

1 Parties and constitution of the subcontract

Parties & representatives

This subcontract is between Wiley and the subcontractor. The details of each are stated in item 1 of schedule 1.

The subcontract

1.1 This subcontract is constituted by these general conditions of subcontract, the schedules 1-12, and all the documents mentioned in those documents.

- 1.1.1 If there are any ambiguities, inconsistencies or discrepancies within or between the subcontract documents the requirement for the highest standard of materials, workmanship or performance prevails unless Wiley instructs the subcontractor to the contrary.

Wiley's instructions

1.2 The subcontractor must comply with any written instruction given by Wiley. If the subcontractor considers that any written instruction from Wiley has any of the following effects, the subcontractor must give Wiley written notice as stated:

- If the subcontractor considers that an instruction is a variation instruction and is not identified by Wiley as a variation instruction, the subcontractor must notify Wiley within the time stated in item 4 of schedule 1.
- If the subcontractor considers it will be, is, or has been delayed by any of the causes stated in item 14 of schedule 1, it must notify Wiley within the time stated in item 13 of schedule 1.
- If the subcontractor considers Wiley is entitled to make a claim under the head contract in relation to the subcontract works, it must notify Wiley within the time stated in item 15 of schedule 1.

- 1.2.1 The subcontractor entitlement to any additional payment under the subcontract will be reduced by Wiley's reasonable determination of the costs, loss or expense incurred by Wiley as a consequence of the subcontractor's failure to give notice required by this clause 1.2.

2 The subcontract sum

The subcontract sum, and its component parts, is stated in item 2 of schedule 1. The subcontractor warrants to Wiley that subcontract sum is sufficient for the subcontractor to comply with all its obligations under this subcontract.

- The subcontractor will be entitled to an adjustment to the subcontract sum, only as stated in these general conditions of subcontract.
- If stated in item 2 of schedule 1 the subcontract sum includes a discrete payment for the delivery to Wiley of any documents stated in schedule 2. The subcontractor is not entitled to that payment until the subcontractor delivers the required documents that strictly comply with this subcontract.

3 Subcontract works

Scope, performance & standard of subcontract works

3.1 The subcontractor must perform the works stated or described in schedule 2 (**subcontract works**) in accordance with this subcontract and in accordance with any applicable legislative requirement, standard, code or guideline applicable to the subcontract works. The subcontractor must also perform any additional works that are implied by, or are commonly included in subcontract works.

- 3.1.1 The subcontractor must coordinate its subcontract works with the work being performed by all other contractors and subcontractors on site during the performance of the subcontract works and the subcontractor must allow, in the subcontract sum, for that coordination within the time for performance of the subcontract works stated in item 11 of schedule 1.

Design by subcontractor - IP & confidentiality

3.2 If the subcontract works includes any design, that will be noted in item 8.1 of schedule 1 and the design obligations will be detailed in schedule 2.

- 3.2.1 The subcontractor must perform any design obligations to a standard reasonably required of a design professional in the relevant field and the subcontractor will indemnify, and continue to indemnify, Wiley against any damage suffered by Wiley as a consequence of deficient design produced by the subcontractor.
- 3.2.2 The subcontractor must ensure that Wiley and the principal under the head contract are granted a perpetual, royalty free and transferable licence to use any intellectual property in any documents expressing the design or in the design itself, for the construction, repair, maintenance, alteration or expansion of the project of which the subcontract works form a part.
- 3.2.3 The subcontractor must keep confidential all material given to it by Wiley related to the subcontract works, except where that material is already in the public domain, the subcontractor is compelled by law or by the rules of the ASX to disclose that material to a 3rd party or the disclosure is made to professional advisors for the purpose of obtaining advice.

Statutory requirements [safety & environment etc]

3.3 The subcontractor must also comply with all statutory requirements relating to the subcontract works or the performance of the subcontract works, including giving all required notices, payment of applicable statutory fees and charges, maintenance of necessary licences and accreditation etc.

- 3.3.1 In particular, the subcontractor must comply with the relevant work health and safety (**WH&S**) legislation and the applicable environmental legislation and must comply with all reasonable instructions from Wiley in relation to WH&S and environmental compliance.
- 3.3.2 The subcontractor must also comply with Wiley's general site safety rules [schedule 7] and the subcontractor must develop, for approval by Wiley, a site specific safety plan for the performance of the subcontract works. The subcontractor must also ensure that it has a WH&S officer and a first aid attendant on site if required by items 5.1 & 5.2 of schedule 1.
- 3.3.3 If stated in item 5.3 of schedule 1 that the site is 'at risk' to Q Fever, the subcontractor must comply with the Q Fever provisions of schedule 7.
- 3.3.4 The subcontractor must comply with all applicable environmental protection legislation and Wiley's environmental management plan stated in schedule 8. The subcontractor must also develop, for approval by Wiley, a site specific environmental management plan for the subcontract works if that is required by item 6 of schedule 1.
- 3.3.5 The subcontractor must indemnify, and continue to indemnify, Wiley against any liability incurred by Wiley arising out of, or connected to, any breach of the subcontractor of any statutory requirement to which the subcontractor is subject.

