



**Fire Boar Pty Ltd. / Training Boar**  
ABN: 36 718 497 624 ACN: 132 208 836  
QBCC: 1148085 Electrical Lic: 70129  
**Air Boar Pty Ltd.**  
ABN: 53 660 058 042 ACN: 660 058 042  
QBCC:15319813  
[www.fireboar.com.au](http://www.fireboar.com.au)  
[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

## Major Works Subcontract

### Stakeholder Details

#### Contractor

<b>Business Name</b>	Fire Boar Pty Ltd	<b>QBCC Licence</b>	1148085
<b>Primary Phone</b>	1300 112 627	<b>Electrical Contractor</b>	70129
<b>Fax</b>	(07) 3208 6693	<b>ABN</b>	367 184 976 24
<b>Email</b>	service@fireboar.com.au	<b>ACN</b>	132 208 836
<b>Street Address</b>	123 Boundary Road, Rocklea, QLD	<b>Post Code</b>	4106
<b>Postal Address</b>	PO Box 1142, Archerfield, QLD, 4108	<b>Post Code</b>	4114

#### Subcontractor

<b>Business Name</b>		<b>QBCC Licence</b>	
<b>Primary Phone</b>			
<b>Fax</b>		<b>ABN</b>	
<b>Email</b>		<b>ACN</b>	
<b>Street Address</b>		<b>Post Code</b>	
<b>Postal Address</b>		<b>Post Code</b>	

### Boar Group Terms & Conditions

By signing this Subcontract, you acknowledge that you have read and understood the terms and conditions of this agreement including those which can be found online at: <https://boargroup.com.au/termsconditions/>

### Contractor Clarifications

*The General Conditions of Fire Boar's Commercial Works Subcontract may not be suitable for all work and Fire Boar does not make any representation as to the suitability of the general conditions. Users of the general conditions must make their own assessment or seek professional legal advice as to the appropriateness of these general conditions for any work or any changes that may be needed to these general conditions.*

*This contract has been developed in alignment with QBCC's Commercial Works Subcontract.*

### QBCC Clarifications

*This subcontract is intended to be used by Contractors and their Subcontractors to document their commercial building agreements (including subcontracts for residential building work).*

*Under s67G (1) of the Queensland Building and Construction Commission Act 1991 ('the QBCC Act') if the reasonable cost of the building work covered by this contract is more than \$10,000, this contract must be put in writing before the building work is started; if the reasonable cost is \$10,000 or less, the contract must be put in writing before the building work is finished.*



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## Subcontract Schedule

Item	Subject	Particulars
1.	Brief description of head contract	Project Description: <hr/> <hr/> <hr/> Principal: <hr/> Head Contract Date: <hr/>
2.	Site	Address: <hr/> Local Government: <hr/>
3.	Description of the Works <i>(Insert a description of the Works. Refer to, and attach, any plans and specifications)</i>	<hr/> <hr/> <hr/> (Attach an additional Schedule to this Subcontract if more space is required)
4.	Subcontract Documents in Order of Precedence	1. Subcontract Schedule 2. Special Conditions (if any) 3. General Conditions of Subcontract 4. Specifications (insert details, including date, or delete if not applicable) <hr/> <hr/> <hr/> 5. Plans / Drawings (insert details, including date, or delete if not applicable) <hr/> <hr/> <hr/> 6. Other Subcontract Documents (if any) <hr/> <hr/> (Attach an additional Schedule to this Subcontract if more space is required)



