«CONTACT_Construction»
Mailing Address	«Mailing_Address» «Mailing_Suburb» «Mailing_State» «Mailing_PCode»
Fax Number	«FAX»
Email	«Email_Address»

BACKGROUND

- A. The Contractor is carrying out «PROJECT» for «Principal» at «Site_Address» (the **Project**).
- B. The Subcontractor has made an offer to the Contractor to provide subcontract design (if any) and construct works in connection with the Project (the **Works**).
- C. The Contractor has accepted the Subcontractor's offer to carry out the Works.
- D. The parties' agreement is constituted and governed by the terms of this Subcontract (the **Subcontract**).

OPERATIVE PROVISIONS

1. SUBCONTRACT DOCUMENTS

- (a) The following documents constitute the Subcontract:
 - (b) this Formal Instrument of Agreement;
 - (c) the Subcontract Conditions;
 - (d) the Annexures to the Subcontract Conditions (including any specifications, drawings or other project documents referred to therein).
 - (e) In the event of any ambiguity, inconsistency or discrepancy between any of the documents comprising the Subcontract, the documents shall be read in the following order of priority:
 - (f) this Formal Instrument of Agreement;
 - (g) the Subcontract Conditions;
 - (h) the Annexures to the Subcontract Conditions (including any specifications, drawings or other project documents referred to therein).

2. SUBCONTRACT SUM

In consideration of the due and proper performance of the Subcontract by the Subcontractor, the Contractor agrees to pay the Subcontractor the (GST exclusive) Subcontract Sum of «**Contract_Sum**» (or such other amount as may constitute the Subcontract Sum), in accordance with the Subcontract.

3. MISCELLANEOUS

3.1 Entire Agreement

The Subcontract contains the entire, final and concluded bargain of the parties. No party can rely on an earlier written document

or anything said or done by or on behalf of another party before this document was executed.

3.2 Execution of Separate Documents

The Subcontract is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

3.3 Further Acts

Each party must at its own expenses promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it.

Execution

EXECUTED as an agreement.

Dated:

Executed by Spaceframe Buildings Pty Ltd
ABN 42 009 930 554 acting by the following authorised person:

Signature of authorised person

Executed by
«Subbie»,
ABN «ABN» acting by the following authorised person:

Signature of authorised person

SUBCONTRACT CONDITIONS

GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In the Subcontract except where the context otherwise requires:

"**BCIPA**" means the *Building and Construction Industry Payments Act 2004* (Qld);

"**Bulk Retention**" has the meaning in subclause 6(f);

"**Business Day**" means a day that is not:

- (a) a Saturday or Sunday;
- (b) a public holiday, special holiday or bank holiday in the place in which the site is located; or
- (c) 27, 28, 29, 30 or 31 December.

"**claim**" means any claim for an entitlement to an extension of time, an adjustment to the Subcontract Sum or the recovery of cash, expenses, damages, liabilities or other amounts under the Subcontract or otherwise;

"**Contractor's Construction Program**" means the document or documents setting out the program of Head Contract Works to achieve practical completion under the Head Contract which the Subcontractor acknowledges has been made available for inspection and review;

"**Date for Commencement**" means the date stated in Annexure A or such other date nominated by the Contractor in writing;

"**Date for Practical Completion**" means the date stated in Annexure A, as adjusted in accordance with the Subcontract;

"**day**" means calendar day;

"**Defects Liability Period**" means the period commencing on the date of Practical Completion and ending on the date of expiry of the last defects liability period under the Head Contract;

"**Design Services**" means all tasks necessary to design and specify the Works as required by this Subcontract (if any), as indicated in Annexure A, including the preparation of such drawings, specifications and other information required for the construction of the Works;

"**Direction**" includes any direction, instruction or communication;

"**Equipment**" means any and all goods supplied or to be supplied by the Subcontractor pursuant to the Subcontract;

"**GST**", "**GST Law**" and other terms used in this clause 48 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, except that "**GST Law**" includes any applicable rulings issued by the Commissioner of Taxation.

"**Head Contract**" means the contract between the Principal and the Contractor for the execution of the Project;

"**Head Contract Works**" means the works to be carried out by the Contractor under the Head Contract and includes temporary works and constructional plant;

"**month**" means calendar month;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth);

"**PPS Law**" means the PPSA, any regulations made at any time under the PPSA, any provision of the PPSA or regulations made under the PPSA and any amendment made at any time to the PPS Law, *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPSA;

"**Practical Completion**" means the stage when the Works are complete except for minor defects and/or omissions that do not prevent the Works from being capable of being used for their intended purpose;

"**Principal**" means the person or entity stated in Annexure A being the Principal under the Head Contract;

"**Project**" means the whole of the work to be carried out and completed by the Contractor under the Head Contract, which is briefly described in Annexure A;

"**QBCC Act**" means the *Queensland Building and Construction Commission Act 1991* (Qld);

"**Qualifying Cause of Delay**" means any act, default or omission of the Contractor, the Principal or their agents or other contractors (not being employed by the Subcontractor);

"**Site**" means the address in Annexure A;

"**Subcontract**" means the subcontract between the Contractor and the Subcontractor set out in the Subcontract Documents;

"**Subcontract Documents**" means the documents listed in Annexure B;

"**Subcontract Sum**" means the amount payable to the Subcontractor by the Contractor, as adjusted in accordance with the Subcontract, as set out in the Formal Instrument of Agreement;

"**the Works**" means the whole of the work to be carried out by the Subcontractor, as stated in or reasonably inferable from the Subcontract, and includes temporary works, constructional plant and Variations and includes Design Services if so indicated in Annexure A;

"**Variation**" means to vary the Works by changing, adding to or omitting from the Works.

