# FOREWORD

This Subcontract Agreement and Conditions of Subcontract (together the **Subcontract**) have been drafted by BuildSafe® with the intention of providing Contractors and Subcontractors with a fair, straight-forward agreement and conditions of contract to govern their relationship when entering into subcontracts under the BuildRight® Conditions of Contract.

The Subcontract is aimed at ensuring that the parties’ rights, obligations and responsibilities under the Subcontract are clearly identified and understood from the outset, so as to ensure that the construction project is completed on time and on budget.

There are two parts to the BuildRight® BCS:2016 Subcontract. The first part is the Subcontract Agreement, which contains the basic details about the Subcontract including, among other things, the Parties’ names and details, the Subcontract Price, and the scope of the Subcontract Works to be completed. The second part of the Subcontract contains the General Conditions of Subcontract. These set out in detail the rights and obligations of the Contractor and the Subcontractor under the Subcontract.

It is important that you read the entire Subcontract and, if you have any queries or concerns about the terms of the Subcontract, you should take independent legal advice before signing the Subcontract.

The Contractor and the Subcontractor must complete and sign the Subcontract Agreement, initial each page of the General Conditions of Contract and have their respective signatures witnessed. The Contractor and Subcontractor must also initial every page of the Plans and Specifications that describe the Subcontract Works, and separately initial any alterations (together, the **Subcontract Documents**). The Parties should each retain a copy of the Subcontract Documents for their records.

BuildSafe® also provides a suite of additional documents for use in relation to the Subcontract. These include templates for, among other things: Payment Claims, Payment Schedules, Site Instructions/Variations, Notice and Certificate of Practical Completion, Notice of Defects, Notice and Certificate of Completion, Notice of Dispute, and Notice of Adjudication. These documents may be downloaded from the BuildSafe® website at [www.buildsafe.co.nz](http://www.buildsafe.co.nz).

# COPYRIGHT

These Conditions of Subcontract are subject to strict conditions of use. BuildSafe® retains title and ownership of the copyright in these documents. In no circumstances are you permitted to: sell, transfer, copy, reproduce, modify, adapt, decompile, disassemble, create derivative works based on the downloaded PDF files, or merge them with any other document or software; or to store them in a retrieval system or transmit them in any form or by any means, electronic, mechanical, photocopied, or otherwise, save only for the purpose of entering into a construction contract. All rights including translation reserved.

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# EXCLUSION OF LIABILITY

You are solely responsible for selecting these documents and you download and use them at your own risk based entirely in reliance on your own judgement and not in reliance on any understandings, statements, opinions, or representations made by BuildSafe®.

In downloading or using these documents, the Parties together and separately release and discharge, BuildSafe®, its agents, and employees, from all liability of any kind (whether involving negligence, misrepresentation, breach of contract, or breach of any equitable, fiduciary, statutory or other duty, or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties, or powers in relation to the preparation and provision of these Conditions of Subcontract, unless the act or omission is the fraudulent act of BuildSafe®, its agents or its employees. Any person who has not acted fraudulently and is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided herein.

The Parties, together and separately, undertake to indemnify and keep indemnified BuildSafe®, its agents, and employees, against all claims, costs, expenses, liabilities, awards, damages, and proceedings of any kind (properly sustained or incurred by them directly, or indirectly made by any third party) in relation to, or in connection with, the exercise of their functions, duties, or powers in relation to the preparation and provision of these Conditions of Subcontract, or otherwise, unless the act or omission is the fraudulent act of BuildSafe®, its agents, or its employees. If BuildSafe®, or any agent or employee of BuildSafe®, has not acted fraudulently and is shown to be unaware of the fraud of any other person, that person will continue to be indemnified as provided herein.

|  |
| --- |
| BuildRight® BCS:2016 - SUBCONTRACT AGREEMENT |

**THIS SUBCONTRACT AGREEMENT** made the Click or tap here to enter text.day of Click or tap here to enter text. 20Click or tap here to enter text..

