Subcontract General Terms & Conditions

1. Definitions and Interpretation

1.1 Definitions

In this Contract, except where the context otherwise requires:

Australian Standards means standards and codes published by Standards Australia.

Business Day means any day which is not a Saturday, Sunday, public holiday or statutory holiday in Western Australia. Saturday, Sunday or public holiday.

Certificate of Practical Completion means written notice issued by GBSC pursuant to clause 10.1(c) confirming that Practical Completion has been achieved and the Date of Practical Completion.

Claim means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

'Consequential Loss' means:

(a) loss of income, profit, anticipated profit, revenue, business, production, opportunity or anticipated savings;

(b) the cost of capital or other financing costs (other than to the extent such costs are included in the calculation of liquidated damages or the assessment of general damages arising out of or in connection with delay);

(c) loss of use;

(d) loss of goodwill; and

(e) penalties payable under other agreements,

but excludes any loss arising from, or in connection with:

(f) any statutory fine arising from any breach of law by the other party;

(g) personal injury, sickness or death;

(h) damage to property caused or contributed to by a party;

(i) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentation by, a party;

(j) wrongful acts committed by a party with a reckless indifference to the consequences;

(k) willful default by a party;

(l) the abandonment of this Contract;

(m) matters that cannot be excluded at law; and

(n) any matter which is the subject of a third-party claim against the Principal and for which the Subcontractor has given an indemnity under this Contract provided that the Principal has taken reasonable steps to limit or avoid such loss.

Contract Schedule means the Contract Schedule forming part of the Contract.

Contract means the agreement between GBSC and the Subcontractor recorded by the Contract Documents. Contract Sum means the monetary amount in the Contract Schedule

Date for Practical Completion means the date for Practical Completion in the Contract Schedule as adjusted by the Contract. Date of Practical Completion means the date certified by GBSC in a Certificate of Practical Completion.

Dispute means any dispute, difference or issue between the parties arising out of or in connection with this Contract or the provision of the Works.

GST means a goods and services or similar tax imposed in Australia. Identified Delay means any:

(a) any act omission of GBSC; or

(a) any other cause which is expressly stated to be a cause for an extension of time which causes the performance of the Works to be delayed.

Intellectual Property means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Legislative Requirements includes:

(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and State or Territory where the Works or the particular part of the Works is being carried out;

(b) certificates, licences, consents, permits, approvals and requirements of any organisations or authorities having jurisdiction in connection with the carrying out of the Works;

(c) standards, codes and guidelines applicable to the Works;

(d) the terms and conditions of any approvals obtained or required to be obtained from any applicable authority or statutory body including but not limited to any applicable development application approvals and building permits; and

(e) any fees or charges payable in connection with (a), (b), (c) or (d). Material Breach means the Subcontractor's failure to:

(a) provide security;

(b) provide evidence of insurance;

Personnel means a parties' directors, officers, employees, consultants, subcontractors or agents.

Practical Completion is the stage in the execution of the Works when the Works are complete except for minor omissions and minor defects (Practical Completion Defects) which do not affect the use or occupation of the Works, and all other information has been provided which, in the opinion of GBSC, is essential for the use, operation and maintenance of the Works.

Practical Completion Defects means any defects or omissions in the work under the Contract existing at Practical Completion.

Schedule of Rates means the schedule of rates for work in Contract Schedule.

Scope of Works means the work, including any design work, specified in Contract Schedule.

Site means the lands and other places to be made available and any other lands and places made available to the Subcontractor by the Contractor for the purpose of the Contract as identified in the Contract Schedule.

WHS Laws means collectively the Work Health and Safety Act 2020 (WA) and the Work Health and Safety Regulations 2022 (WA).

Works means the work described and inferred by the Scope of Works and any variations to the Scope of Works varied in accordance with the Contract and any other supply of plant, equipment, materials and services incidental to and necessary for the performance of such work.

2. Time

2.1 Extension of Time

The Subcontractor must undertake with due diligence and without delay so as to bring the Works to Practical Completion by the Date for Practical Completion.

2.2 Notice of Delay

As soon as the Subcontractor becomes aware that the performance of its Works may be delayed beyond the Date for Practical Completion, it must give GBSC 5 Business Days written notice (Notice of Delay).

2.3 Claim for an Extension of Time (EOT)

(a) If an Identified Delay causes the progress of the Works to be delayed, the Subcontractor may submit a written claim for an extension of time to the Date for Practical Completion (Claim for an EOT).