In the Subcontract:

- (a) clause headings and subclause headings do not form part of, nor are to be used in the interpretation of, the Subcontract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (c) the words "include", "includes", "including" are to be read as if they are followed with "(without limitation)"; and
- (d) no clause of the Subcontract will be construed against a party on the basis that the party or its lawyers were responsible for the drafting of that clause.

2. OBLIGATIONS OF THE PARTIES

- (a) The Subcontractor must carry out and complete the Works:
 - (i) in a proper and tradesperson like manner;
 - (ii) in accordance with all legislative requirements including any relevant Australian Standards applicable to the Works;
 - (iii) using materials that are new, free of defects and of the highest quality for the purpose or application required; and
 - (iv) by the Date for Practical Completion.
- (b) The scope of the Works is deemed to include all items of work necessary or convenient for their proper execution and completion and the effective and efficient use and operation of the Project, although not specifically called for by the Subcontract Documents.
- (c) The Subcontractor warrants to the Contractor that the Subcontractor:
 - (i) at all times must be suitably licenced, qualified and experienced and must exercise due skill, care and diligence in the carrying out and completing of the Works;
 - (ii) has effected and maintained all relevant insurances as required by this Subcontract;
 - (iii) at all times must engage and retain sufficient personnel and appropriately qualified personnel to carry out and complete the Works in accordance with this Subcontract;
 - (iv) must carry out and complete the Works in accordance with the Contractor's directions, both verbal and written;
 - (v) must carry out and complete the Works in accordance with the Contractor's Construction Program (as amended by the Contractor from time to time) and the Subcontractor must not depart from the Contractor's Construction Program without the written consent of the Contractor;
 - (vi) in performing the Design Services it has exercised and will continue to exercise all the reasonable skill, care and attention to be expected of a qualified subcontractor or consultant experienced in performing design services for works of a similar nature, value, complexity and time scale as the Works;
 - (vii) must carry out and complete the Works so that when completed, the Works are fit for their purpose and must comply with all requirements of the Subcontract and all Acts, Ordinances, regulations, order, awards and proclamations of the Commonwealth and State and local governments in which the Works are carried out;
 - (viii) has examined all information obtainable by the making of reasonable inquiries relevant to the risks, contingencies and other circumstances, including site conditions, and characteristics of the Site and its surroundings, and any existing structures in, on, under and adjacent to the Site, having an effect on the carrying out of the Works and must have satisfied itself that the Subcontract Sum covers the cost of complying with all its obligations under the Subcontract and of all matters and things necessary for the due and proper performance and completion of the Works;
 - (ix) must do all things necessary to enable and ensure performance by the Contractor of its obligations and enjoyment by the Contractor of its rights and advantages under the Head Contract and to ensure no breach or loss of advantage of the Head Contract by the Contractor;
 - (x) must maintain a safe and clean Site and must keep the Site clean and tidy as the Works progress and regularly remove from the Site all rubbish and surplus materials arising from the execution of the Works.
- (d) The Contractor will provide the written drawings, any preliminary design specifications and instructions as specified in Annexure B. The Subcontractor agrees that the documents are suitable, appropriate and adequate for the Subcontractor to carry out and complete the Works.
- (e) The Subcontractor is not entitled to make any claim against the Contractor on account of or in connection with:
 - (i) the accuracy or suitability of the documents in Annexure B;
 - (ii) the Site or any natural or artificial subsurface, surface or physical conditions in, on or above the Site.

3. DOCUMENTS AND INTELLECTUAL PROPERTY

- (a) Documents provided by the Contractor under the Subcontract or otherwise, remain the Contractor's property and must be returned to the Contractor on demand.
- (b) The Contractor retains all intellectual property in the documents. The Contractor grants to the Subcontractor a licence to use the documents to carry out the Works and any rectification, maintenance or servicing as necessary for the purposes of the Subcontract.
- (c) The Subcontractor must not use, copy or reproduce the documents provided by the Contractor for any purpose other than the Works.
- (d) The Subcontractor acknowledges, warrants and agrees to grant, or procure the grant to the beneficiary of the warranty of an irrevocable royalty-free and non-exclusive licence to copy and use documents created in relation to the design of any part of the Works or the Site for any purpose related to the Works and on terms that the beneficiary may assign the licence and grant sublicenses to a third party.

4. AS BUILT DRAWINGS

- (a) The Subcontractor must supply to the Contractor three (3) printed copies of all 'as built' drawings and one (1) electronic copy of all 'as built' drawings in .dwg format and three (3) printed copies and one (1) electronic copy in .pdf format of all maintenance manuals, operating instructions, guarantees, warranties or other similar documents upon completion of the Works which are relevant to the Works in the format as specified by the Contractor.
- (b) The Subcontractor will be liable to the Contractor and must indemnify the Contractor in respect of any liability arising from its failure to comply with the requirements of this clause 4 which results in any loss, claim, demand or damage incurred or suffered by the Contractor.
- (c) All such claims will be a debt due and owing by the Subcontractor to the Contractor against which the Contractor may deduct from any monies due and owing to the Subcontractor or from any retention monies or security provided by the Subcontractor or both and must also be entitled to terminate this Subcontract by notice without prejudice to any other remedies available to the Contractor.

