



Carrisa Pty Ltd ATF The Minniti Family Trust

Trading As

Domination Homes, Zircon Living, Zircon Projects, Minniti & Son

Subcontract Terms and Conditions

1 The Subcontract Works

The Subcontractor must carry out the subcontract works described on the Purchase Order, including any variations:

- 1.1 in a proper and workmanlike manner using materials that are new and of first quality;
- 1.2 in accordance with the drawings and specifications described on the Purchase Order; and
- 1.3 in compliance with all legislative requirements.

The Subcontractor must ensure that it works to the issued for construction version of the drawings and specification and must check this upon commencement on Site.

The Subcontractor must not seek or act on any direction from any person other than the Builder or its representatives. In particular the Subcontractor must not seek or act on any direction from the owner of the premises under construction.

2 The Subcontract Sum

The Builder must pay the Subcontractor the Subcontract Sum described on the Purchase Order in the manner provided in this agreement.

3 Security and retention

- 3.1 The Builder may deduct 10% from each progress payment up to 5% of the Subcontract Sum by way of retention as security for the Subcontractor's performance of its obligations.
- 3.2 The Builder may in its discretion accept security by way of unconditional bank guarantee in lieu of retention.
- 3.3 If at any time any monies become due and payable to the Builder (contingently or otherwise), the Builder may have recourse to the retention monies or other form of security, after providing the Subcontractor with five Business Days' written notice.

- 3.4 50% of the retention monies (or other form of security) is otherwise to be returned to the Subcontractor at practical completion of the subcontract works with the balance to be returned at the end of the defects liability period.

4 The Site

- 4.1 The Subcontractor is not entitled to exclusive possession or exclusive use of any portion of the Site.

- 4.2 The Subcontractor acknowledges and agrees that:

4.2.1 Other subcontractors and workers may be working on the site at the same time as the Subcontractor and this may affect the Subcontractor's access to parts of the Site from time to time;

4.2.2 it will cooperate with the Builder and all other subcontractors and workers on site and will comply with all reasonable directions of the Builder coordinating access at its own cost;

4.2.3 it has allowed for all risk of disruption to its works by other subcontractors and workers in the Subcontract Sum.

- 4.3 The Subcontractor must at all times:

4.3.1 keep the Site and its working areas clean and tidy and must regularly remove rubbish and surplus material; and

4.3.2 ensure that its workers do not damage or harm the building works on Site.

- 4.4 The Subcontractor must promptly comply with any direction of the Builder to clean and tidy the Site or to rectify any damage or harm caused by its workers to the building works.

- 4.5 The Subcontractor must at all times have a competent supervisor on Site supervising the subcontract works. Failure to do so is a substantial breach by the Subcontractor of its obligations under this Subcontract, entitling the Builder to terminate this Subcontract.

5 Variations

- 5.1 The Builder may at any time up to the date of practical completion direct the Subcontractor to vary the subcontract works and the Subcontractor must comply with the direction where the Subcontractor can reasonably do so. Save in cases of emergency, the Subcontractor must not vary the subcontract works without having first received a written variation order from the Builder.

- 5.2 The amount payable by the Builder to the Subcontractor for each variation will be as agreed by them prior to the variation work being carried out. If no sum is agreed then the amount payable will be as reasonably determined by the Builder having regard to the rates it pays for similar works.

6 Time

- 6.1 The Subcontractor must commence the subcontract works when directed to do so by the Builder and must continuously and diligently carry out and complete the subcontract works.
- 6.2 It is a fundamental term of this agreement that the Subcontractor must at all times provide and continually maintain adequate labour and sufficient materials to allow it to complete the subcontract works by the date stated in the Purchase Order. If, in the reasonable opinion of the Builder, the Subcontractor is failing to comply with this clause, the Builder may direct the Subcontractor to rectify such failure within 5 business Days, and if the Subcontractor fails to do so the Builder may:
- 6.2.1 engage others to take over and complete all or part of the subcontract works; and
 - 6.2.2 recover the extra over cost of doing so as a debt due and payable by the Subcontractor to the Builder.
- 6.3 The Subcontractor will in no circumstances, other than where a delay is caused by a negligent act or omission of the Builder, be entitled to any compensation for or in connection with any delay or disruption to the subcontract works.

