



ECA/BESA Standard Amendments to the JCT ICSUB with Guidance Notes

October 2018

Key information

- Introduction
- Areas of risk protection
- Sub-contract agreement

1. Introduction - How to use the standard amendments

Strictly speaking the terms and conditions should be part of a robust and clear tendering process. However, in preparing to compete to win work there are a mix of priorities from technical, suppliers, estimating and, sometimes the least priority is the contractual terms. In many instances these are offered last minute by your client as non-negotiable, or in some cases, they may even be offered for your approval after the works have started.

What is more they are often incorporated by reference and never actually offered for review – this means that there is a line in pre-start minutes or a purchase order simply specifying that a referenced form of contract will apply.

If you begin works without stating that these terms do not apply, or you sign without checking the documents referred to as part of the purchase order/contract, then you will be bound by them. You cannot argue that you are not bound simply by virtue of not having been given a copy of the documents, and you cannot argue that just because you didn't sign it, even though you have spent weeks working under the order given to you with no refusal from you to be under it, that you are not in contract.

ECA and BESA have therefore used their collective experience to provide members with a set of standard terms which they may, if they wish to, use as the basis to create a standard set of amendments to a JCT Intermediate form of sub-contract with design, so that Members can use this as the basis for their contractual offer/quotations (and revisions).

You will therefore want to include a paragraph in your quotations and revised quotations along the following lines to incorporate the contractual terms:

This quote/tender submission and all revisions thereto, is submitted on the basis of the ECA/BESA Standard Amendments to the JCT ICSUB 2016 – copy available from us on request or from the ECA or BESA.

If faced with a purchase or sub-contract order, Members can either: a) review the terms offered to them and amend the parts they find unacceptable, or b) simply write back as follows:

Thank you for your Sub-Contract/Purchase Order. We look forward to working with you on this project and will revert back to you with any specific concerns. In the meantime, we will continue to progress the project based on our last revised quotation.

This would be sufficient to reverse the assumption that you are agreeing to their terms and would put the terms back in your favour based on terms incorporated in your last quotation/tender submission.

2. Key areas of risk protection

Under the **ECA/BESA Standard Amendments to the JCT ICSUB 2016** the following areas of risk have been addressed to present a fairer and more reasonable risk profile for Sub-Contractors who wish to contract upon the basis of the **ECA/BESA Standard Amendments to the JCT ICSUB 2016**.

- **Timescales** – The timescales throughout the sub-contract have been changed to ensure the sub-contractor has definitive fair timescales to respond or within which the main contractor must respond and that they are not linked to the main contract – to which the sub-contractor is not party and has usually not had sight of knowledge of.
 - **Materials and Goods** – These are now the property of the sub-contractor until such time as they have been paid for. Risk passes to the main contractor once they are incorporated into the main contract works.
 - **Extension of Time and Loss & Expense** – The system for claiming is now fairer and uses the same grounds for making both types of claims.
 - **Opinions, Decisions, Approvals** – To ensure the main contractor must have a fair and reasonable approach, i.e. the main contractor's actions and thinking should be expeditious and fair against that which other professionals would perceive, the sub-contract has been amended to ensure the main contractor's approach should match that which an ordinary industry professional perceives as fair.
 - **Links to Main Contract** – As most sub-contractors do not have an opportunity to negotiate, are not given the chance to review amendments to and do not usually have sight of, the main contract, we have uncoupled the sub-contract from the main contract provisions to ensure sub-contractors are not unduly tied to provisions in contracts upstream which have neither seen nor reviewed.
- **Practical Completion** – The process for obtaining PC is now easier and more aligned to be within the gift of the sub-contractor where the main contractor does not communicate effectively over why it is unable to award PC.

