



SIMPLE WORKS SUBCONTRACT - USER GUIDE

Overview

This guide relates to the 'Simple Works Subcontract' template, which is a customisable form of subcontract intended for use on small to medium-sized construction engagements in Australia.

The template is not intended for use on domestic (residential) construction contracts. It is a fixed price (lump sum) form of contract.

The risk profile of this subcontract is intentionally 'firm', weighted in favour of the head contractor, but without being as aggressive as many modern head contracts.

Notes on use

The template is provided in Word format so that it can be modified to suit the needs of your business, and to also allow further tailoring as required for individual projects. For example, you may wish to change the word 'Company' throughout the document to the name of your company (or an abbreviation), which may make the document easier to read. You are also free to add your logo to the document or otherwise change the look of the document if you wish to do so.

The operation of this contract will be affected by the operation of legislation, including security of payment legislation, competition and fair trading legislation, insolvency legislation and other legislation that is specific to the construction industry. The operation of the contract may also be affected by the way in which you administer the contract after it is signed.

The document is intentionally short, with a view to maximising the appearance of simplicity. It does not attempt to deal with every risk that may arise on your project. Examples of issues that are deliberately not addressed in the contract are described further below.

The template has not been designed with any particular project or circumstances in mind. You should not assume that the document is 'ready to use' or otherwise appropriate for your circumstances in its standard form. You should make your own assessment about the suitability of the document, and seek legal and other professional advice as required, before using or relying on it.

SUMMARY OF CONTENTS

Back-to-back operation

The document assumes that your business has been engaged as head contractor under a separate head contract, and that this contract will operate as a subcontract.

Although there is a general back-to-back provision,^{cl 2} recent decisions suggest the courts may not be willing to enforce this type of clause. If there are any requirements of your head contract that you are concerned about, and which you need to pass through to your subcontractor, you should consider the incorporation of specific special conditions to address the issue.

Design responsibility

Under this contract, the Contractor will always have some design responsibility.^{cl 6} At a minimum, the Contractor will always be responsible for performing any work necessary to complete the design.^{cl 6.1}

You will need to decide whether the Contractor should assume the risk of the existing design.^{Item 10} If the answer is 'yes' (i.e. the Contractor will be fully responsible for all design connected with its scope of work), this will also mean that the Contractor:

- (a) cannot claim relief for a design discrepancy,^{cl 6.5} and
 - (b) will assume the risk of the existing design and provide a fit for purpose warranty.^{cl 8}
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Increases to the Contract Price

The contract expressly allows the Contractor to claim an increase to the contract price in the following circumstances:

- (a) a variation directed by you,^{cl 14}
 - (b) the final value of provisional sum work exceeds the value of a provisional sum in the contract,^{cl 17}
 - (c) if Item 10 is marked 'no', design discrepancies which could not reasonably have been anticipated,^{cl 6.5} and
 - (d) an acceleration of the works, but only where you have requested the acceleration, obtained a proposal and directed the Contractor to proceed.^{cl 11.10}
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Completion

The Contractor is required to ensure the works are fully complete and that there are no known defects by the Date for Completion.^{cl 11.1, 11.2} There is no concept of 'practical completion' in this contract.

This means that the Contractor may be exposed to liquidated damages if the works are not fully complete and free of defects by the Date for Completion.