(b) Claims for EOT under must:

(i) Be given within 10 Business Days of the conclusion of the delay caused by the Identified Delay;

(ii) Give details of the Identified Delay and the period of EOT claimed;

(iii) Give details of the steps that the Subcontractor has taken to mitigate the effects of the delay; and

(iv) Be accompanied by any other documents or information which GBSC reasonably requests.

3. Work Health and Safety

(a) The Subcontractor must:

(i) comply with all applicable WHS Laws and ensure the health and safety of all persons on the Site at all times.

(ii) ensure that the Subcontractor's officers, employees, agents, subcontractors and representatives comply with all WHS Laws in connection with the carrying out of any work under this Contract and:

1. comply with all applicable health, safety and environment regulations, codes of practice and standards;
2. comply with any conditions issued by [insert client name] relating to safe working practices and environmental protection, including any occupational health and safety procedures;
3. have the required safety equipment to perform the works, including all personal protective equipment and clothing;
4. obey all Site rules, signs, policies and instructions pertaining to the Site; and
5. must keep the Site clean and regularly remove rubbish and waste off Site. The Supplier's responsible work area is to be left in a clean and safe state at the completion of each working day.

(b) Without limiting the Subcontractor's obligations under the WHS Laws, if a Notifiable Incident (as defined in the WHS Act) occurs in relation to any work performed under this Contract, the Subcontractor shall immediately inform GBSC and provide GBSC with all information and documentation reasonably required by GBSC.

4. Meetings/events

The Subcontractor shall attend periodic meetings as may be required by the GBSC.

5. Legislative Requirements

5.1 Compliance with Legislative Requirements

(a) The Subcontractor shall comply with all Legislative Requirements.

5.2 Approvals

(a) The Subcontractor must obtain all certificates, licences, permits, consents and approvals required for the Works and shall be deemed to have allowed for all costs and fees associated with this clause in the Contract Sum.

6. Site

6.1 Access and use of Site

(a) The Subcontractor shall not have exclusive possession of the Site but shall be provided with sufficient access to the Site to enable the Subcontractor to execute the Works.

(b) GBSC may, acting reasonably, direct the Subcontractor to remove any Subcontractor's Personnel from the Site. The Subcontractor must promptly comply with such a direction and is not entitled to any adjustment to the Contract Sum, delay damages, extension of time or any other costs incurred in complying with the direction.

6.2 Other Contractors

(a) The Subcontractor acknowledges that:

(i) other parties may be undertaking work on or adjacent to the Site;

(ii) it shall have no Claim against GBSC for time or costs by reason of other parties carrying out works and services at or on the Site at the same time as the Subcontractor.

7. Contacts with client/other subcontractors

7.1 Access and use of Site

(a) Subcontractor shall not communicate with GBSC's Client or GBSC's other subcontractors regarding the Works except as expressly authorised by GBSC.

(b) GBSC may, acting reasonably, direct the Subcontractor to remove any Subcontractor's Personnel from the Site. The Subcontractor must promptly comply with such a direction and is not entitled to any adjustment to the Contract Sum, delay damages, extension of time or any other costs incurred in complying with the direction.

7.2 Site Conditions

(a) The Subcontractor is responsible for and assumes the risk of all loss, costs, time or damage caused by Site Conditions encountered during the performance of the Works.

8. Variations

8.1 Directing Variations

(a) The Subcontractor must not vary the Works except as directed in writing by GBSC in a document titled "Variation Order".

(b) GBSC may at any time prior to the Date of Practical Completion direct the Subcontractor to vary the Works.

(c) If GBSC omits any part of the Works GBSC is entitled to have such omitted work carried out by others.

(d) The work which has been omitted will be valued in accordance with clause 8.4.

8.2 Proposed Variations

GBSC may give the Subcontractor notice of a proposed variation. The Subcontractor must within 5 Business Days notify GBSC whether the proposed variation can be effected and advise of the effect on the Date for Practical Completion and the cost of performing the variation (including delay costs if any).

8.3 Direction and Instruction by GBSC

(a) If the Subcontractor receives a direction or instruction from GBSC which it considers constitutes a variation, it must notify GBSC within 5 Business Days (and in any event prior to proceeding with the works the subject of the direction or instruction).

(b) Upon receipt of notice, GBSC must confirm whether or not the direction is a Variation Order or withdraw the direction.