- **Claims** – Where the main contractor is attempting to contra-charge or set-off it is now required to provide reasons and substantiation for its position in order for it to be able to exercise its rights in this regard.
- **Suspension & Termination** – The sub-contractor now has a right to suspend performance wherever the main contractor breaches the sub-contract and if the main contractor persists in a breach, the sub-contractor has the ability to terminate. This will maximise the sub-contractors leverage to get paid and ensure the main contractor performs in a fair manner.
- **Variations & Directions** – The sub-contract now allows for oral variations to be confirmed by the sub-contractor and to be counted and claimed as part of the ongoing payments system.
- **Payment** – Payments are on a monthly cycle of applications and should be made within 3 weeks of month end. Notices regarding payment should now be accompanied by a justification and rationale to understand the divergence between an application and the notice. This should also be accompanied by substantiation.
- **Retentions has been removed**
- **Remeasurement** – This method of pricing often leads to a devaluation of the sub-contract sum towards the final interim payments and final payments, leaving the sub-contractor exposed to loss. This facility has therefore been removed to ensure the sub-contract pricing mechanism is based on the 'adjustment' system.
- **Arbitration** – With statutory adjudication and courts as a means of dispute resolution (in addition to the parties own abilities to negotiate settlements), there is little need at sub-contract level for the arbitration process which usually take as long and is as expensive, as the litigation process within the courts. Arbitration, when first conceived had the advantages of being a private and expert dispute resolution process, but with the advent of adjudication, with the same element of expert determination and privacy, arbitration has become a disproportionate method of dispute resolution at sub-contract level. It has therefore been removed.

ECA/BESA standard amendments to the JCT ICSUB 2016

Sub-Contract Agreement

Recitals:

1. **Eight** – Delete in its entirety

This will ensure you are not deemed to have knowledge of the main contract such that you would a) be bound by it in anyway – given you have not had a chance to negotiate it or review it, and b) you do not want to be liable for loss stemming from a breach of the main contract by reason of something you may have done under the sub-contract.

Articles:

2. **Article 1** – Insert a new bullet at the top of the list of bullets as follows “The BESA/ECA Standard Amendments to the JCT ICSUB 2016.”

This simply ensures these amendments become part of the overall contract.

3. **Article 3B** – Remeasurement – Delete in its entirety

Prices under the standard amendments are fixed and adjusted under the clauses which allow for price adjustments to accommodate variations etc. In reality, the remeasurement basis as a means of settling the final price for the sub-contract works is often an opportunity at the close of the works to revisit and re-value interim valuations of the sub-contract works. At this point the sub-contractor has very little commercial strength and this opportunity can be exploited by the contractor to de-value the works at a point when the sub-contractor only has formal proceedings as a means of challenging those decisions by the Contractor. This therefore presents a high-risk pricing system for the sub-contractor.

4. **Article 5 Arbitration** – Remove this article in its entirety.

Arbitration mirrors litigation in its cost, complexity and protracted nature. Given the recourse you have to adjudication for quick, therefore more cost effective, technical and confidential dispute resolution, and the ability to go to court if need be and adjudication is not suitable, arbitration is unnecessary and disproportionate.

Sub-Contract Particulars

5. **Preamble** – Re-draft the preamble to read “References in these Particulars to Articles are to the Articles in this Agreement and those to clauses or Schedules are to the clauses or Schedules in Intermediate Sub-Contract Conditions ICSUB/D/C, as all such documents are modified by BESA/ECA Standard Amendments to the JCT ICSUB 2016”

6. **2 – Arbitration** - Remove in its entirety.

Arbitration is removed from the sub-contract as the arbitration process is long and expensive and a disproportionate method of dispute resolution at sub-contract level.

7. 3 – Design submission procedure - Remove “Design Submission Procedure” (if the provisions as set out in Schedule 4 to the Sub-Contract Conditions have under the Main Contract been replaced or amended)

- The provisions in Schedule 4 have been replaced by the procedure set out in Numbered Document
- Amendments made to the Design Submission Procedure are set out in Numbered Document”

This should not be amended from the standard from position.

8. 4 (Clause 1.7) – Delete and replace with “The following email addresses will be used by the parties for service of notices under the Contract; Contractor _____

Sub-Contractor _____ .”

9. 7 Item 1 Attendances – Remove from the first bullet “except where such provision is necessary solely and exclusively for the purpose of carrying out the Sub-Contract Works;”

To ensure all scaffold and access are provided by the main contractor.