Variations

3.4 Wiley may instruct the subcontractor, in writing identified as a variation instruction, to change the quantity, quantity or character of the subcontract works. The subcontractor must comply with Wiley's instruction.

- 3.4.1 If a variation instruction is not identified as such, the subcontractor must notify Wiley as stated in clause 1.2.
- 3.4.2 Wiley and the subcontractor will agree the value of the variation. If they cannot agree, the value of the variation will be determined by Wiley on the basis of rates stated in schedule 4.

Provisional work

3.5 The subcontractor will only be entitled to be paid for any provisional work stated in item 2.4 of schedule 2 to the extent Wiley instructs the subcontractor to perform all or some of that work.

Defects

3.6 The subcontractor must continually identify and rectify all defects in the subcontract works.

- 3.6.1 A defect rectification period commences the day after the subcontract works are complete in accordance with this subcontract and expires 12 calendar months later (**DRP**).
- 3.6.2 If, during the **DRP**, Wiley instructs the subcontractor to rectify a defect within a specified time, and the subcontractor does not comply with that instruction, Wiley may engage others to rectify the defect and the rectification cost will be a debt owed by the subcontractor to Wiley.

4 Time

Start and completion

4.1 The subcontractor must commence the subcontract works by the date stated in item 10 of schedule 1, and must regularly and diligently proceed with the subcontract works in accordance with Wiley's then current construction program.

- 4.1.1 The subcontractor must complete the subcontract works within the period stated at item 11 of schedule 1.
- 4.1.2 The subcontract works will be complete when all the requirements stated in schedule 2 have been satisfied and the subcontractor has given Wiley a properly completed and executed deed of release in the form set out in schedule 6.

Delay costs incurred by Wiley

4.2 If the subcontractor fails to complete the subcontract works in accordance with clause 4.1, Wiley may recover from the subcontractor the costs, loss and expense incurred by Wiley and reasonably determined by Wiley as a consequence of the subcontractor's failure.

Extension of time

4.3 The subcontractor will be entitled to an extension of time, as determined by Wiley, if it is delayed by any of the events stated in item 14 of schedule 1.

5 Site & personnel

Working hours, resources, access etc

- 5.1 The site is available to the subcontractor at the times stated in item 12 of schedule 1. The subcontractor must ensure every person involved in the performance of the subcontract works complies with all conditions stated in item 9 of schedule 1 whilst on or near the site
- 5.1.1 The subcontractor must resource the subcontract works to maintain the rate of progress stated in Wiley’s construction program and coordinate with other trades at no additional cost to Wiley.

Subcontract personnel

- 5.2 The subcontractor must ensure that the subcontract works are supervised by a competent supervisor who speaks and writes fluent English.
- 5.2.1 Wiley may require the subcontractor to remove any person involved in the performance of the subcontract works from the site on the grounds of incompetence, misconduct or dishonesty and the subcontractor must comply that requirement.
- 5.2.2 The subcontractor is responsible for industrial relations with its employees and indemnifies Wiley from any costs, loss or expense incurred Wiley a consequence of any industrial dispute with its employees.

Site services

- 5.3 The site services that Wiley will provide and those that must be provided by the subcontractor are stated in schedule 3.

Care of the works and cleaning

- 5.4 The subcontractor must protect the subcontract works against any damage, regardless of the cause of that damage, and must promptly rectify any damage.
- 5.4.1 The subcontractor must also ensure that it does not damage any other subcontractor’s works and must also promptly rectify any damage.
- 5.4.2 The subcontractor must clean any works made dirty by the performance of the subcontract works and must remove to bins, as directed by Wiley, all surplus materials, residue, rubbish etc. If the subcontractor does not comply with this obligation, Wiley may arrange to discharge the subcontractor’s obligations and the costs incurred by Wiley will be a debt owing from the subcontractor to Wiley.

6 Payment

Progress claims

- 6.1 The subcontractor must give Wiley a valid progress claim in the form set out in schedule 9, by the day stated in item 17 of schedule 1 and deliver that progress claim by email to accounts@wiley.com.au. The progress claim must state the reasonable value of the work completed by the subcontractor, including any adjustments to the subcontract sum approved by Wiley, less the amounts paid by Wiley and less any retention. If it does not, the claim will not take effect as a progress claim until the date on which the next progress claim is due.
- 6.1.1 A valid progress claim is one that strictly complies with clause 6.1 and is accompanied by a signed statutory declaration that all subcontractors, contractors and employees have been paid all amounts due in respect of the subcontract works to the date of the progress claim.

