



CONSTRUCTION
INDUSTRY COUNCIL
建造業議會



REFERENCE MATERIALS

SIMPLIFIED STANDARD FORM OF DOMESTIC SUBCONTRACT

Disclaimer

Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the CIC nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible and readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions.

Enquiries

Enquiries on this publication may be made to the CIC Secretariat at:

Tel: (852) 2100 9000
Fax: (852) 2100 9090
Email: enquiry@cic.hk
Website: www.cic.hk

© 2017 Construction Industry Council

Preface

The Construction Industry Council (CIC) is committed to seeking continuous improvement in all aspects of the construction industry in Hong Kong. To achieve this aim, the CIC forms Committees, Task Forces and other forums to review specific areas of work with the intention of producing Alerts, Reference Materials, Guidelines and Codes of Conduct to assist participants in the industry to strive for excellence. The CIC appreciates that some improvements and practices can be implemented immediately whilst others may take more time to adjust. It is for this reason that four separate categories of publication have been adopted, the purposes of which are as follows:

Alerts

Reminders in the form of brief leaflets produced quickly to draw the immediate attention of relevant stakeholders the need to follow some good practices or to implement some preventative measures in relation to the industry.

Reference Materials

Reference Materials for adopting standards or methodologies in such ways that are generally regarded by the industry as good practices. The CIC recommends the adoption of these Reference Materials by industry stakeholders where appropriate.

Guidelines

The CIC expects all industry participants to adopt the commendations set out in such Guidelines and to adhere to such standards or procedures therein at all times. Industry participants are expected to be able to justify any course of action that deviates from those recommendations.

Codes of Conduct

Under the Construction Industry Council Ordinance (Cap 587), the CIC is tasked to formulate codes of conduct and enforce such codes. The Codes of Conduct issued by the CIC set out the principles that all relevant industry participants should follow. The CIC may take necessary actions to ensure compliance with the Codes.

If you have attempted to follow this publication, we do encourage you to share your feedback with us. Please take a moment to fill out the Feedback Form attached to this publication in order that we can further enhance it for the benefit of all concerned. With our joint efforts, we believe our construction industry will develop further and will continue to prosper for years to come.

SIMPLIFIED STANDARD FORM OF DOMESTIC SUBCONTRACT^{1,2}**SUBCONTRACT AGREEMENT**

This Subcontract Agreement (which terms shall be read in conjunction with the Subcontract Particulars annexed hereto) is made on between of (“Contractor”) and of (“Subcontractor”).

Whereas the Contractor has secured a contract (“Head Contract”) to execute works (“Head Contract Works”) on the Site and wishes to subcontract out part of the Head Contract Works (“Subcontract Works”) to the Subcontractor. **Now** the Contractor and the Subcontractor (each a “Contract Party”) hereby agree as follows:

Article 1: Object of this Subcontract

The Subcontractor will carry out and complete the Subcontract Works shown or described in the Subcontract Documents defined in Article 4 hereof for the consideration hereinafter provided.

Article 2: Subcontract Price

The Contractor will pay to the Subcontractor the Subcontract Price pursuant to the Subcontract Conditions, or such other sum as shall become payable at the times and in the manner stated in this Subcontract.

Article 3: Subcontract Periods

The Subcontractor will complete the Subcontract Works within the Time for Completion or such extended period as may be authorised under this Subcontract.

Article 4: Subcontract Documents

The documents constituting this Subcontract (“Subcontract Documents”) consist of the following:

- (a) this Subcontract Agreement;
- (b) the Subcontract Particulars annexed hereto and superseding the one included in the Tender Documents;
- (c) the Tender Correspondence annexed hereto;
- (d) the Subcontract Conditions annexed hereto as may be modified by the Special Subcontract Conditions included in the Tender Documents; and
- (e) the Tender Documents as completed by the Subcontractor when submitting the tender.

Contractor**Subcontractor**

.....
(Signature of legal or authorised representative)

.....
(Signature of legal or authorised representative)

Name:

Name:

Position:

Position:

Witness

Witness

.....
(Signature of witness)

.....
(Signature of witness)

Name:

Name:

Position:

Position:

SUBCONTRACT PARTICULARS

(Note: When completing the Particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

Item	Entities or Defined Terms	Particulars or Definitions
1	Parties to Head Contract	
2	Head Contract Works (brief description)	
3	Subcontract Works (brief description)	
4	Site	
5	Date for Access to the Site	
6	Commencement Date	
	Date for Completion	
	Time for Completion calendar days
	Rate of liquidated damages for each calendar day's delay	HK\$
7	Defects Liability Period	Commencing on the day following the substantial completion of the Subcontract Works until:
8	Subcontract Price	HK\$
9	Retention Percentage %
10	Maximum Retention % of the original Subcontract Price stated in Item 8 above
11	Payment Application Due Date	The day of each month
12	Payment Due Date	The day of each month