5. VARIATIONS

- (a) The Subcontractor must not vary the Works except in accordance with the Contractor's written Direction.
- (b) The Contractor may Direct the Subcontractor to carry out any Variation to the Works. If the Contractor Directs the omission of any part of the Works, the Contractor may (itself or by engaging others) carry out the omitted work.
- (c) If the Subcontractor receives a Direction to carry out a Variation under subclause 5(b), the Subcontractor will have no claim arising from or in

connection with the alleged variation unless 5 days after the Direction is given, the Subcontractor has advised the Contractor in writing of:

- (i) the amount which the Subcontractor will claim if the Variation is effected; and
 - (ii) the period of extension to the Date for Practical Completion which the Subcontractor will claim if the Variation is effected.
- (d) If the Contractor at any time gives the Subcontractor a Direction (written or otherwise) which is not expressly stated to be a Variation Direction and the Subcontractor considers involves a Variation the Subcontractor will have no claim arising from or in connection with the alleged Variation unless 5 days after the Direction is given, the Subcontractor has advised the Contractor in writing of:
- (i) the amount which the Subcontractor will claim if the alleged Variation is effected; and
 - (ii) the period of extension to the Date for Practical Completion which the Subcontractor will claim if the alleged Variation is effected.
- (e) The price for a Variation is to be as agreed or if not agreed as determined by the Contractor using:
- (i) where the Subcontract prescribes specific rates or prices, applying those rates or prices;
 - (ii) where the Subcontract includes a schedule of rates, using those rates or prices to the extent that it is reasonable to use them; then
 - (iii) to the extent that neither clauses 5(e)(i) and 5(e)(ii) applies, a fair and reasonable valuation of the price of the Variation.

6. SECURITY

Alternative 1: security specifically held for the Subcontract (i.e. Bulk Retentions do not apply)

[Paragraphs (a) to (d) of this clause 6 apply if Bulk Retention is not held by the Contractor in respect of the Subcontractor.]

- (a) Security must be provided in the form of cash retention or other security acceptable to the Contractor in the amount stated in Annexure A.
- (b) If the Subcontract Sum increases, the Contractor may require, and the Subcontractor must provide, additional security.
- (c) The Contractor may have recourse to security:
 - (i) where an amount that is due to the Contractor, under the Subcontract or otherwise, remains unpaid after the time for payment;
 - (ii) in respect of any claim for payment (liquidated or otherwise) that the Contractor may have against the Subcontractor under the Subcontract or otherwise on the giving of written notice to the Subcontractor; or
 - (iii) in respect of any claim against the Contractor by the Principal under the Head Contract where the Contractor is entitled to an indemnity from the Subcontractor under the Subcontract.
- (d) Subject to any right under subclause 6(c), the balance of any remaining security must be released to the Subcontractor on the later of:
 - (i) 20 Business Days after the expiration of the Defects Liability Period; or
 - (ii) the provision by the Subcontractor of a deed of release in the form contained in the Subcontract Documents.
- (e) The Subcontractor acknowledges and agrees that to the extent security held after Practical Completion exceeds 2.5% of the Subcontract Sum, such security does not relate to the need to correct defects identified in the Defects Liability Period.

Alternative 2: Bulk Retention

[Paragraphs (f) to (j) of this clause 6 apply if the Contractor is holds Bulk Retention in relation to the Subcontractor.]

- (f) The Subcontractor acknowledges and agrees:
 - (i) from time to time, the Subcontractor may enter into multiple subcontracts with the Contractor; and
 - (ii) for administrative ease and for the benefit of both parties, Bulk Retention has been provided by the Subcontractor to the Contractor to secure the performance of the Subcontractor under the multiple subcontracts (of which this Subcontract is one).
- (g) The parties acknowledge and agree that under the QBCC Act, unless the parties expressly agree otherwise, section 67L(1) of the QBCC Act makes the Subcontract subject to a condition that at any time before Practical Completion the total of:
 - (i) all retention moneys withheld by the Contractor; and
 - (ii) all securities held by the Contractor,
 - under the Subcontract (other than those referred to in section 67L(2) of the QBCC Act) is not to exceed 5% of the Subcontractor's price for the contract (which under the QBCC Act includes adjustments for variations).

By initialling the Subcontract in the space provided below the parties expressly agree that, to the extent that the Bulk Retention held exceeds 5% of the Subcontract Sum, the Subcontract is not subject to the conditions imposed by the above section of the QBCC Act.

(Note: Parties to initial)

CONTRACTOR'S Initials

SUBCONTRACTOR'S Initials

- (h) The Subcontractor acknowledges and agrees that to the extent Bulk Retention held after Practical Completion exceeds 2.5% of the Subcontract Sum, such Bulk Retention does not relate to the need to correct defects identified in the Defects Liability Period.
- (i) The Contractor may have recourse to Bulk Retention:
 - (i) where an amount that is due to the Contractor, under the Subcontract or otherwise, remains unpaid after the time for payment;
 - (ii) in respect of any claim for payment (liquidated or otherwise) that the Contractor may have against the Subcontractor under the Subcontract or otherwise on the giving of written notice to the Subcontractor; or
 - (iii) in respect of any claim against the Contractor by the Principal under the Head Contract where the Contractor is entitled to an indemnity from the Subcontractor under the Subcontract.
- (j) The Subcontractor acknowledges and agrees the Contractor may continue to hold Bulk Retention after the expiry of the Defects Liability Period as security for the Subcontractor's performance of other subcontracts between the Contractor and the Subcontractor.