|  |  |  |
| --- | --- | --- |
| **BETWEEN** | **THE CONTRACTOR** | Click or tap here to enter The Contractor’s Name. |
|  |  |
| Postal Address | Click or tap here to enter Postal Address. |
|  |  |
| Street Address | Click or tap here to enter Street Address. |
|  |  |
| Phone Number | Click or tap here to enter Phone Number. |
|  |  |
| Mobile Number | Click or tap here to enter Mobile Number. |
|  |  |
| Fax Number | Click or tap here to enter Fax Number. |
|  |  |
| Email Address | Click or tap here to enter Email Address. |
|  |  |
| **AND** | **THE SUBCONTRACTOR** | Click or tap here to enter The Subcontractor’s Name. |
|  |  |  |
| Postal Address | Click or tap here to enter Postal Address. |
|  |  |
| Street Address | Click or tap here to enter Street Address. |
|  |  |
| Phone Number | Click or tap here to enter Phone Number. |
|  |  |
| Mobile Number | Click or tap here to enter Mobile Number. |
|  |  |
| Fax Number | Click or tap here to enter Fax Number. |
|  |  |
| Email Address | Click or tap here to enter Email Address. |

(together, the Parties)

# BACKGROUND

A The Contractor has entered into a contract with Click or tap here to enter Principal’s name.(**Principal**) under the Click or tap here to enter the Head Contract Conditions of Contract.(**Head Contract**) for Click or tap here to enter Head Contract Works.(**Head** **Contract Works**).

B The Subcontractor is to complete part of the Head Contract Works, as follows Click or tap here to enter Subcontract Works. (**Subcontract** **Works**).

# THE PARTIES AGREE THAT:

1. They will carry out and fulfil all obligations imposed on them by the Subcontract.
2. The Subcontractor will carry out and complete the Subcontract Works for the Subcontract Price, or such greater or lesser sum as may become payable under the terms of the Subcontract, and will remedy all defects as required by the Subcontract and at law with all reasonable diligence.
3. Unless otherwise agreed, the Subcontractor will provide all labour, plant, equipment, materials, and services necessary for the proper completion of the Subcontract Works.
4. The following items constitute the Subcontract:
   1. this Subcontract Agreement;
   2. the General Conditions of Subcontract BCS:2016;
   3. the Special Conditions of Subcontract referred to in Section J (**Special Conditions**);
   4. the Plans and Specifications appended to the Subcontract Agreement; and
   5. any other documents specifically referred to in Section K of the Subcontract Agreement (**Additional Documents**),

(together, the **Subcontract**).

1. The Subcontract is an entire agreement between the Contractor and the Subcontractor and supersedes all previous negotiations, communications, representations, agreements and warranties, whether oral or written, with respect to the Subcontract Works.

# Location of Site

The Subcontract Works are to be completed at the following location:

Click or tap here to enter text.

# Description of Subcontract Works

The Subcontractor agrees to carry out and complete the Subcontract Works as more particularly described in the Plans and Specifications appended to the Subcontract including:

Click or tap here to enter text.

# Time

The Commencement Date of the Head Contract Works is: Click or tap to enter a date.

The due date for Practical Completion of the Head Contract Works is: Click or tap to enter a date.

The Commencement Date of the Subcontract Works is: Click or tap here to enter a date.

The due date for Completion of the Subcontract Works is: Click or tap here to enter a date

# Damages for Late Completion

The sum of $ Click or tap here to enter text. (incl GST) is the amount to be paid by the Contractor to the Principal under the Head Contract for each week, or part thereof, from the due date for Practical Completion of the Head Contract Works up to and including the date when Practical Completion is achieved by the Contractor.

# Payment

Please select one of the two options below to indicate the agreed payment method for the Subcontract.

This is a lump sum (fixed price) subcontract.

The Contractor shall pay the Subcontractor the sum of $Click or tap here to enter text. (incl GST) calculated in accordance with Schedule 1 to the Subcontract Agreement, subject to adjustment in terms of the Subcontract (the **Subcontract Price**).

The Subcontract Price in words: Click or tap here to enter text.

A margin of Click or tap here to enter text.% shall be added to the net price of all materials and separate contractors’ charges incurred by the Subcontractor in respect of Variations to the Subcontract Works.