Item	Entities or Defined Terms	Particulars or Definitions		
13	Delay by reason of: ³	Excusable Events ⁴	Compensable Events ⁵	
	(a)	force majeure		
	(b)	inclement weather conditions		
	(c)	late provision by the Contractor of instructions		
	(d)	the carrying out of a Variation		
	(e)	a postponement of the Date for Access to the Site		
	(f)	a suspension of the progress of the whole or a part of the Subcontract Works as instructed by the Contractor		
	(g)	a delay or disruption caused by other contractors present on the Site		
	(h)	a special circumstance considered by the Contractor as sufficient grounds to fairly entitle the Subcontractor to an extension of time		
	(i)	an act of prevention, a breach of contract or other default by the Contractor or any person for whom he is responsible		
14	Milestones: ⁶	Milestone Date ⁷		
	(a)			
	(b)			
	(c)			
	(d)			
	(e)			
	Rate of liquidated damages for each calendar day's delay ⁸			
	(a)		HK\$	
	(b)		HK\$	
	(c)		HK\$	
	(d)		HK\$	
	(e)		HK\$	
15	Limit of indemnity for employees' compensation insurance	HK\$		
16	Limit of indemnity for contractors' all risks and third party liability insurance	HK\$		

SUBCONTRACT CONDITIONS

1. Site

The Contractor shall provide the Site on the Date for Access to the Site. The Contractor shall not be bound to give the Subcontractor exclusive possession of the Site.

2. Commencement and Completion

2.1 The Subcontractor shall carry out the Subcontract Works with reasonable skill and care.

2.2 The Subcontractor shall commence the Subcontract Works on the Commencement Date and do all that may reasonably be required to proceed with the Subcontract Works expeditiously.

2.3 The Subcontractor shall complete the Subcontract Works on or before the Date for Completion as may be extended under Clause 3.2.

2.4 The Subcontractor shall complete each Milestone on or before the corresponding Milestone Date as may be extended under Clause 3.2.

3. Delay

3.1 The Subcontractor shall give a written notice of delay to the Contractor as soon as the Subcontractor is aware of any event causing or likely to cause delay to the progress of the Subcontract Works or the completion of a Milestone, and state in such notice of delay:

(a) the event and relevant circumstances causing or likely to cause the delay;

(b) the estimated extent and length of the delay; and

(c) whether the Subcontractor considers that he is or may become entitled to:

(i) an extension of time due to the event being an Excusable Event; and

(ii) reimbursement for direct loss and/or expense due to the event being a Compensable Event and, if he considers that he is so entitled, an estimate of such loss and/or expense.

3.2 The Contractor shall, upon receipt of the Subcontractor's notice of delay under Clause 3.1, grant an extension of time by fixing a later Date for Completion and, where applicable, a later Milestone Date if there is a delay to completion due to an Excusable Event.

3.3 The Contractor shall, upon receipt of the Subcontractor's monetary claim under Clause 3.1, assess and certify the amount of any direct loss and/or expense compensable to the Subcontractor if there is a delay to completion due to a Compensable Event.

3.4 Subject to Clause 3.2, the Contractor shall be entitled to recover from the Subcontractor liquidated damages for delayed completion of the Subcontract Works at the rate stated in Item 6 of the Subcontract Particulars or of any Milestone at the rate stated in Item 14 of the Subcontract Particulars.

4. Substantial completion

4.1 The Subcontractor shall notify the Contractor to carry out a completion inspection when the Subcontractor considers that the Subcontract Works are substantially completed, and the Contractor shall carry out the completion inspection and issue a substantial completion certificate ("Substantial Completion Certificate") confirming the date on which substantial completion was achieved.

4.2 The Contractor shall take over the Subcontract Works upon the issue of the Substantial Completion Certificate.

5. Interpretation of Subcontract Documents

The various parts of the Subcontract Documents are mutually explanatory of each other and shall be interpreted as a whole as far as possible. Unless otherwise defined herein or required by the context, all capitalised terms in these Subcontract Conditions are as defined in the Subcontract Agreement or the Subcontract Particulars.

6. Instructions

- 6.1 Instructions in regard to the Subcontract Works shall be issued in writing by the Contractor and complied with by the Subcontractor within a reasonable time after receipt, and may be issued at any time before the completion of defects rectification.
- 6.2 If an instruction issued pursuant to Clause 6.1 requires a Variation as defined in Clause 8.1, such Variation shall be valued in accordance with Clause 8.3.