Security of payment legislation

- 6.2 Reference dates under any security of payment legislation will be the day of each month stated in item 17 of schedule 1, but only if the subcontractor has given Wiley a valid progress claim strictly in accordance with clause 6.1. If it does not, there will be no reference date that month.

Wiley to pay

- 6.3 Wiley must, within the time stated in item 19.1 issue a payment certificate stating the amount payable under the subcontract and why any part of the subcontractor’s claim is not payable and Wiley must pay the subcontractor the amount stated in the certificate on or before the time stated in item 19.2 of schedule 1.
- 6.3.1 Before the subcontractor is entitled to the final progress payment, including any variations, the subcontractor must sign and give to Wiley a deed of release in the form set out in schedule 6.

Security for performance

- 6.4 Retention or security secures to Wiley, the subcontractor’s obligations to perform. Wiley may have access to retention or security for any debt owed by the subcontractor to Wiley that remains unpaid for 10 business days. Depending on the election made at item 20 of schedule 1, the relevant of the following applies:
- 6.4.1 Wiley must return retention money after completion of the subcontract works as stated in item 21 of schedule 1 so that Wiley then holds 2.5% of the subcontract sum. Wiley must return the remaining retention, if any,

within the later of 25 business days after the expiration of the DRP under clause 3.6.1 or after the subcontractor returns a completed deed of release in the form set out in schedule 6.

- 6.4.2 Wiley must return 1 undertaking, or the remaining cash proceeds, after completion of the subcontract works as stated in item 21 of schedule 1. Wiley must return the other undertaking [or any remaining proceeds of the securities] within the later of 25 business days after the expiration of the DRP under clause 3.6.1 or after the subcontractor returns a completed deed of release in the form set out in schedule 6.

GST & RCTIs

- 6.5 The subcontract sum is exclusive of GST. The subcontractor must add GST to any claim made under this subcontract and must, when paid, remit the GST as required by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 6.5.1 The subcontractor agrees that Wiley will issue Recipient Created Tax Invoices (RCTI’s) for payments Wiley makes under this subcontract and that the subcontractor must not issue tax invoices.
- 6.5.2 Wiley and the subcontractor each warrant that they are registered for GST and will give notice to the other if that registration ceases.

7 Indemnity & insurance

Indemnity

- 7.1 Subject to clause 7.1.1, the subcontractor must indemnify, and continue to indemnify, Wiley against any liability suffered by Wiley arising out of any damage to the subcontract works, any design performed by the subcontractor or any damage caused to any property or injury to any person arising out of or connected with the performance of the subcontract works.
- 7.1.1 The subcontractor is not liable to indemnify Wiley under clause 7.1 to the extent that Wiley has caused the liability or damage suffered by Wiley.

8 Insurance

- 8.1 The subcontractor must establish and maintain the insurance policies stated in item 22 of schedule 1 for the period for which the subcontractor is potentially liable under the indemnity stated in clause 7.1.
- 8.1.1 If Wiley requests the subcontractor to do so, the subcontractor must satisfy Wiley of the sufficiency and currency of all insurance coverage prior to the date stated in item 10 of schedule 1 and during the period for which the subcontractor is liable for the risks covered by the specified insurance policies.

9 Default and termination

Wiley may terminate this subcontract by giving the subcontractor notice in writing if any of the following happen:

- The head contract is terminated.
- The subcontractor appoints a voluntary administrator or the subcontractor is insolvent as stated in the *Corporation Act 2001* or in the *Bankruptcy Act 1966*.
- The subcontractor commits a substantial breach of this subcontract and fails to rectify that breach for a period of 5 business days after Wiley, in writing, requires the subcontractor to rectify the breach.

10 Queensland Code of Practice

If the project is in Queensland, the subcontractor must comply with the Queensland Code of Practice, the Queensland Governments’ Implementation Guidelines to the Code of Practice for the Building and Construction Industry and schedule 12.

11 Notices

All notices must be given in writing by email to the email address stated in item 1 of schedule 1.

12 Dispute resolution

Any dispute resolution between Wiley and the subcontractor must be referred, at first instance to mediation. Neither party may litigate until genuine attempts to settle by mediation have been taken and have been unsuccessful.

13 Jurisdiction

This subcontract is subject to the law applicable in the jurisdiction stated item 23 and the parties submit to the jurisdiction of courts in that place.

14 Entire agreement

This subcontract contains the entire agreement between the parties and supersedes any terms purportedly imposed by the subcontractor.

15 Special conditions

Any special conditions are stated in schedule 5.