5.	Start Date	<p>___ / ___ / _____</p> <p>OR</p> <p>Method for determining Start Date:</p> <p>_____</p> <p>_____</p> <p><i>(Delete the option that does not apply)</i></p>
6.	Date for Substantial Completion	<p>___ / ___ / _____</p> <p>OR</p> <p>_____ days from the Start Date</p> <p><i>(Delete the option that does not apply)</i></p>
7.	Delay Costs	<p>Subcontractor's maximum entitlement to delay costs:</p> <p>\$_____ per day <i>(excluding GST)</i></p>
8.	Subcontract Price	<p>Subcontract Price: \$_____ <i>(excluding GST)</i></p> <p>Subcontract Price: \$_____ <i>(including GST)</i></p>
9.	Reference Date	<p>The last Business Day of each <b>week / fortnight / month</b> <i>(delete those that do not apply)</i> prior to Substantial Completion and upon Substantial Completion</p> <p>OR</p> <p>Other (specify):</p> <p>_____</p> <p><i>(If nothing stated, then the last Business Day of each month prior to Substantial Completion and upon Substantial Completion)</i></p>
10.	Payment Period	<p>Within _____ Business Days after the Contractor's receipt of a payment claim</p> <p><i>(Up to a maximum of 25 Business Days)</i></p> <p><i>(If not stated, then 25 Business Days after the Contractor's receipt of a payment claim)</i></p>
11.	Interest Rate on Late Payments	<p>The greater of:</p> <p>(a) _____% per annum; or</p> <p>(b) The rate made up of the sum of the following –</p> <p>(i) 10% per annum; and</p> <p>(ii) the annual rate, as published on occasion by the Reserve Bank of Australia, for 90-day bills.</p> <p><i>(If (a) is blank, the rate in (b) shall apply)</i></p>
12.	Retention or other Security	<p>Retention per progress payment (% of progress payment) _____%</p> <p><i>(NOTE: Retention cannot be more than 10% of a single progress payment)</i></p> <p>Total of retention and any other security (% of Subcontract Price) _____%</p> <p><i>(Prior to Substantial Completion, the total value of retention and any other security cannot be more than 5% of the Subcontract Price. After Substantial Completion, the total value of retention and any other security cannot be more than 2.5% of the Subcontract Price)</i></p> <p><i>(If nothing is specified here, no retention or other security applies to this Subcontract)</i></p>



13.	Defect Liability Period	_____ weeks / months (delete the option that does not apply) after practical completion (as defined in s.67A of the QBCC Act) is reached under the Head Contract <i>(If nothing stated, 12 months after practical completion (as defined in s.67A of the QBCC Act) is reached under the Head Contract)</i>
14.	Liquidated Damages	\$_____ per day (excluding GST)
15.	Subcontractor's Public Liability Insurance	Insurer: _____  Policy no.: _____  Amount of Cover: \$_____ <i>(If no amount of cover is stated, the amount of cover is at least \$10 million)</i>

We the undersigned confirm that the above information is true and correct to the best of our knowledge and agree to the above terms and the **General Conditions of Subcontract.**

### Contractor Sign Off

<b>Contractor</b>		<b>Date</b>	
<b>Authorised Person</b>		<b>Witnessing Person</b>	
<b>Signature</b>		<b>Witness Signature</b>	

### Subcontractor Sign Off

<b>Subcontractor</b>		<b>Date</b>	
<b>Authorised Person</b>		<b>Witnessing Person</b>	
<b>Signature</b>		<b>Witness Signature</b>	

## Major Works Subcontract Terms & Conditions

### 1. Commencement and Carrying Out

#### 1.1 Primary Obligation

- a. The Subcontractor must complete the work under the Subcontract by the Date for Completion, in accordance with the Subcontract, the directions of Boar Group and all applicable Legislative Requirements.
- b. In completing the work under the Subcontract pursuant to subclause 1.1a the Subcontractor will complete work:
  - I. with the professional degree of skill, care, diligence, and prudence expected from a Subcontractor who is highly experienced and qualified in providing services for comparable work; and
  - II. to meet and achieve Best Industry Practice.
- c. Boar Group will pay the Subcontractor the Subcontract Sum as set out in the Formal Instrument of Agreement (Major Works Subcontract Agreement), adjusted by any additions or deductions made pursuant to the Subcontract.

#### 1.2 Commencement

The Subcontractor must commence work under the Subcontract on but not before the date stated in the Subcontract Schedule or, if no time is stated, when directed by Boar Group. The Subcontractor must, from the Commencement Date, diligently, without delay and with due expedition, carry out the work under the Subcontract.