7. Re-measurement⁹

The Subcontract Price and the quantities building up the Subcontract Price shall be deemed to be provisional subject to actual site re-measurement and be finally recalculated by re-measuring the authorized work properly carried out and valuing the same at the rates in this Subcontract, subject only to other adjustments permitted under this Subcontract.

8. Variations

- 8.1 A Variation means a change (including any addition, omission, substitution, alteration or modification) as instructed by the Contractor to the design, quality or quantity of the Subcontract Works or to the time or manner for carrying out the Subcontract Works.
- 8.2 The Contractor may issue instructions from time to time requiring a Variation.
- 8.3 All Variations shall be valued based on the Valuation Rules stated in Clause 8.4, and the Subcontract Price shall be adjusted accordingly.
- 8.4 The "Valuation Rules" are:
- (a) the rates in this Subcontract shall be used for valuing work added to or omitted from the Subcontract and of the same or similar character to and carried out under the same or similar conditions to the work to which the rates apply;
 - (b) If (a) is not applicable, the rates in this Subcontract for comparable work shall be used as the base with adjustment for the difference in character or conditions; and
 - (c) If there are no rates in this Subcontract which can reasonably form a basis for valuing the work, fair rates shall be agreed between the Contractor and the Subcontractor.

9. Payment

- 9.1 The interim payment timeline shall be as follows:
- (a) On or before each Payment Application Due Date, the Subcontractor shall submit to the Contractor an application statement for payment with supporting computation and documents.
 - (b) On or before the Payment Due Date following the receipt of each interim application for payment, the Contractor shall pay to the Subcontractor the net amount payable as computed in accordance with Clause 9.2.
- 9.2 The net amount payable to the Subcontractor under each interim payment shall be computed by calculating the gross valuation at paragraph (a) below and then making the deductions at paragraphs (b) to (d) below:
- (a) the gross valuation of the Subcontract Works being the estimated total value of materials not pre-maturely delivered to the Site and work partly or fully completed up to the Payment Due Date, excluding those materials supplied by the Contractor and those materials or work which are not according to this Subcontract;
 - (b) deduction of retention according to the following:
 - (1) the retention shall be calculated by applying the Retention Percentage to the gross valuation mentioned in Clause 9.2(a), subject to a maximum equal to the Maximum Retention;
 - (2) upon the issue of the Substantial Completion Certificate, one half of the retention fund shall be released to the Subcontractor without interest in the next periodical payment; and

- (3) as soon as **14 days** have elapsed after the expiry of the Defects Liability Period, the balance of the retention fund shall be released to the Subcontractor without interest in the next periodical payment, provided that a sum may be retained for the estimated cost of rectification of defects listed by the Contractor but not yet rectified, and the sum shall be released progressively based on the progress of the rectification of defects;
 - (c) deduction of liquidated damages for delayed completion under Clause 3.4; and
 - (d) deduction of the total amount previously paid to the Subcontractor under this Subcontract.
- 9.3 The final payment timeline shall be as follows:
- (a) Within **3 months** after the substantial completion of the Subcontract Works, the Subcontractor shall submit a final account with supporting computation and documents to the Contractor for checking and agreement.
 - (b) Within **30 days** after the completion of all defects rectification according to Clause 10 or **30 days** after the agreement of the final account, whichever is later, the balance of the final Subcontract Price after deducting the amount previously paid to the Subcontractor shall be paid to the Subcontractor or, in the case of a negative balance, refunded to the Contractor, subject only to appropriate adjustments for any further factors affecting the computation of the final Subcontract Price and arising or known after the agreement of the final account.

10. Defects

- 10.1 The Subcontractor shall replace or rectify any item of materials or work which is found, at any time before the expiry of the Defects Liability Period, to be not according to this Subcontract at his own cost on his own initiative or as and when instructed by the Contractor to do so.
- 10.2 If the Subcontractor fails to rectify defects pursuant to Clause 10.1, the Contractor shall be entitled to employ others to rectify the defects and to recover the extra cost of doing so from the Subcontractor.

11. General obligations

- 11.1 The Contractor or the Subcontractor shall not assign this Subcontract without the written consent of the other Contract Party.
- 11.2 The Subcontractor shall not sublet any part of the Subcontract Works without the written consent of the Contractor.
- 11.3 Unless otherwise specified by this Subcontract, the Subcontractor shall provide all labour, temporary site facilities, site and head office management necessary for the completion of the Subcontract Works.
- 11.4 The Subcontractor shall take responsibility for the care of the Subcontract Works and the materials supplied for incorporation into the Subcontract Works from the Commencement Date until the issue of the Substantial Completion Certificate or the termination of this Subcontract, whichever is earlier.