(c) The Subcontractor must comply with all directions issued.

(d) All communications between the parties are to be directed to and from the party's Representative, as described in the Contract Schedule.

8.4 Valuation

(a) Any variation shall be valued by:

(i) agreement;

(ii) using reasonable rates or prices.

(b) The value of a variation shall be added to or subtracted from the Subcontract. Any deduction shall include a reasonable amount for profit and overheads.

(c) The value of the variation pursuant to (a) shall be the Subcontractor's sole remedy for any loss and damage the Subcontractor suffers by reason of the delay caused by the variation.

8.5 Inspections

(a) GBSC may inspect the Works and if such inspection reveals defects then GBSC may direct the Subcontractor to take action to rectify the defect and if the Subcontractor fails to rectify the defect, then GBSC may have the work rectified and the cost incurred by GBSC shall be a debt immediately due and payable from the Subcontractor to GBSC.

9. Warranties

9.1 Subcontractor's Warranties

(a) The Subcontractor warrants:

(i) the Works will be performed in a proper and workmanlike manner and the completed Works shall comply with the Contract Documents, all applicable Australian Standards, and all Legislative Requirements;

(ii) that it has examined all information relevant to the risks which could affect the calculation of the Contract Sum and the performance of its obligations under the Contract; and

(iii) that it has visited and examined the Site and informed itself fully as to the Site Conditions.

10. Performance and Payment

10.1 Performance

(a) The Subcontractor must execute and complete the Works in accordance within this Contract by the Date for Practical Completion.

(b) When the Subcontractor is of the reasonable opinion that the Works have reached Practical Completion, the Subcontractor must give notice to that effect.

(c) Upon receipt of notice, GBSC will inspect the Works and if completed in accordance with this Contract, issue a Certificate of Practical Completion.

10.2 Payment

(a) GBSC will pay the Subcontractor the Contract Sum.

(b) The Subcontractor may submit payment claims after the end of each month, for work done;

(c) GBSC will respond to any payment claim by:

(i) Providing a payment schedule within 15 Business Days of receipt of the payment claim, stating the amount to be paid, and if necessary, reasons for not paying the amount claimed, and the amount to be paid (scheduled amount);

(ii) Paying the amount of the payment claim (or the scheduled amount as the case may be) within 20 Business Days of receipt of the payment claim.

(d) The Contract Sum includes allowances for all things necessary and incidental for the performance of the Works.

(e) The Contract Sum shall not be adjusted due to an increase in the cost of labour, materials, packing, testing, plant, transport or exchange rates.

10.3 Provisional Sums

(a) If the Subcontractor is directed to carry out a provisional sum relates, the Subcontractor shall carry out the work and the price for the provisional sum work will either be agreed or determined by GBSC acting reasonably.

10.4 Supporting documentation

If requested, Subcontractor shall provide supporting documentation with each payment claim to justify the amount claimed.

11. Final Payment

11.1 Final Payment Claim

(a) The Subcontractor shall provide GBSC with a final payment claim within fourteen (14) days of the expiry of the Defects Liability Period. The final payment claim is to include all the Subcontractor's claims for payment.

(b) The Subcontractor is barred from making any Claims against GBSC in relation to, arising out of or in connection with the Works, unless included in the Final Payment Claim.

11.2 Set-off and withholding

(a) GBSC may set-off or deduct from payments to the Subcontractor any amounts which are owed to GBSC by the Subcontractor.

12. Termination and Suspension

12.1 Subcontractor default

(a) Where the Subcontractor commits a Material Breach of this Subcontract and the Subcontractor fails to remedy the breach within seven days of GBSC giving the Subcontractor written notice of the breach, GBSC may, by notice in writing:

(i) terminate the Subcontract as at the date specified in the notice;

(ii) take all or part of the Works out of the hands of the Subcontractor.

(b) Where GBSC terminates pursuant to subclause 12.1(a)(i), GBSC may itself, or through other contractors, complete the Works and the Subcontractor shall not be entitled to any compensation as a result of the Works being completed by others.

12.2 Termination other than due to default

(a) This Subcontract may be terminated in whole or in part at any time at the complete discretion of GBSC by giving notice in writing to the Subcontractor whereupon GBSC will pay the Subcontractor:

(i) any amounts already due and payable pursuant to clause 10.2;

(ii) for work executed prior the date of termination but not included in any payment claim,

(iii) the cost of materials reasonably ordered by the Subcontractor for the Works under the Subcontract, which the Subcontractor is liable to accept, but only where the materials become the property of GBSC on payment; and

(iv) the reasonable costs of removal of temporary Works and constructional plant;

provided that the Subcontractor substantiates these amounts to the reasonable satisfaction of GBSC.