7. PAYMENT

- (a) The Subcontractor must claim payment progressively in accordance with Annexure A.
- (b) All progress claims must be submitted to the Contractor in a format approved by the Contractor.
- (c) A progress claim, including a final progress claim, must include:
 - (i) full details of the proportion of the Subcontract Sum representing such part of the Works which has been satisfactorily completed by the Subcontractor;
 - (ii) the full legal basis of the claim and full details of the likely quantum;
 - (iii) a subcontractor's certificate (in the form contained in the Subcontract Documents) executed by the Subcontractor or where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared that:
 - (A) all workers who have at any time been employed by the Subcontractor on work performed under this Subcontract have been paid all moneys due and payable to them in respect of work performed under the Subcontract;
 - (B) with respect to any works, materials, goods, apparatus, machines, equipment, vehicles, plant or other things for which the Subcontractor submits a claim for payment, upon payment being made by the Contractor there will be no security interests, liens or encumbrances of any kind existing with respect to the works, materials, goods, apparatus, machines, equipment, vehicles, plant or other things and that they are at the Site or will be available for immediate delivery to the Site;
 - (C) the Subcontractor warrants that any materials, goods, apparatus, machines, vehicles, equipment, plant or other thing delivered to the Site, will under no circumstances whatsoever be subject to retentions of title by the Subcontractor's subcontractors,

each of which must be a precondition to payment and if not provided, if incomplete, or if false the Contractor may withhold payment until received.
- (d) The progress claim after Practical Completion must include:
 - (i) full details of the proportion of the Subcontract Sum representing such part of the Works which has been satisfactorily completed by the Subcontractor;
 - (ii) the full legal basis of the claim and full details of the likely quantum;
 - (iii) a statutory declaration (in the form contained in the Subcontract Documents) by the Subcontractor or where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts declared that:
 - (A) all workers who have at any time been employed by the Subcontractor on work performed under this Subcontract have been paid all moneys due and payable to them in respect of work performed under the Subcontract;
 - (B) with respect to any works, materials, goods, apparatus, machines, equipment, vehicles, plant or other things for which the Subcontractor submits a claim for payment, upon payment being made by the Contractor there will be no security interests, liens or encumbrances of any kind existing with respect to the works, materials, goods, apparatus, machines, equipment, vehicles, plant or other things and that they are at the Site or will be available for immediate delivery to the Site;
 - (C) the Subcontractor warrants that any materials, goods, apparatus, machines, vehicles, equipment, plant or other thing delivered to the Site, will under no circumstances whatsoever be subject to retentions of title by the Subcontractor's subcontractors,

each of which must be a precondition to payment and if not provided, if incomplete, or if false the Contractor may withhold payment until received.
- (e) On receipt of a progress claim which is compliant with this clause 7, the Contractor will:
 - (i) issue a certificate assessing the amount owing within 10 Business Days; and
 - (ii) issue a recipient created tax invoice for the assessed amount owing within 10 Business Days; and
 - (iii) pay the amount assessed to the Subcontractor within 25 Business Days.
- (f) The Subcontractor must not issue a tax invoice.
- (g) Payment by the Contractor of any progress claim (including the final progress claim) is a payment on account only and not evidence that the work has been carried out satisfactorily.
- (h) The Contractor may deduct from any payment otherwise due to the Subcontractor, any debt or other amount due from the Subcontractor to the Contractor or any claim to payment which the Contractor may have against the Subcontractor whether for damages or otherwise under the Subcontract or at law relating to the Works and if those moneys are insufficient, the Contractor may have recourse to security.
- (i) It is a precondition to payment of any claim that the Subcontractor has executed and returned the Subcontract.

7A. RECIPIENT CREATED TAX INVOICES

The parties acknowledge and agree that:

- a) the Contractor can issue tax invoices in respect of all supplies under or in connection with the Subcontract and the Subcontractor will not issue tax invoices;
- b) a progress claim under the Subcontract is not a tax invoice;
- c) the Subcontractor is registered for GST when it enters into this Subcontract and that it will notify the Contractor if it ceases to be registered;
- d) the Contractor is registered for GST when it enters into this Subcontract and that it will notify the Subcontractor if it ceases to be registered or if it ceases to satisfy any of the requirements of any relevant tax ruling relating to the issue of recipient created tax invoices; and
- e) if for any reason one or more of the criteria which must be satisfied to allow the Contractor to issue recipient created tax invoices is not satisfied such that the Contractor cannot issue a tax invoice in respect of supplies made under or in connection with the Subcontract then the Subcontractor must, when requested by the Contractor, issue a tax invoice (being an invoice that complies with GST Law and contains both the Subcontractor's and the Contractor's ABN) to the Contractor for the amount specified by the Contractor. If the Contractor has made a request under this clause, the Contractor will not be required to make a payment under this Subcontract to which the request relates until the Subcontractor has provided a tax invoice in relation to that payment in

the form and the amount required by the Contractor.

8. FINAL ACCOUNT

- (a) Within 20 Business Days after the expiration of the Defects Liability Period the Subcontractor must submit to the Contractor:
 - (i) its final progress claim endorsed "Final Progress Claim" being a progress claim containing, in addition to the requirements in clause 7, a final statement setting out the details of all moneys claimed or owing under, or in connection with, the subject matter of the Subcontract; and
 - (ii) a deed of release in the form contained in the Subcontract Documents.
- (b) On receipt of the Final Progress Claim that is compliant with this clause 8, the Contractor will issue a certificate assessing the claim within 10 Business Days and make payment of the amount assessed within 25 Business Days of receipt of the final progress claim.
- (c) The provision of the deed of release is a precondition to payment of the certificate in subclause 8(b) and the release of any security by the Contractor. If the deed of release is not provided, the Contractor may withhold payment in full and retain the security until the deed of release is provided.

9. DEFECTS

- (a) The Subcontractor must rectify at its own cost any part of the Works that is defective (including omitted) within 5 Business Days of being notified in writing by the Contractor.
- (b) As soon as possible after Practical Completion the Subcontractor must rectify all defects existing at Practical Completion.
- (c) During the Defects Liability Period, the Contractor may give the Subcontractor a Direction to rectify a defect within a certain time period. The Subcontractor must carry out rectification as Directed and at times and in a manner causing as little inconvenience to the occupants or users of the Project as is reasonably possible.
- (d) If the rectification is not carried out as Directed, the Contractor may have the rectification carried out by others and the costs incurred will be a debt due and payable by the Subcontractor to the Contractor.