#### 1.3 Access

At the time the Subcontractor is to commence work under the Subcontract Boar Group will give the Subcontractor sufficient access to, so much of the Site as is necessary for the Subcontractor to commence carrying out the work under the Subcontract and will thereafter give the Subcontractor sufficient access to the Site as is necessary to enable the work under the Subcontract to be carried out. Any delay in providing Site access will not constitute a breach of the Subcontract by Boar Group. The Subcontractor will have No Claim against Boar Group arising under this subclause.

#### 1.4 Prior work

The Subcontractor acknowledges that the Subcontract applies to any works carried out prior to the date of execution of the Subcontract (*Early Works*). Any work undertaken on the Project prior to the execution of the Subcontract is governed by the terms of this Subcontract and forms part of the Subcontract Sum.

#### 1.5 Subcontractor's Representative

The Subcontractor must always ensure a representative is appointed and given all authority necessary to act on the Subcontractor's behalf under the Subcontract. If Boar Group's representative objects to an appointment the Subcontractor must replace that person. Matters within a representative's knowledge (including directions received) are deemed to be within the Subcontractor's knowledge.

#### 1.6 Cooperation with Others

The Subcontractor must cooperate and coordinate with Separate Contractors on Site and must at its own cost, at all times, plan, program and carry out the Subcontract Works so as to minimise any interference with disruption or hindrance of, or delay to the performance of works on the Site being performed by Separate Contractors. The Subcontractor will have No Claim against Boar Group arising out of compliance with its obligation under this subclause.

#### 1.7 Incidental Works

Incidental items not expressly stated in the Subcontract, but which are clearly necessary for the completion and performance of the work under the Subcontract, shall be supplied and carried out by the Subcontractor without adjustment to the Subcontract Sum.

#### 1.8 Discrepancy in Documents

- a. If the Subcontractor becomes aware of an inconsistency, ambiguity, discrepancy, or omission in or between Subcontract Documents, the Subcontractor must notify Boar Group immediately, in any event within one (1) Business Day of becoming aware of the discrepancy, and paragraph (b) will apply.
- b. If notified under paragraph (a), subject to subclause 1.8 [Order of Precedence] below, Boar Group will inform the Subcontractor of the interpretation to be followed. The Subcontractor acknowledges it will have No Claim against Boar Group due to a direction of Boar Group under this subclause.
- c. The Subcontractor acknowledges and agrees that any Subcontract Works which is not expressly mentioned or shown in the Subcontract Documents but which:
  - I. Is necessary to ensure that the Subcontract Works are:
    - i. completed to a standard normally achieved or reasonably expected on projects/developments of a similar size, quality, and type; and
    - ii. otherwise fit and suitable for their intended purpose; and
  - II. should reasonably have been inferred or assumed from a proper review and examination in the Subcontract Documents by a competent Subcontractor having regard to the nature and purpose of the Subcontract Works, including (but not limited to) for the purposes of ensuring the proper and satisfactory completion and performance of the Subcontract Works:
    - i. is deemed to be included within the Subcontract Sum and the time for reaching Completion; and



- ii. must be supplied, performed, and executed by the Subcontractor at its own risk and cost. The Subcontractor acknowledges it will have No Claim against Boar Group due to a direction of Boar Group under this subclause.

#### 1.9 Order of Precedence

The parties acknowledge and agree the order of precedence of the Subcontract Documents as listed in the Formal Instrument of Agreement (Major Works Subcontract Agreement), applies in the event of an inconsistency, ambiguity or discrepancy between the various documents constituting the Subcontract.

To the extent that any part of the various documents comprising the Subcontract imposes a greater or higher requirement, standard, quality or level of service or scope than any other part of the documents, except and subject to where the context expressly requires, that greater or higher requirement, standard or quality, level of service or scope prevails.

#### 1.10 Boar Group Supplied Documents

Any document Boar Group supplies to the Subcontractor remains Boar Group's property to be returned to Boar Group on demand and is not to be copied or reproduced for any purpose unrelated to the Subcontract.