Change the last bullet from “provision of reasonable measures to prevent access by unauthorised persons” to “provision of security measures to prevent access by unauthorised persons, theft and vandalism by authorised or unauthorised persons”

Add to the bullet list of attendance to be provided by the Contractor:

- “Builder’s work including holes more than two inches/150mm in diameter”

10. 9 Item 3 and 10 Retentions – Remove this facility entirely.

As retentions are open to abuse and industry is trying to eradicate them, this facility has been removed to safeguard you from having monies earned and held by the Contractor used as leverage against you or not being paid at all.

11. 14 – Delete and replace the existing drafting and table with:

“Elements of Sub-Contract Works are to be regarded as fully, finally and properly incorporated into the Main Contract Works prior to practical completion of the Sub-Contract Works or Section as applicable on the date when the Sub-Contractor notifies the Contractor of the same in writing.”

This will ensure the risk in goods, plant and materials passes to the Contractor once they are fully and properly incorporated into the main contract works. Further the decision as to whether such elements are or are not, fully and properly incorporated, will be that of the sub-contractor as and when it notifies the main contractor that such an element is complete.

12. 15 Dispute Resolution – remove the section on Arbitration.

There is no requirement for it under this sub-contract.

Attestation

13. **Execution as a Deed** – Remove this section and execute the sub-contract under hand.

The limitation period is the period within which you can be sued for breach of the sub-contract and it begins on completion of the sub-contract works. If the sub-contract is executed as a deed, this period will be twelve years instead of six.

Main contract information schedule

14. **1 Items 5 to 9** – Remove

You should not be bound by the terms of documents you have not seen which may be automatically incorporated into the Sub-Contract by virtue of these provisions naming them as “Numbered Documents”. If specific issues within the main contract need to be identified for the purposes of the sub-contract they should be expressly itemised so that their risk can be assessed and the impact priced.

Sub-Contract Conditions

15. **1.1 – Arbitration** – remove this definition.

Arbitration has been removed from the sub-contract.

16. **1.7.1.1** – Remove “but the Final Payment Notice shall not be conclusive evidence that they or any other materials or goods or workmanship comply with any other requirement or term of this Sub-Contract.”

This will ensure that the Final Payment Notice is conclusive evidence that materials or goods or workmanship complies with requirements of this Sub-Contract

17. **1.7.2** – Remove “Subject to clause 1.7.4,”

This ensures all communications can be sent by email.

18. **1.7.3** – Remove “Subject to clauses 1.7.2 and 1.7.4,” and replace “by hand or sent by pre-paid post to: 1. the recipient's address stated in the Sub-Contract Particulars (item 4), or to such other address as the recipient may from time to time notify to the sender; or 2. if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.” with “electronic means.”

This will enable you to service important notices by email.

19. **1.7.4** – Remove in its entirety.

20. **1.7.5** – Remove “with respect to health and safety, risk of damage to property or insurance matters,”

All oral communications should be confirmed in writing if they are to be relied upon at a later date.

21. **1.8.2.1** - Replace “10 days” with “three months”

To ensure you have enough time to assess the Final Payment Notice and prepare to dispute it if necessary.

22. **1.9** – Remove “except in the case of the Contractor's consent under clause 3.1 the giving of which shall be at his sole discretion.”

The main contractor’s consent should never be unreasonably withheld or delayed.

23. **2.1.2** – Replace “as a whole” with “to the extent that copies of the same are issued to the Sub-Contractor prior to the date of this Sub-Contract.”

This will ensure you are not obliged to comply with directions integrating your design with the main contract design if you are not issued with the main contract design.

24. **2.2** – Remove “and reasonably in accordance with the progress of the Main Contract Works or each relevant Section of them”

This ensures you only have to comply with your sub-contract time limits for completion of the sub-contract works. Insert ‘written’ before ‘notice’.

25. **2.4** – Delete and replace this clause with “Insofar as the Contractor's obligations under the Main Contract, are identified in the Sub-Contract Particulars and relate and apply to the Sub-Contract Works, and subject to the Sub-Contractor having been provided with a copy of the Main Contract and any other document reasonably necessary for interpreting the same the Sub-Contractor shall use reasonable endeavours to complete the Sub-Contract Works so not to cause the Main Contractor to be in breach of its obligations under the Main Contract.”