10. INDEMNITY AND INSURANCE

- (a) The Subcontractor must indemnify, and keep indemnified, the Contractor from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from any breach of any warranty or any of the other terms and conditions of the Subcontract by the Subcontractor or the Subcontractor's personnel or any negligent act or omission of the Subcontractor or the Subcontractor's personnel, except to the extent of liability which is caused by the wilful misconduct or a negligent act or omission of the Contractor or the Contractor's personnel.
- (b) Without limiting the preceding paragraph, the Subcontractor indemnifies the Contractor against:
 - (i) loss or damage to property, including existing property on or around the Site including property belonging to third parties;
 - (ii) claims against the Contractor in respect of personal injury, death, or loss or damage to any property; and
 - (iii) any costs, losses or damages that the Contractor pays or becomes liable to pay under the Head Contract, or otherwise, to the extent that such payment or liability arises out of the Subcontractor's failure to comply with the Subcontract.
- (c) If the Head Contract Works do not reach practical completion by the date for practical completion under the Head Contract or there is any other claim against the Contractor under the Head Contract for which the cause is delay by the Subcontractor or the acts or omissions of the Subcontractor in carrying out the Works, the Subcontractor indemnifies the Contractor against:
 - (i) any liquidated damages payable by the Contractor under the Head Contract; and
 - (ii) any other loss or damages other than liquidated damages, which become due and payable by the Contractor to the Principal.
- (d) The Subcontractor must effect and maintain:
 - (i) the insurance specified in Annexure A and each policy of insurance must be on the terms satisfactory to the Contractor and, other than workers' compensation insurance, name the Contractor as an insured. If the Subcontractor fails to effectively maintain the insurance the Contractor may do so and the cost must be a debt due and payable by the Subcontractor to the Contractor; and
 - (ii) if Design Services form part of the Works, professional indemnity insurance with a limit of not less than \$5,000,000.00 for each and every claim for a period of 6 years commencing on the date of issue of the final certificate issued pursuant to the Head Contract.
- (e) The Subcontractor must, within 3 Business Days of the Contractor's request, give evidence of the insurance required to be effected and maintained. Evidence of insurance is a precondition to payment and the Contractor may withhold payment in full until such time as satisfactory evidence is given.
- (f) The Subcontractor must, where there is a claim on any insurance policy under the Subcontract and before there is any entitlement in the Subcontractor to claim under the insurance of any other party, pursue a claim under the Subcontractor's insurance for the full extent of the Subcontractor's liability.
- (g) The Subcontractor must, where there is a claim on any insurance policy for loss or damage for which it is responsible, bear the cost of any deductible pursuant to the relevant insurance policy.
- (h) The Subcontractor must ensure that all secondary subcontractors of the Subcontractor have insured against liability for death of, or injury to, themselves or their workers including liability under statute and at general law.

11. CARE OF WORKS

The Subcontractor is responsible for care of the Works from and including the Date for Commencement until 4:00 pm on the date of Practical Completion.

12. TIME AND PROGRESS

- (a) The Subcontractor will be entitled to make a written claim for an extension of time ("EOT") if the Subcontractor is, or will be, delayed in achieving Practical Completion by the Date for Practical Completion by a Qualifying Cause of Delay. That claim must be given to the Contractor within 5 Business Days of the Subcontractor becoming aware of the delay.
- (b) Within 10 Business Days of receiving the Subcontractor's claim for an EOT, the Contractor will give the Subcontractor a written notice assessing the EOT claim.

- (c) If the Subcontractor does not comply strictly with the requirements of this clause 12 it will not be entitled to make a claim, nor be granted an EOT.
- (d) Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Contractor may at any time and from time to time before issuing the certificate under subclause 8(b) direct an EOT for its own benefit, for its sole and absolute discretion and not for the benefit of the Subcontractor.
- (e) The Subcontractor is not entitled to delay costs or any claim whatsoever arising out of or in connection with an EOT directed by the Contractor under subclause 12(d).

13. LIQUIDATED DAMAGES

If the Works do not reach Practical Completion by the Date for Practical Completion, the Contractor is entitled to liquidated damages as specified in Annexure A for every day after the Date for Practical Completion up to and including the date of Practical Completion. The amount calculated must be a debt due and payable by the Subcontractor to the Contractor.

14. COMPLIANCE WITH STATUTES

- (a) The Subcontractor must comply with all legislative requirements relating to the Works, including any direction from a local authority or other body having jurisdiction over the carrying out of the Works.
- (b) The Subcontract is subject to the provisions of the QBCC Act and BCIPA to the extent that they apply, and where there is any inconsistency between the Subcontract and the QBCC Act or BCIPA, the QBCC Act or BCIPA must prevail to the extent necessary to avoid the inconsistency.
- (c) The Subcontractor must not perform any Works which requires a licence under the QBCC Act unless it holds a licence permitting the Subcontractor to lawfully carry out that work.
- (d) In performing the Works, the Subcontractor must be responsible for ensuring that the Subcontractor and its employees and/or secondary subcontractors complete the work under the Subcontract safely and in accordance with all legislative requirements including the *Work Health and Safety Act 2011* (Qld), the *Environmental Protection Act 1994* (Qld) or other similar legislation.

15. ASSIGNMENT

The Subcontractor must not assign the Subcontract or any right, benefit or interest under the Subcontract or subcontract any part of the Works without the Contractor's written approval.