7 The Subcontract Works

- 7.1 The Subcontractor is responsible for and must protect the subcontract works and unfixed materials from theft, loss or damage. The Subcontractor must rectify all damage and replace all lost or stolen materials at its own cost.
- 7.2 The Subcontractor must verify all set out details on Site.
- 7.3 Before undertaking the subcontract works, the Subcontractor must satisfy itself that any prior works undertaken by another party, or any substrate to which the subcontractor's works will be affixed, is adequate for the performance of the subcontract works. If the Subcontractor considers that the prior work or substrate is not adequate for the performance of the subcontract works, it must immediately notify the Builder and seek a direction.
- 7.4 If the Subcontractor does not notify the Builder as to the inadequacy of prior works or substrate, it will be responsible for the performance of the subcontract works notwithstanding that the prior works or substrate may be the cause of the nonperformance.
- 7.5 If there is a discrepancy between any drawings, specifications or other Subcontract Documents, the Subcontractor must immediately notify the Builder and seek a direction.

- 7.6 Ownership in all materials supplied by the Subcontractor will pass to the Builder upon delivery to Site or payment, whichever is earlier. Risk in the materials will pass from the Subcontractor to the Builder upon being affixed to the Site. The Subcontractor is responsible for all materials supplied by it until completion of the subcontract works and must indemnify the Builder for any damage or loss suffered by the Builder should the materials be damaged or lost before then.

8 Subcontract Sum, Progress Claims and Progress Payments

- 8.1 The subcontract sum is payable upon completion of the subcontract works, or if the subcontract works take longer than 28 days, the Subcontractor may make a progressive claim for payment at the end of each calendar month.
- 8.2 Each payment claim must be in writing, in the form of a tax invoice and state:
- 8.2.1 the order number;
 - 8.2.2 a breakdown showing the value of work carried out (including any adjustments) to the level of detail and in the form required by the Builder;
 - 8.2.3 the amount of the Subcontract Sum paid by the Builder to the Subcontractor to date;
 - 8.2.4 the amount of the Subcontract Sum claimed; and
 - 8.2.5 any other information required by the *Building and Construction Industry (Security of Payment) Act 2021 (WA) (the Act)*.
- 8.3 Compliance with clause 8.2 is a condition precedent to the Subcontractor's entitlement to be paid any amount in respect of a progress claim submitted by the Subcontractor to the Builder.
- 8.4 On receipt of a valid progress claim, the Builder must assess the progress claim by reference to the value of the subcontract works and:
- 8.4.1 if the Builder does not dispute the progress claim, pay the amount claimed within 25 Business Days after receiving the progress claim; or
 - 8.4.2 if the Builder disputes part or all of the progress claim, the Builder will:
 - (a) within 15 Business Days after receiving the progress claim, provide a payment schedule to the Subcontractor; and
 - (b) within 25 Business Days after receiving the payment claim, pay any amounts not in dispute.

- 8.5 For the purposes of these terms and conditions, “Business Day” means a day other than a Saturday, Sunday, public holiday or any other day that falls between 22 December in any year and 10 January in the following year.
- 8.6 Any payment schedule issued by the Builder under clause 8.4.2(a) will:
- 8.6.1 identify the progress claim to which the payment schedule relates;
- 8.6.2 state the Builder’s determination, including for each item of the invoice:
- (a) the amount which is not disputed and therefore payable; and
- (b) the amount which is disputed and the reason(s) it is disputed.
- 8.7 Interest is payable on overdue monies at 6% per annum or such other rate prescribed by the Act.
- 8.8 The Subcontractor must be registered for GST purposes, have an ABN and issue invoices in a form complying with the GST legislation and which will allow the Builder to claim an input tax credit.

9 Health, Safety and the Environment

- 9.1 The Subcontractor must:
- 9.1.1 Register on the Builder’s safety management system, familiarise itself, comply with and ensure that all of its employees and agents comply with the Builder’s Safety Management Plan;
- 9.1.2 upon reasonable request by the Builder, demonstrate compliance with the Builder’s Safety Management Plan;
- 9.1.3 cooperate with the Builder to enable it to comply with the Builder’s Safety Management Plan; and
- 9.1.4 at all times be familiar with and comply with all laws, regulations, codes and standards with respect to safety.
- 9.2 To the extent permitted by law, the Subcontractor must indemnify the Builder for all loss the Builder may incur or suffer due to any breach by the Subcontractor of its obligations under this clause including any fines incurred.
- 9.3 Any breach by the Subcontractor of its obligations under this clause is a serious breach entitling the Builder to terminate this Subcontract.

10 Neighbouring Property or Nearby Work

Where the Subcontractor considers that the Subcontract Work may cause damage to any neighbouring property or nearby work being undertaken by other contractors at the Site, the

Subcontractor must take all steps to protect the neighbouring property or nearby work from damage.

If the Subcontractor causes any damage to neighbouring property or nearby work, it must at its own cost, rectify the damage. If it does not do so, the Builder may undertake the rectification work and the cost of doing so will become a debt due and owing from the Subcontractor to the Builder.