This ensures you are not bound to the terms of the main contract (which you have often not seen), and are not party to.

26. **2.5.1** – Remove “Subject to clauses 2.10 and 2.11 of the Main Contract Conditions”

To ensure you are not bound by a contract which you are not party to and have not had sight of.

Replace “from time to time” with “as soon as reasonably practicable”

To ensure you are given the information you require in due time and that if they do not do so it is a breach of contract for which you can make a claim.

Insert “reasonable” before “directions”

To ensure they may only issue directions in this regard which are reasonable.

27. **2.6** - Remove “and Main Contract Works”

To ensure not to bind yourself to the provisions of the main contract which you have not had sight of or negotiated.

Replace “as and when necessary from time to time to enable the Contractor in respect of the Sub-Contractor's Designed Portion to observe and perform his obligations in respect of the Design Submission Procedure, and the Sub-Contractor shall not commence any work to which such a document relates before that procedure has been complied with’ with ‘on the dates notified reasonably and sufficiently in advance to the Sub-Contractor by the Contractor.”

This should make the information you need from the Contractor or need to give the Contractor attach to defined dates they have communicated to you or you have communicated to them.

28. **2.8.2** – Remove and renumber remaining clauses.

To ensure you are not bound by the main contract.

29. **2.9.** – Remove “having regard to the progress of the Main Contract Work”

To ensure you are not bound to the main contract or the progression of its works.

30. **2.11.1** – Replace “except for use on the Main Contract Works unless the Contractor with the Architect/Contract Administrator's agreement consents to such removal” with “without the Sub-Contractor's prior written consent”.

This will ensure your goods and materials cannot be removed by the main contractor or others for which it is responsible.

31. **2.11.2** – Redraft to read “no Site Materials belonging to the Sub-Contractor will become the property of any other party until such time as the Sub-Contractor has been paid for the same as identified in a payment notice issued under clause 4.9.”

This will ensure your materials belong to you until you are paid for them and they are specifically identified as paid within a payment notice by the main contractor.

32. **2.11.3** – After “Site Materials” insert “as identified within a payment notice issued under clause 4.9”.

This will ensure property in materials only passes if they pay you and identify sums on the payment notice in respect of those materials.

33. **2.11.4** – Remove.

You should not be bound by the main contract.

34. **2.12.1** – Redraft to read “If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a Section is being or is likely to be delayed, the Sub-Contractor shall as soon as he is reasonably able to do so give the Contractor notice of the cause of the delay. If the Contractor reasonably properly considers that completion of such works has been, is being or is likely to be delayed beyond the relevant period or periods for completion stated in the Sub-Contract Particulars (item 5) (or any previously revised period or periods) by any of the Relevant Sub-Contract Events, the Contractor, within 14 days of the Sub-Contractor's notice hereunder, shall by

written notice to the Sub-Contractor give a fair and reasonable extension of such period or periods including the reasons for so doing.”.

This will ensure you know within 2 weeks if you are entitled to an extension of time or not.

35. **2.12.2** – Change “as soon as he is able to estimate the length of the delay beyond the period or periods” to read “within 14 days of the occurrence of the Relevant Event”.

This will ensure you know within 2 weeks if you are entitled to an extension of time or not.

36. **2.12.4.1** – Change “best” to “reasonable” and insert “reasonable” before “satisfaction”.

This will ensure you are only expected to do that which is reasonable to mitigate delay.

37. **2.12.4.2** – Insert “reasonable” before “information”.

This will ensure you only need give information as would ordinarily be expected of you.

38. **2.13.2** – Remove .1 .2 and .3.

This will ensure you have the right to an extension of time for all direction passing on an Architect’s/Contract Administrator’s instruction.

39. **2.13.3** – Remove “under clause 2.5 of the Main Contract Conditions”.

This will ensure you are entitled to an extension for any deferment of possession of the Site.

40. **2.13.5** – Remove "under clause 4.10”.

This will ensure you get an extension of time for any suspension of performance you are forced to implement.