16. DEFAULT

- (a) If the Subcontractor commits a substantial breach of the Subcontract, the Contractor may issue a notice to show cause to the Subcontractor requiring the Subcontractor to show cause why the Contractor should not terminate the Subcontract.
- (b) If the Subcontractor fails to show reasonable cause notice within 7 days of receipt of the notice, the Contractor may, by further notice in writing:
 - (i) terminate the Subcontract; or
 - (ii) take out of the Subcontractor's hands the whole or part of the Works remaining to be completed and suspend payment.
- (c) Where the whole or part of the Works are taken out of the Subcontractor's hands or the Subcontract is terminated and as a result, the Contractor incurs additional costs, those costs must be a debt due and payable by the Subcontractor to the Contractor.
- (d) If the Subcontract is terminated for a party's default, including repudiation, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Subcontract had the defaulting party repudiated the Subcontract and the other party elected to treat the Subcontract as at an end and recover damages.
- (e) Notwithstanding the preceding subclause, the Subcontractor will not be entitled to make a claim based on quantum meruit.
- (f) If the Head Contract is terminated for any reason:
 - (i) the Subcontract is automatically terminated at the same time;
 - (ii) the Contractor will provide written notice of the termination within 5 Business Days of the termination of the Head Contract; and
 - (iii) the Subcontractor is not entitled to any payment for loss of profit on the Works that have not been performed at the time of termination of the Subcontract.
- (g) Without prejudice to any of the Contractor's other rights under the Subcontract, the Contractor may:
 - (i) at any time and for any reason, by written notice to the Subcontractor, terminate the Subcontract; and
 - (ii) either itself or by a third party complete the uncompleted part of the work under this Subcontract,
 and:
 - (iii) the Subcontractor is not entitled to any payment for loss of profit on the Works that have not been performed at the time of termination of the Subcontract.

17. INSOLVENCY

If either party:

- (a) being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors;
- (b) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any Subcontract with its creditors,

the other party may, without issuing a notice to show cause, terminate the Subcontract by written notice.

18. DISPUTE RESOLUTION

- (a) Any dispute between the Contractor and Subcontractor with respect to any matter arising under or in connection with this Subcontract must be dealt with in accordance with the provisions of clause 18.
- (b) If any dispute should arise between the parties including but not limited to a dispute with respect to the meaning of a part of the Subcontract, Variation, payment or other related matter, the party claiming that a dispute has arisen must give to the other party a written notice detailing:
 - (i) the nature of the dispute;

- (ii) the clause/s of this Subcontract, which relates to the dispute;
 - (iii) the action it requires the other party to this Subcontract to undertake to resolve the dispute;
 - (iv) stating that the notice is given in accordance with subclause 18(b) of the Subcontract.
- (c) On receipt of a subclause 18(b) notice, the other party must, within 14 days of receipt of the notice, provide a written notice to the other party detailing:
- (i) whether or not that party accepts the proposal for the resolution of the dispute set out in the subclause 18(b) notice;
 - (ii) if that party does not accept the proposal detailed in the subclause 18(b) notice to resolve the dispute that party must set out in the subclause 18(c) notice, its proposal for the resolution of the dispute;
- (d) Within 7 days of receiving the subclause 18(c) notice, the party receiving same must notify the other party in writing whether or not it accepts the proposal for the resolution of the dispute set out in the subclause 18(c) notice;
- (e) If the party receiving the subclause 18(c) notice does not accept the proposal for dispute resolution, it must so notify the other party within 7 days of receipt of the subclause 18(c) notice, and the dispute must be referred to mediation.
- (f) If within a further 14 days of a dispute being referred to mediation the parties have not agreed upon the mediator, the mediator must be the President of the Institute of Arbitrators & Mediators Australia.
- (g) The party issuing the notice of dispute must be responsible for conveying and organising the mediation.
- (h) The mediation must be conducted on the following basis:
- (i) the mediation must be conducted in accordance with the Institute of Arbitrators & Mediators Australia's rules for the mediation of commercial disputes; and
 - (ii) each of the parties must pay an equal share of the fees and expenses that the mediator is entitled to and any room hire charges.
- (i) Subject to subclause 18(j), if the dispute is not resolved in the mediation convened, a party may litigate in the court with appropriate jurisdiction.
- (j) Where:
- (i) a claim is not resolved in the mediation; and
 - (ii) the amount in dispute is less than \$50,000,
- a party will not be entitled to refer the matter to litigation pursuant to subclause 18(i), but may refer the matter to expert determination.
- (k) The expert must be appointed by an authorised officer of the Royal Institution of Chartered Surveyors Dispute Resolution Service (**RICS DRS**) Oceania.
- (l) The expert determination must be carried out in accordance with the terms of the RICS Dispute Resolution Service Expert Determination Subcontract (as updated from time to time on the RICS DRS website).
- (m) In making a determination, the independent expert must:
- (i) give due weight to any written submissions or representations made by a disputing party within any reasonable time limit prescribed by the independent expert;
 - (ii) give written reasons for his or her decisions; and
 - (iii) act as an expert and not as an arbitrator.
- (n) In the absence of any manifest error, the decision of the independent expert will be final and binding upon the parties and not subject to review either through the courts or otherwise.
- (o) The cost and expense of the conference and independent expert determination must be borne equally by the parties.

19. SERVICE OF NOTICES

- (a) Any notice under the Subcontract must be in writing and:
- (i) delivered by hand to the address;
 - (ii) delivered by prepaid, registered or certified mail to the address;
 - (iii) sent to the facsimile number; or
 - (iv) sent electronically as an email to an email or other internet address (including a network or common information system address), set out for the Contractor and the Subcontractor in Annexure A.
- (b) A notice (and other documents) under the Subcontract is deemed to have been given and received:
- (i) if delivered by hand, on the date it is delivered to the addressee;
 - (ii) if mailed to an address in the city of dispatch, on the date which is 3 days after the date of dispatch;
 - (iii) if mailed to an address not in the city of dispatch, on the date which is 5 days after the date of dispatch;
 - (iv) if sent by facsimile, on the date confirmation of correct transmission of facsimile by the addressee's facsimile is received by the sender; or
 - (v) if sent electronically:
 - (D) at the time shown in the delivery confirmation report generated by the sender's email system; or
 - (E) if the sender's email system does not generate a delivery confirmation report, within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent,
 - (F) unless a later time is specified in the direction or notice.