#### 1.11 RFIs

- a. Subject to subclause 1.8, if the Subcontractor wishes to clarify an issue arising from the Subcontract Documents or the work under the Subcontract, the Subcontractor may submit a written notice requesting information to Boar Group. A Request for Information (RFI) must state a time by which the Subcontractor requires a response to that RFI (which must be not less than five (5) Business Days).
- b. The Subcontractor acknowledges and agrees an RFI does not constitute a Variation notice under subclause 11.1b and it will have No Claim against Boar Group if the subject matter of an RFI has not been acknowledged as a Variation.

#### 1.12 Notices

Any document or notice which is or may be issued or served on either party to the Subcontract may be issued or served by:

- a. delivering it by hand to the other party, in which case it is deemed to be served or issued on the day that it is delivered;
- b. sending it by registered post, to the other party in which case it is deemed to be served or issued two (2) Business Days after the day on which it is posted;
- c. electronically, in which case it:
  - I. may be served to the email address set out in the Subcontract Schedule; and
  - II. it is deemed to be served or issued, when the communication enters the information system on which the mailbox of the recipient's email address resides.
  - III. Notwithstanding paragraph (c) the Subcontractor may only submit a Payment Claim to the email address set out at subclause 12.2b.

#### 1.13 Shop Drawings

If the Subcontractor is required to complete design of the Subcontract Works through shop drawings (or has Full Design Responsibility for the Subcontract Works pursuant to Clause 4), the Subcontractor must carry out all necessary design to, and so produce documents which, meet the requirements of all of:

- a. the Subcontract;
- b. Boar Group's directions; and
- c. Legislative Requirements.

#### 1.14 Submission of Subcontractor Documents

- a. The Subcontractor must supply documents at the times specified in the Trade Package, or the Head Contract Works Program, or at times agreed with Boar Group.
- b. In respect of any design document or shop drawing, if no time is specified or agreed, the Subcontractor must submit those documents in sufficient time to allow for Boar Group (and if required) the Principal to review (and so to permit re-work if required).
- c. Boar Group will not be required to check Subcontractor supplied documents for errors, omissions, inconsistencies, ambiguities or discrepancies and any Boar Group approval will not relieve the Subcontractor of any of its obligations under the Subcontract.

#### 1.15 Subcontractor Warranties

- a. The Subcontractor warrants that:
  - I. it is suitably qualified, skilled, and experienced in the type of work that is the subject of the Subcontract;
  - II. It will employ suitably qualified, skilled, and experienced employees, agents and Subcontractors who will discharge the Subcontractors obligations strictly in accordance with this Subcontract;
  - III. it will ensure that if any Legislative Requirement requires that a person be authorised or licensed to carry out any work in relation to the Subcontract Works, that person is so authorised or licensed and has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience or a workplace, plant or substance (or design), or work (or class