41. **2.13.6** – Remove “under clause 4.14 of the Main Contract Conditions”.

This will ensure you get an extension of time for any suspension of performance the main contractor undertakes under the main contract.

42. **2.13.7** – Insert “hindrance” after “impediment”. Remove “the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person”.

This will ensure you get an extension of time for any delay caused by a third party which you are not responsible for.

43. **2.13.14** – Remove “after the Main Contract Base Date”.

To ensure you are entitled to an extension of time for any Governmental or other similar decision which impacts on your ability to complete on time.

44. **2.14.2** – After “If the Contractor so dissents,” insert “the Sub-Contractor shall be entitled, upon the Contractor’s reasonable reasons given under clause 2.14.1 for not agreeing with the Sub-Contractor that the Sub-Contract Works are practically complete, being resolved, to the

Sub-Contractors Works being deemed practically complete for the purposes of this Sub-Contract”.

Remove the remainder of this clause.

This will ensure you are able to apply for practical completion, if they disagree they are required to itemise why they disagree, and once those items are resolved, you are entitled to deemed practical completion.

45. **2.15** – After “periods for completion” insert “including any extensions to such period as the Sub-Contractor is reasonably entitled to regardless of whether such extensions have been given by the Contractor”. After “incurred” insert “and substantiated”.

This means they can only claim costs which they substantiate they have incurred.

46. **2.16.1** – Remove “at his own cost and in accordance with any direction of the Contractor”.

This will mean you may be able to claim for rectification of defects and do not need to take directions on the rectification thereof. Especially in circumstances where you are asked to rectify an issue which is not an actual defect with your works.

47. **2.17** – Remove.

Deductions from your account should not simply be made by reference to the main contract.

48. **2.18** – Insert before .1 “Subject to the Sub-Contractor having received payment of any and all monies owed to it under this Sub-Contract.”.

This will ensure these obligations do not apply unless you have been paid everything you are owed.

49. **2.19** – Insert after “shall” the words “subject to the Sub-Contractor having received payment of any and all monies owed to it under this Sub-Contract,”.

This will ensure these obligations do not apply unless you have been paid everything you are owed.

50. **2.21** – Insert before .1 “Subject to the Sub-Contractor having no liability under this clause to the Contractor beyond that for which the Sub-Contractor is insured,”.

This will ensure you do not take on any liability for design issues for which you are not covered by your Professional Indemnity insurance.

51. **3.2.1** – Remove .1 and .2

If this is not amended it precludes you from using labour-only self-employed sub-contractors without first getting the main contractors consent.

52. **3.5** – Insert “reasonable” before “directions”

This will ensure you only have to comply with those directions of the main contractor which are reasonable.

53. **3.5.1** – Remove “where such a direction requires a Variation of the type referred to in clause 5.1.2”

This will ensure you have the right to object to any unreasonable direction from the main contractor.

54. **3.6** – After “additional” insert “reasonably and directly incurred and fully substantiated”

This will ensure that if you do not comply with a direction that is reasonable and they employ others to carry out the direction, they may only recover direct costs which they have substantiated.

55. **3.7** – Before “directions” insert “written”

This will ensure site-based directions must be recorded by the main contractor as being issued to you.

56. **3.8** – After “reasonable times” insert “on reasonable written request”

This will ensure your business is not unduly interrupted.

57. **3.12** – Remove.

If you do not perform under the sub-contract they can claim under breach of contract. An indemnity needlessly extends both the scope and duration of your liability and should be resisted.

58. **3.14.2** – Remove “Such use shall be on the express condition that no warranty or other liability on the part of the Contractor or any Contractor's Persons or of the Sub-Contractor or any Sub-Contractor's Persons, as the case may be, shall be created or implied under this Sub-Contract in regard to the fitness, condition or suitability of such scaffolding.”.

Where the main contractor or others supply equipment or scaffolding they should take responsibility for ensuring it is appropriate and safe.