- (c) A notice received after 5pm (recipient's time) is taken to be received on the next day in the place of receipt.
- (d) A party may, from time to time, change its address details in Annexure A by giving notice to the other party thereof.

20. NOTIFICATION OF CLAIMS

- (a) Notwithstanding any other provision of the Subcontract, the Contractor will not be liable upon any claim other than a payment claim under clauses 7 and 8 by the Subcontractor in respect of any matter arising out of or in connection with the Subcontract, the subject matter of the Subcontract or otherwise, including but not limited to, Variations and claims for any form of loss or damage for delay unless:
 - (i) a notice of claim together with full particulars the claim is given in writing to the Contractor within 10 Business Days after the date the Subcontractor becomes aware or should have reasonably become aware of the occurrence of the events or circumstances on which the claim is based; and
 - (ii) the notice outlines the legal basis of the claim and full details of the likely quantum.
- (b) If the Subcontractor does not give to the Contractor the notice in accordance with this clause 20, the Subcontractor will not be entitled to the claim and the Contractor will be released for all time from the claim.

21. GOODS AND SERVICES TAX (GST)

- (a) It is agreed that the Subcontract Sum is exclusive of GST.
- (b) Notwithstanding any other clause in the Subcontract, if any supply made under or in connection with the Subcontract constitutes a taxable supply, then the recipient of the supply of goods or services ("the Recipient") must determine and pay to the Subcontractor of the goods or services ("the Subcontractor") the amount of GST required to be accounted for by the Subcontractor to the Commissioner of Taxation in respect of the supply in addition to any amount or consideration expressed as payable elsewhere in the Subcontract.

22. BCIPA

- (a) This clause applies to the extent that BCIPA applies.
- (b) For BCIPA, the "reference date" in respect of the Subcontract means:
 - (i) for all progress claims, the date referred to in clause 7 for the making of progress claims; and
 - (ii) for the final progress claim, the date calculated in accordance with clause 8.
- (c) Any notice served by the Subcontractor under BCIPA must be served to the Contractor's fax number listed in Annexure A.
- (d) The Contractor may serve a payment schedule under BCIPA by email to the email address listed in Annexure A.
- (e) The Subcontractor must promptly and without delay, give to the Contractor a copy of any adjudication application received by the Subcontractor from any party under BCIPA.
- (f) If the Contractor becomes aware that a party is entitled to suspend work (which forms part of the Works) pursuant to section 33 of BCIPA, the Contractor may, at its absolute discretion, pay the other party such money that is, or may be owing, to that party in respect of the work forming part of the Works and any amount paid by the Contractor is recoverable from the Subcontractor as a debt due to the Contractor under the Subcontract.
- (g) The Subcontractor indemnifies the Contractor against all claims made against, or losses, damages or expenses (including but not limited to legal) which the Contractor suffers or incurs in connection with:
 - (i) a suspension by a subcontractor of the Subcontractor of work which forms part of the Works, under BCIPA; or
 - (ii) a failure by the Subcontractor to comply with this clause 22.

23. PPSA

- (a) For the purposes of this clause 23:
 - (i) words and phrases used in this clause 23 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates; and
 - (ii) "Contractor's Personal Property" means all personal property the subject of a security interest granted under this Subcontract.
- (b) If the Contractor determines that the Subcontract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Subcontractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Contractor asks and considers necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the Contractor to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - (iii) enabling the Contractor to exercise rights in connection with the security interest.
- (c) The Contractor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- (d) The Subcontractor must notify the Contractor as soon as the Subcontractor becomes aware of any of the following:
 - (i) if any personal property which does not form part of the Contractor's Personal Property becomes an accession to the Contractor's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
 - (ii) if any of the Contractor's Personal Property is located or situated outside Australia; or
 - (iii) upon request by the Contractor, of the present location or situation of any of the Contractor's Personal Property.
- (e) The Subcontractor must not:
 - (i) create any security interest or lien over any of the Contractor's Personal Property whatsoever (other than security interests granted in favour of the Contractor);
 - (ii) sell, lease or dispose of its interest in the Contractor's Personal Property;
 - (iii) give possession of the Contractor's Personal Property to another person except where the Company expressly authorises it to do so;

- (iv) permit any of the Contractor's Personal Property to become an accession to or commingled with any asset that is not part of the Equipment;
- (v) change its name without first giving the Contractor 15 days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Contractor is required to do under this clause 23 is at the Subcontractor's expense.
- (g) The Subcontractor must not disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor must not authorise, and will ensure that no other party authorises, the disclosure of such information.
- (h) This subclause 23(h) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- (i) The Subcontractor warrants that:
 - (i) the Equipment is being sold in the ordinary course of the Subcontractor's business of selling property of that kind; and
 - (ii) the sale of the Equipment will not constitute a breach of any security agreement providing for any security interest in the Equipment under the PPSA or otherwise.
- (j) Without limiting or waiving subclause 23(e), if any security interest in the Equipment is registered on the Personal Properties Securities Register, the Subcontractor undertakes to register a financing change statement in respect of the Equipment to release that security interest within 10 days of executing a deed of release in the form contained in the Subcontract Documents.

24. GOVERNING LAW

- (a) Notwithstanding the domicile or residence of any party, the Subcontract must be governed in all respects by the laws of the State as noted in Annexure A. The parties to the Subcontract submit to the non-exclusive jurisdiction of the Courts of the State as noted in Annexure A (including the High Court of Australia) with respect to any legal proceedings relating to the Subcontract.
- (b) Any proceedings arising under the Subcontract may, at the option of the Contractor, be instituted, heard and determined in any court of competent jurisdiction in Queensland selected by the Contractor, and such court must possess territorial jurisdiction to hear and determine any such proceedings.