11 Insurance and Indemnities

11.1 The Subcontractor is solely liable and must indemnify the Builder against any liability relating to:

11.1.1 Personal injury or death of any person caused or contributed to by the Subcontractor or its personnel;

11.1.2 Damage to any property caused or contributed to by the Subcontractor or its personnel; or

11.1.3 Breach of professional duty by the Subcontractor or its personnel.

The parties agree that, to the extent permitted by law, Parts 1B to 1F of the *Civil Liability Act 2002* (WA) (and any equivalent legislation in any other State or Territory) is expressly excluded and the Subcontractor indemnifies the Builder against any liability arising out of or in connection with the Subcontract which are caused or contributed to by any of the Subcontractor's personnel, including subcontractors, suppliers or consultants, and for which the Subcontractor would have been liable to the Builder but for, or which the Builder is not able to recover from the Subcontractor because of, any apportionment under that legislation.

11.2 The Subcontractor must take out and keep current during the course of the subcontract works public liability and contract works insurance and for professional indemnity insurance (if applicable) and maintain such insurance for 6 years beyond practical completion.

11.3 The Subcontractor must provide copies of the certificates of currency of such insurances upon demand.

11.4 The Subcontractor must bear any excess payable under the insurances it is to take out.

11.5 The Builder may at its discretion withhold payment of any progress claim until the Subcontractor fully complies with its obligations under this clause.

12 Defects

12.1 Defective work includes defective work, incomplete work, unsatisfactory work or work that does not comply either with the Subcontract documents or the Builder's written direction.

- 12.2 The Subcontractor must at its own cost rectify any defective subcontract works as assessed and within the time directed by the Builder (which shall be not less than 5 Business Days).
- 12.3 In the event that the Subcontractor does not rectify defective work within the time or as directed, the Builder may carry out the rectification work and the cost will become a debt due and owing by the Subcontractor to the Builder.
- 12.4 The defects liability period begins on the date of practical completion of the subcontract works and extends for the one year.
- 12.5 The Subcontractor must promptly rectify any defects if directed to do so during the defects liability period.

13 Default, termination, insolvency

- 13.1 In the event the Subcontractor is in substantial breach of any of its Subcontract obligations or commits an Insolvency Event, the Builder may provide written notice of same and request that the Subcontractor rectify the breach or Insolvency Event within a period of not less than 3 days. If the Subcontractor fails to rectify such breach or Insolvency Event within that period, the Builder may terminate the Subcontract.
- 13.2 An Insolvency Event is any act that suggests that the Subcontractor may not be able to pay its debts as and when they become due and includes the appointment of an administrator, liquidator or external manager or if a receiver or receiver/manager enters into possession or assumes control of any property of the Subcontractor.
- 13.3 Upon such termination, the Builder may suspend any further payments of monies to the Subcontractor and set off the cost of completing the subcontract works against any monies held, or recover the extra over cost of doing so as a debt due and payable by the Subcontractor to the Builder. The Builder's remedies will otherwise be the same as if the Subcontractor had repudiated the Subcontract and the Builder has accepted such repudiation.

14 Head Contract Termination

In the event that the Builder's contract with the Owner of the Site is terminated for any reason, the Builder may terminate this agreement. In that event:

- 14.1 the Builder must pay the Subcontractor the value of the Subcontract Works then carried out and the direct, substantiated and unavoidable costs incurred by the Subcontractor for demobilisation; but
- 14.2 the Builder will not be liable to make any further payment to the Subcontractor including for any loss of profit or other loss arising from such termination.

15 Set Off

- 15.1 Whenever in this agreement the Subcontractor is responsible for any cost, loss or damage, the Builder is entitled to:

- 15.1.1 Issue a certificate as to its assessment of that sum, which will be prima facie evidence of the amount due to the Builder;
- 15.1.2 Set off that sum as against any monies that may be or become due and owing to the Subcontractor; or
- 15.1.3 Recover that sum as a debt due and owing to the Builder.

16 Dispute Resolution

- 16.1 In the event of a dispute between the parties arising out of or in connection with the Subcontract, as a condition precedent to taking any action in connection with the dispute:
 - 16.1.1 the disputing party must give written notice of dispute to the other party and the parties must meet within 7 days in an attempt to resolve the dispute.
 - 16.1.2 If the dispute is not resolved within 7 days then either party is free to commence proceedings in connection with the dispute.
- 16.2 The Resolution Institute is appointed as the appointing body to appoint an adjudicator for the purposes of adjudication under the Act.

17 Law

This Subcontract is governed by and subject to the laws of Western Australia.

18 Assignment

The Subcontractor shall not assign any benefit under this Subcontract without the written consent of the Builder, which shall not be unreasonably withheld.