12. Insurance

The Contractor shall take out and maintain, in the joint names of the Contractor, the Subcontractor and his sub-subcontractors of all tiers, for the full period of construction, defects liability and maintenance:

- (i) an employees' compensation insurance to indemnify the insured against their legal liabilities in respect of bodily injury or death sustained by any employees employed by any of them by accident occurring or occupational disease contracted during the period of insurance and arising out of and in the course of the employees' employment on the Subcontract Works or in connection with this Subcontract to the limit of indemnity stated in Item 15 of the Subcontract Particulars for any one occurrence; and

- (ii) a contractors' all risks and third party liability insurance in respect of the Subcontract Works, relevant temporary work and unfixed materials to the limit of indemnity stated in Item 16 of the Subcontract Particulars for any one occurrence.

13. Termination

- 13.1 If a Contract Party ("Defaulting Party") has committed a serious breach of this Subcontract and fails to cure such breach within **7 days** of receiving a written notice of default issued by the other Contract Party ("Non-defaulting Party") specifying such breach, the Non-defaulting Party may by written notice to the Defaulting Party forthwith terminate this Subcontract.
- 13.2 Either Contract Party may by written notice to the other Contract Party forthwith terminate this Subcontract if that other Contract Party becomes bankrupt or has a petition for compulsory winding up presented against him or enters into compulsory or voluntary winding up.
- 13.3 If for any reason the Head Contract is terminated, this Subcontract shall also terminate at the same time.
- 13.4 When this Subcontract is terminated, the Contract Parties shall agree upon the account of money due or payable up to the date of termination within **30 days** of the termination. Any dispute over the amount due or payable shall be settled in accordance with Clause 14. For avoidance of doubt, Clause 13.4 will survive the termination of this Subcontract.

14. Dispute resolution

In the event of a dispute arising out of or relating to this Subcontract, either Contract Party may notify the other in writing to refer the dispute to arbitration. The arbitration shall be a domestic arbitration conducted according to the Arbitration Ordinance (Chapter 609, Laws of Hong Kong) and the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre. The place of arbitration shall be Hong Kong.

15. Governing law

This Subcontract shall be governed by and construed according to the laws for the time being in force in Hong Kong.

Notes:

- 1. This Simplified Standard Form is intended to be used for minor subcontracts.
- 2. It is not recommended to proceed with the Subcontract Works before a formal contract award. The contractual implications of work or services done before formal contract award should be agreed in writing before they are carried out, and they should be expressly identified in the letter awarding this Subcontract as forming part of the Subcontract Works.
- 3. Adjust the list and description of the events as appropriate.
- 4. Specify 'Yes' or 'No' for each event as appropriate.
- 5. Specify 'Yes' or 'No' for each event as appropriate.
- 6. Insert as appropriate.
- 7. Insert as appropriate.
- 8. Make sure that there will be no double recovery if liquidated damages are required under this Item and Item 6 above. It may also be necessary to prescribe different rates of liquidated damages for different Milestones to ensure that the rates reflect a genuine pre-estimate of loss due to a failure to meet the relevant Milestone Dates.
- 9. This is a re-measurement contract. Please seek professional advice for adapting this Simplified Standard Form for a lump sum contract.



Feedback Form

Simplified Standard Form of Domestic Subcontract

Thank you for reading this publication. To improve our future editions, we would be grateful to have your comments.

(Please put a "✓" in the appropriate box.)

1. As a whole, I feel that the publication is:	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Informative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comprehensive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Useful	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Practical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the publication enable you to understand more about domestic subcontracts?	Yes	No	No Comment		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Have you made reference to the publication in your work?	Quite Often	Sometimes	Never		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. To what extent have you incorporated the recommendations of the publication in your work?	Most	Some	None		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5. Overall, how would you rate our publication?	Excellent	Very Good	Satisfactory	Fair	Poor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Other comments and suggestions, please specify (use separate sheets if necessary).					
Personal Particulars (optional):*					
Name: <u>Mr. / Mrs. / Ms. / Dr. / Prof. / Ir / Sr ^</u>					
Company: _____					
Tel: _____					
Address: _____					
E-mail: _____					

* The personal data in this form will be used only for this survey. Your data will be kept confidential and dealt with only by the Construction Industry Council.

^ Circle as appropriate.

Please return the feedback form to:

CIC Secretariat – Council Services

E-mail: enquiry@cic.hk

Fax No.: (852) 2100 9090