25. INDUSTRIAL RELATIONS

- (a) The Subcontractor must ensure that there is at all times a good industrial climate on the Site and must ensure that all relevant awards and formal industrial subcontracts and allowances are adhered to and paid by the Subcontractor to its employees and adhered to and paid by the Subcontractors agents and sub-subcontractors.
- (b) The Subcontractor will be fully liable to the Contractor and must indemnify the Contractor in respect of any liability arising from the Subcontractor's failure to comply with the requirements of this clause 25 which results in any loss, claim, demand or damage incurred or suffered by the Contractor.
- (c) All such claims will be a debt due and owing by the Subcontractor to the Contractor against which the Contractor may deduct from any moneys due and owing to the Subcontractor or from any retention monies or security provided by the Subcontractor or both and must also be entitled to terminate this Subcontract by notice without prejudice to any other remedies available to the Contractor.

26. HEAD CONTRACT

- (a) The Subcontractor must indemnify the Contractor against all losses and liabilities arising from any conduct or omission by the Subcontractor which amounts to or results in default by the Contractor under the Head Contract or failure by the Contractor to perform and comply with the terms of the Head Contract, or the Contractor obtaining less than the best rights and best advantages under the Head Contract.
- (b) In any case where the rights of the Contractor are restricted (including, without limiting the generality of that expression, any restriction on rights to payment for work executed or loss or expense incurred or on rights to extension of time) or are defined in a way which is disadvantageous to the Contractor by a term of the Head Contract, the corresponding rights of the Subcontractor must be correspondingly restricted and defined.
- (c) In any case where the Contractor has, or may incur, a liability or obligation under a term of the Head Contract, the Subcontractor must have, or incur, a corresponding liability or obligation, in its performance of the Subcontract.
- (d) In any case where the Contractor will or might wish to give any notice, make any claim, avoid any obligation and/or take any other course or step under the Head Contract and/or otherwise, the Subcontractor must ensure that the Contractor is able to do so in good time and is completely informed in writing of all matters it might need to know for its purposes, including any relevant time constraints and without limiting the generality of the foregoing, the Subcontractor must do all things appropriate to enable the Contractor to notify and make any claims in respect of delay and/or variations.
- (e) This clause 26 must prevail over all other inconsistent provisions except in any circumstance where the inconsistent provision would be more advantageous to the Contractor.
- (f) Nothing in this clause 26 must oblige the Contractor to disclose the Subcontract Sum under the Head Contract or provisions indicating its components or other benefits to the Contractor.

27. WARRANTY

The Subcontractor acknowledges and agrees that a form of warranty in terms as required by the Contractor shall be executed and returned to the Contractor prior to commencement of the Subcontract Works and in any event prior to payment of any payment claim made by the Subcontractor. The warranty requirements shall be in accordance with Item 17 of Annexure A.

28. ENTIRE AGREEMENT

- (a) This Subcontract contains the entire agreement as concluded between the parties, notwithstanding anything to the contrary contained in any brochure, report, letter, facsimile or other document prepared by or on behalf of the Contractor and/or the Subcontractor and must specifically exclude the Subcontractor's quotation and any terms and conditions contained in the Subcontractor's quotation.
- (b) The Subcontractor acknowledges that it has not been induced to enter into this Subcontract by any representation verbal or otherwise made by or on behalf of the Contractor that is not set out in this Subcontract.

ANNEXURE A - «CONTRACT_NUMBER»

Item	Description	
1	Contractor	Spaceframe Buildings Pty Ltd
	ABN	42 009 930 554
	Address	225 Queensport Rd North Murarrie QLD 4172
	Phone	+61 7 3890 9500
	Fax	+61 7 3890 9533
2	Subcontractor	«Subbie»
	ABN	«ABN»
	Address	«Mailing_Address», «Mailing_Suburb» «Mailing_State» «Mailing_PCode»
	Fax	«FAX»
	Email	«Email_Address»
	QBCC Licence Number	«BSA_LICENCE_NUMBER»
3	Principal	«Principal»
4	Security	Alternative «Retention_Alternative» If Alternative 1 applies, amount of security to be provided: «Retention_Amount» of the Contract Sum
5	Project	«PROJECT»
6	Site (description and address)	«Site_Address»
7	Brief description of the Works	«Trade» Cost Code: «Cost_Code»
8	Date for Commencement	As per Contractors programme at Annexure C as amended
9	Date for Practical Completion	As per Contractors programme at Annexure C as amended
10	Reference Date for Progress claims (a) Times for progress claims: (i) prior to Practical Completion (ii) after Practical Completion	On the last business day of each month for work carried out to the last business day of that month at the end of the month in which Practical Completion was achieved, for work carried out up to Practical Completion
11	Liquidated damages	\$1,000.00 per day
12	Insurance by Subcontractor Public liability Workers Compensation, personal accident and illness or any other insurance required under Statute	\$10,000,000.00
13	Subcontract Documents	All documents as stated and shown in the documents and drawings at Annexure B.
14	Governing Law	Queensland
15	Design Services	Design Services are included in the Works - «Design_included»
16	Contract Sum	«Contract_Sum»
17	Warranty Period	As to Labour – 12 months defects liability period As to materials, plant and equipment - «warranty_period_as_to_plant_materials_a»

ANNEXURE B

Current Scope of Works for the Head Contract
Completed Tender Price Break Up
Trade Specification(s)
Current Programme for the Head Contract
All documents as per Document Register attached
Standard Spaceframe Subcontractor's Certificate
Standard Spaceframe Statutory Declaration
Standard Spaceframe Deed of Release

ANNEXURE C