**Variations to the Subcontract Works:**

The Subcontractor’s charge out rate to be applied to any additional work (**Variations**) required by the Contractor shall be $Click or tap here to enter text. per hour (incl GST).

If more than one rate may be charged, set out below a description of the roles and relevant rates for all employees:

Click or tap here to enter text.

The Subcontractor shall be entitled to the sum of $Click or tap here to enter text. (incl GST) for preparing any Variation price requested by the Contractor.

**Or**

This is a cost reimbursement (charge-up) subcontract.

The Contractor shall pay the Subcontractor on a charge-up basis in accordance with Schedule 2 to the Subcontract Agreement.

# Working Day Rate

The Subcontractor shall be entitled to the sum of $Click or tap here to enter text. (incl GST) per day as compensation for time related costs by reason of the net effect of a Variation, or Default by the Contractor, or any person for whose acts or omissions the Contractor is responsible, unless the nature or the circumstances of the Variation or Default are such as to render it inequitable to use this rate and a reasonable rate shall then be used.

1. **Insurance**

The Parties agree that the insurance requirements of the Subcontract will be satisfied as follows:

1. Subcontract Works insurance shall be the responsibility of Click or tap here to state Contractor or Subcontractor.
2. If the insurance of the Subcontract Works is the responsibility of the Subcontractor, the Subcontractor has contract works insurance in place for the period of the Subcontract Works for the sum of $Click or tap here to enter text. (refer to clause 65 of the General Conditions of Subcontract BCS:2016).

The above sum includes the following allowances:

Subcontract Price……………………………………….. $Click or tap here to enter Contract Price.

Costs of demolition, disposal and preparation for

replacement work……………………………………….. $Click or tap here to enter Costs.

Professional fees……………………………………….. $Click or tap here to enter Professional fees.

Value of items to be incorporated by Contractor……. $Click or tap here to enter Value of items.

Allowance for increased construction costs due to

Variations………………………………………….......... $Click or tap here to enter Variation costs.

Allowance for increased construction costs due to

inflation…………………………………………….......... $Click or tap here to enter Inflation.

1. The Subcontractor shall maintain a public liability insurance policy until the expiry of the Defects Repair Period and any work required to remedy defects, notified during the Defects Repair Period, has been completed, for the sum of $Click or tap here to enter text. (such sum being not less than two million dollars – refer to clause 68).
2. **The Contractor’s Representative** (refer clause 17of the General Conditions of Subcontract BCS:2016)

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Click or tap here to enter Name of Contractor’s Representative. | | |
|  |  | | |
| Phone Number | Click or tap here to enter Phone Number. | Mobile Number | Click or tap here to enter Mobile Number. | |
|  |  | | |
| Email Address | Click or tap here to enter Email Address. | | |

1. **The Subcontractor’s Representative** (refer clause 16of the General Conditions of Subcontract BCS:2016)

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Click or tap here to enter Name of Subcontractor’s Representative. | | |
|  |  | | |
| Phone Number | Click or tap here to enter Phone Number. | Mobile Number | Click or tap here to enter Mobile Number. | |
|  |  | | |
| Email Address | Click or tap here to enter Email Address. | | |

1. **Special Conditions**

Conditions stated in the Subcontractor’s tender do not form part of this Subcontract unless they are recorded here.

The following Special Conditions take precedence over the General Conditions of Subcontract:

Click or tap here to enter text.

1. **Additional Documents**

The following documents (ie emails, quotes, correspondence, tender documents, schedules of quantities, minutes of Subcontract pre-letting meeting, contract programme, Subcontractor site specific safety plan etc) form part of the Subcontract:

Click or tap here to enter text.

1. **Subcontractor to provide documents**

The Subcontractor shall provide the following warranties and guarantees for materials and services, as-built drawings, shop drawings, operating and maintenance manuals, and/or producer statements to the Contractor as soon as practicable upon request:

Click or tap here to enter text.