(b) Other than in respect of payment set out in 12.2(a) above, the Subcontractor shall not be entitled to any other payment or compensation (including for loss of profit) arising out of or in connection with termination pursuant to this clause 12.2.

12.3 Suspension

(a) GBSC may, at any time, for any reason, suspend the carrying out of the whole of any part of the Works by written notice to the Subcontractor.

(b) The Subcontractor must recommence carrying out the suspended Works as soon as reasonably practicable after written notice from GBSC instructing it to do so.

(c) The Subcontractor must take all reasonable steps to mitigate any costs incurred when recommencing any Works after a period of suspension.

13. Indemnity

(a) The Subcontractor must indemnify GBSC and GBSC's officers, agents and employees against any Claim, loss, expense, liability, fine, penalty or fee suffered or incurred by GBSC arising out of or in connection with any act or omission of the Subcontractor, in relation to the Contract or the Works, including in respect of:

(i) death or personal injury of any person;

(ii) loss of, or damage to, any tangible property;

(iii) infringement of Intellectual Property or moral rights; or

(iv) breach of any Legislative Requirements,

(b) but the indemnity shall be reduced proportionally to the extent that a negligent act or breach of the Contract by GBSC, its officers, employees or agents contributed to the Claim, loss, expense, liability, fine, penalty or fee.

(c) To the extent allowed at law, Part 1F of the Civil Liability Act 2002 (WA) does not apply to this Subcontract.

14. Insurance

14.1 Insurance requirements

(a) The Subcontractor must, before commencing work under the Contract, take out and maintain the following insurances :

(a) Workers Compensation and employee Liability Insurance – Where permitted b statue a policy with a common Law extension with a limit of not less than $20 million for any one event.

(b) Public & Product Liability Insurance – a policy is required with a cover $20 Million. (c) Motor Vehicle Insurance – Policy is required with a cover od $20 Million

Compliance with this clause does not of itself relieve or reduce the Subcontractor's obligations under any other provision of this Subcontract.

15. Confidentiality

15.1 Confidentiality and Publicity

(a) The Subcontractor must keep confidential all documents and information provided to it in relation to the Contract or the Works, including the Contract Documents.

16. Dispute Resolution

16.1 Notice of Dispute

(a) If either party becomes aware of any Dispute between the parties in connection with the Works or the Contract it must, within 14 days of the Dispute arising, give the other party a written notice of the Dispute (Dispute Notice).

(b) A Dispute Notice given under clause 16.1(a) must identify and provide details of the dispute.

16.2 Conferral

(a) Within 10 Business Days of a party receiving the Dispute Notice, the parties must meet confer at least once, in a genuine attempt to resolve the Dispute.

16.3 Litigation

(a) If the Dispute cannot be resolved within a further 10 Business Days after the conferral either party may refer the Dispute to litigation.

16.4 Independent Contractor

The Subcontractor is an independent contractor performing the Contract. The Subcontract does not create any agency, partnership, joint venture, or other joint relationship between the parties.

17. Assignment/subcontracting

Subcontractor shall not assign this Agreement nor any rights or obligations herein, nor subcontract any of the Works, without GBSC's prior written consent.

18. Non-Waiver

(a) A party's failure or delay in exercising a right relating to this Contract, is not a waiver of that right. Any waiver must be in writing and signed.

19. Governing Law

The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of Western Australia

19.1 Entire Agreement

This Agreement supersedes all prior agreements, whether written or oral, relating to the subject matter hereof, and contains the entire agreement of the parties.

20. Consequential Loss

Neither party will be liable to the other party under this Contract, at law, in equity or otherwise for Consequential Loss.

21. Retention and Security

The Subcontractor must provide retention for performance of all and any of its obligations under this Contract. GBSC is entitled to call upon retentions upon giving 5 Business Days written notice where GBSC claims that it has incurred cost as a consequence of any act or omission by the Subcontractor.

(a) GBSC must:

(i) release 50% of any retention or security held promptly after the issue of the Certificate of Practical Completion; and

(ii) Release the balance of the retention promptly after the end of the Defects Liability Period.