59. **3.19** – Replace “under clause 4.14 of the Main Contract Conditions gives the Employer a written notice of his intention to suspend the performance of any of his obligations under the Main Contract, he shall thereupon copy that notice to the Sub-Contractor and” with “suspends performance of any obligation under the Main Contract”. Add to the end of the clause “If such suspension continues for a period of 4 weeks or more, the Sub-Contractor may by notice in writing elect to terminate this Sub-Contract without further notice.”

This ensures you to be notified of any suspension by the main contractor and also allows you to terminate should you wish to after 4 weeks without the need to return to site.

60. **3.21.1** – Replace “neither Party shall have any claim on the other for any” with “the Sub-Contractor will be entitled to claim reasonable”.

This will give you the right to claim your reasonable costs resulting from delays due to strikes and/or lock-outs.

61. **4.2** – Remove.

The pricing system should not be on a remeasurement basis as this will only give the main contractor an opportunity to devalue your account towards the end of the programme of sub-contract works.

62. **4.4.1** – Replace “shall in addition pay the amount of any VAT properly chargeable in” with “shall in where required by applicable and relevant legislation and regulation pay in addition the amount of any VAT properly chargeable in”.

This will accommodate the change in VAT to reverse charge which will implement in October 2019.

63. **4.6.1** - Replace “12 days after the relevant Interim Valuation Date, commencing (unless an earlier date is specified by the Sub-Contract Particulars (item 9.2)) with the Interim Valuation Date” with “the last Business Day of the month”.

This will ensure you have monthly due dates for payment at the end of each month.

64. **4.6.2.1** – Replace “Interim Valuation Date” with “Due Date”.

To ensure your applications for payment are received 4 days prior to month end.

65. **4.6.4** – Remove this clause.

To ensure that interim payments are the total of amounts due under relevant clause 4.7.

66. **4.7.1** – Remove “subject to clause 4.6.4, the applicable percentage, as stated in the Sub-Contract Particulars (item 10), of”

To ensure the full amount becomes due.

67. **4.7.3** – Remove “clause 2.17 (Deductions under Main Contract Conditions),” and “3.12 (Indemnity by Sub-Contractor)”

68. **4.9.2** – After “calculated” insert “in reasonably sufficient detail and with reasonably sufficient substantiation for the Sub-Contractor to understand why/the grounds upon which the valuation assessment contained in his application for payment differs from the valuation assessment contained in this notice.”.

This will mean you have to be given a detailed basis for calculation and a rationale for why the calculation differs from your own.

69. **4.9.6** – After “calculated” insert “in reasonably sufficient detail and with reasonably sufficient substantiation for the Sub-Contractor to understand why/the grounds, upon which the valuation assessment contained in his application for payment differs from the valuation assessment contained in this notice.”.

This will mean you have to be given a detailed basis for calculation and a rationale for why the calculation differs from your own.

70. **4.9.7** – Before “simple interest” insert “reasonable costs of recovery and”.

This will mean they have to pay all your reasonable costs of recovering late payment as well as the payment and interest thereon.

71. **4.10.1** – Replace “fails to pay a sum payable to the Sub-Contractor in accordance with clause 4.9 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure” with “breaches the terms of this Sub-Contract and the breach”.

This will ensure you can suspend performance for any occasion where they breach the terms of the sub-contract maximizing your leverage to ensure they adhere to the terms of the contract.

72. **4.12** – Insert “reasonably” and “reasonable” before “ascertain” and “ascertainment”.

This will ensure you get a reasonable loss and expense decision within two weeks of the submission of your request.

73. **4.12.4** – Replace “42” and “28” with “14”.

This will ensure you get loss and expense decisions within two weeks of the submission of your request.

74. **4.13** – Remove and replace with “The Relevant Sub-Contract Matters will be the same as the Relevant Sub-Contract Events identified under clause 2.13.”.

This will ensure you are entitled to loss and expense wherever you suffer delay.

75. **4.14** – After “details” insert “and full substantiation”.

This will ensure they must evidence any claim of delay under the main contract being attributed to you.

76. **4.17** – Remove.

This relates to pricing on a remeasurement basis which has been removed.

77. **4.18.2** – Redraft to read “Not later than 1 month after receipt of the documents referred to in clause 4.18.1 the Contractor shall prepare and send to the Sub-Contractor a statement of the calculation of the Final Sub-Contract Sum.”.