1. **Signatures of Parties to the Subcontract**

|  |  |
| --- | --- |
| SIGNED for and on behalf of the **CONTRACTOR**  Signature  Print Full Name | SIGNED for and on behalf of the **SUBCONTRACTOR**  Signature  Print Full Name |
| In the presence of:  *Name:*  *Address:*  *Occupation:*  *Signature* | In the presence of:  *Name:*  *Address:*  *Occupation:*  *Signature* |
| Date: | Date: |

**SCHEDULE 1**

This is a lump sum (fixed price) subcontract. Please note: this schedule is solely for the purpose of assessing Progress Payments and valuing Variations under the Subcontract. The Subcontractor may substitute this schedule with any similarly detailed trade summary.

The Subcontract Price is $Click or tap here to enter text. (inclusive of GST)

The Subcontract Price in words: Click or tap here to enter text.

The Subcontract Price is made up as follows:

| **BASE SUBCONTRACT ‘A’** | |  |
| --- | --- | --- |
| **ITEM** | **TRADE** | **AMOUNT** |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  | **\*SUBTOTAL** | **$ 0.00** |
|  | **ADD SUBCONTRACTOR’S MARGIN** | $0.00  0.00  **.00** |
|  | **\*TOTAL BASE SUBCONTRACT ‘A’** | **$ 0.00** |

**\***This table has been formatted to automatically calculate your Subtotal and your Total Base Subcontract Value.

* Enter in all your amounts and the subcontractor’s margin.
* Click onto the **\*SUBTOTAL field** (highlighted in yellow). Place your cursor **AFTER** the **DOLLAR** sign (as per example) 
* **Right click** your mouse and select the update field option.

To calculate your **Total Base Subcontract ‘A’** repeat the same steps as above.

Please note:

* If you add any lines, calculations will need to be changed.
* The same calculation methodology also applies to the following three tables.
* Please call if you have any questions with this form.

|  |  |  |
| --- | --- | --- |
| **MONETARY ALLOWANCES** | | |
| **PRIME COST SUMS ‘B’** | | |
| **ITEM** |  | **AMOUNT** |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  | **SUBTOTAL** | **$ 0.00** |
|  | **ADD SUBCONTRACTOR’S MARGIN** | $0.00 |
|  | **TOTAL PRIME COST SUMS ‘B’** | **$ 0.00** |

|  |  |  |
| --- | --- | --- |
| **MONETARY ALLOWANCES** | | |
| **PROVISIONAL SUMS (INCLUSIVE OF SUBCONTRACTOR’S MARGIN) ‘C’** | | |
| **ITEM** |  | **AMOUNT** |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  |  | $0.00 |
|  | **TOTAL PROVISIONAL SUMS ‘C’** | **$ 0.00** |

Please take totals from A, B and C and enter into the below table.

|  |  |  |
| --- | --- | --- |
| **SUMMARY** | |  |
|  | **Total Base Subcontract ‘A’** | $0.00 |
|  | **Total Prime Cost Sums ‘B’** | $0.00 |
|  | **Total Provisional Sums ‘C’** | $0.00 |
|  |  |  |
| **SUBTOTAL (excluding GST)** | | **$ 0.00** |
| **ADD GST** | | **$ 0.00** |
| **TOTAL SUBCONTRACT PRICE INCLUDING GST** | | **$ 0.00** |

**SCHEDULE 2**

This is a cost reimbursable (charge up) subcontract.

The Contractor shall pay the Subcontractor to undertake the Subcontract Works on a charge up basis as follows:

|  |  |
| --- | --- |
| **Labour:**  Subcontractor’s total hourly charge-out rate(s) (including all overheads, margin, travel, off-site project administration, and GST) for each hour engaged on the Subcontract Works including up to a total of half an hour per day for morning and afternoon tea breaks, but not including any time related to a lunch break, is/are: | $ |
| (specify if more than one rate applies) |  |
|  |  |
|  |  |
| **Materials:**  The net cost (actual cost after deduction of all trade discounts) to the Subcontractor of supplying materials (inclusive of GST) together with the Subcontractor’s margin of: | % |
|  |  |
|  |  |
| **Separate contractors:**  The net amount properly payable to separate contractors after the deduction of any discounts (inclusive of GST) together with a Subcontractor’s margin of: | % |
|  |  |
|  |  |
| **Other:** (please specify details below) |  |
|  | $ |
|  | $ |