This ensures they must notify you within a month of their assessment of the final sub-contract sum.

78. **4.19.1** – Remove “whichever of the following occurs last” .1 and .2.

This ensures that the final payment is 14 days after the date on which they should issue the final sub-contract sum assessment.

79. **5.1** – After “means” insert “and includes any oral or written direction or instruction from the Contractor on”.

This will ensure oral instructions can also be treated as variations.

80. **5.2.2, 5.4** and **5.5.4** – Remove.

This applies to the remeasurement basis which has been removed.

81. **5.8.1** and **5.9.2** – Insert “and reasonable” after “fair”.

This will ensure the valuation must also be reasonable by ordinary standards and not simply what the main contractor arbitrarily thinks is fair.

82. **6.1** – At the beginning of the definition of “Specified Perils” insert the words “theft, vandalism”.

To ensure the main contractor must insure against these risks.

83. **6.2 & 6.3** – After “against, any” insert “reasonably and directly incurred and fully substantiated”.

This will ensure that you only need indemnify them for direct and reasonable loss which they evidenced they have incurred.

84. **6.5.4** – Before “amount” insert “reasonable”.

This will ensure the main contractor can only deduct reasonable insurance premiums.

85. **6.7.8** – Replace “to the extent indicated or referred to in the Sub-Contract Particulars (item 14)” with “to the extent that there is no significant works on those elements of the Sub-Contract Works not complete save for testing and commissioning”.

86. **5.8.2** – Remove “(except clause 7.11.3.3)”

To ensure that on termination you are entitled to be paid everything you are owed.

87. **7.5.3.2** – Before “adequately protected” insert “which have been paid for by the Contractor”.

This will ensure the main contractor can only keep that which it has paid for.

88. **7.7.1** – Remove “and (subject to obtaining any necessary third party consents) may use all the Sub-Contractor's temporary buildings, plant, tools, equipment and Sub-Contract Site Materials for those purposes”.

You will most likely be in dispute over termination by default and the main contractor should not have the right to let another contractor use your plant, tool and materials to finish the works.

89. **7.7.2.1** – Remove “when required in writing by the Contractor to do so (but not before),”.

This will ensure you are able to remove your plant, tools and materials should you be in dispute over their right to terminate.

90. **7.7.4** – Before “direct” insert “reasonable, incurred, substantiated and”.

This will ensure they may only off-set reasonable and direct costs resulting from termination.

91. **7.8.1 & 7.8.2** – Remove “without reasonable cause”.

This will ensure if the main contract is suspended or fails to proceed you have recourse.

92. **7.8.4** – Redraft to read “fails to comply with any of its obligations hereunder”.

This will ensure you have recourse whenever the main contractor breaches the terms of the sub-contract.

93. **7.11.2.2** – Remove.

You should not be obliged to handover documents and assist the main contractor where the main contractor has breached the sub-contract leading to termination.

94. **7.11.3.3** – Insert at the end “including an amount for loss of profit for the remaining Sub-Contract Works which remain to be completed at the date of termination”.

This will enable you to be compensated for the early termination and loss of profit.

95. **7.11.4** – Remove.

Your sub-contract should not be linked to the main contract.

96. **8.3 to 8.8** – Remove.

This relates to arbitration which has been removed from the sub-contract.

Additional Clauses

97. All directions, instructions and opinions of the Contractor must be reasonable.

98. All consents, opinions, directions or instructions of the Contractor shall not be unreasonably withheld or delayed.

99. All notices required to be given by either party under this Sub-Contract containing sums, calculations and programmes shall be accompanied by reasonable explanations, substantiation and rationale in support thereof.

100. The Sub-Contractor’s liability to the Contractor or any third party with rights under this Sub-Contract in contract, tort and at common law shall be limited to the Sub-Contract Sum and in any event shall not exceed amount for which the Sub-Contractor is insured in respect of such liability.

This ensures that the Contractor cannot issue any instructions or directions to you which are unreasonable in light of issues such as health and safety or progress and completion of sub-contract works.



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