- of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- IV. it has informed itself as to the means of access to and egress from the Site, transport facilities, accommodation, services and storage facilities and any constraints therein available on Site;
- V. it has allowed in the Subcontract Sum for incidental items not expressly stated in the Subcontract, but which are clearly necessary for the completion and performance of the work under the Subcontract to be supplied and carried out, including any and all relevant Legislative Requirements;
- VI. in establishing the Subcontract Sum, the Subcontractor warrants it has made proper and adequate allowance for all risks and matters which might impact on the Subcontractor's ability to complete the work under the Subcontract by the Date for Completion and satisfied itself as to the correctness and sufficiency of the Subcontract Sum;
- VII. it has the necessary resources to complete the Subcontract Works by the Date for Completion;
- VIII. it shall exercise due skill, care, and diligence in the carrying out and completion of the Subcontract Works;
- IX. it will achieve and meet Best Industry Practice;
- X. it has conducted a thorough examination and investigation of the Site and the nature and extent of both the main contract works and the Subcontract Works and has made sufficient allowances in the Subcontract Sum and any construction program to carry out and complete the Subcontract Works by the Date for Completion;
- XI. it is Financially Sound at the time of entering into this Subcontract and continues to be Financially Sound in carrying out works under the Subcontract and will comply with any direction of Boar Group for the Subcontractor to provide proof that it is Financially Sound, including to provide to Boar Group (when directed by Boar Group) all financial records of its financial position to be provided a financial expert to allow that financial expert to form an opinion of the Subcontractor's financial position to perform its obligations under this Subcontract;
- XII. it is aware of the requirements of the Queensland Building and Construction Amendment, it acknowledges that the use of a Non-Conforming Building Product is strictly prohibited, and it agrees it will not use, refer to or identify a Non-conforming Building Product in the performance of the Subcontract Works;
- XIII. it has complied with all obligations under the *Privacy Act 1988* (Cth) in regard to information supplied to Boar Group in respect of the Subcontractor's employees;
- XIV. if it has any design responsibility under the Subcontract; it will ensure that:
- i. appropriately skilled, experienced, and qualified persons supervise and coordinate design and production of design documents; and
  - ii. the Works under the Subcontract are fit for their stated purpose and complies with all requirements of the Subcontract.
- XV. it will comply with, and is registered or licensed in accordance with, any Legislative Requirements.
- XVI. each of the goods, product, plant, materials, and equipment (*Equipment*) used by the Subcontractor:
- i. conforms with the Subcontract and is of good and merchantable quality;
  - ii. is free from defects or faults in composition and manufacture;
  - iii. conforms with all Legislative Requirements;
  - iv. where selected or designed by the Subcontractor;
  - v. is fit for its intended purpose as specified in, or ascertainable from the Subcontract;
  - vi. would not constitute an item which is a Non-conforming Building Product under the Queensland Building and Construction Amendment; and
  - vii. would not constitute a product which will cause or is likely to cause a threat to the safety of any occupants of the building if a fire occurs in the building which is a breach of the Queensland Building and Construction Amendment.
- XVII. If, at any time prior to the expiry of the Defects Liability Period, the Equipment or other Subcontract Works do not conform with the terms of this Deed, the Subcontractor will, at its own cost and at such times and in such a manner as Boar Group may require, reinstate, replace, repair or rectify the Equipment or Subcontract Works so that the Equipment and/or Subcontract Works conforms with this Deed.
- b. The Subcontractor must, prior to commencing work under the Subcontract (and as a precondition to payment of any amount under the Subcontract), execute and return the Deed of Warranty set out in the Subcontract Schedule, or if required and directed to do so, the form of Subcontractor warranty deed required under the Head Contract.
- c. The Subcontractor indemnifies Boar Group of all costs, expenses, damages, liability, and loss incurred by Boar Group as a result of any breach of the Subcontractor's obligation under this Subcontract including any of the warranties stated in this subclause 1.14 and otherwise in this Subcontract.

## 2. Security

### 2.1 Security

- a. The amount of retention to be retained by Boar Group is stated in the Subcontract Schedule. If accepted by Boar Group, the Subcontractor may provide security in the form of two (2) unconditional bank guarantees each for an amount equal to 50% of the amount stated as the limit for retained amounts in the Subcontract Schedule in lieu of retention and Boar Group will release the amount of retention then held.





- b. If due to one or more Variations the Subcontract Sum increases, Boar Group may retain additional amounts so that the total amount of Security equates to the percentage of the Subcontract Sum (as adjusted) stated as the limit for retained amounts in the Subcontract Schedule.

## 2.2 Recourse

Boar Group may have recourse to Security and is entitled to deduct money from payments due to the Subcontractor any debt or other monies due or an amount which Boar Group believes the Subcontractor is, or may in the future be, liable from the Subcontractor to Boar Group, if (in Boar Group's opinion) the Subcontractor is in breach of any of its obligations under the Subcontract or if Boar Group is entitled to terminate the Subcontract, whether under the Subcontract or otherwise.

## 2.3 Reduction and Release

- a. Upon the latter of:
- I. Practical Completion of the Head Contract Works;
  - II. the Subcontractor has provided any document required by the Subcontract including an executed Deed of Release in the form of that in the Subcontract Schedule of this Subcontract; and
  - III. receipt of a written request from the Subcontractor for release of 50% of Security.
- Boar Group will release 50% of Security held and return to the Subcontractor.
- b. Upon the latter of:
- I. the Subcontractor's obligations under the Subcontract being fully performed;
  - II. expiry of the last Defects Liability Period;
  - III. delivery of an executed Deed of Release in the form of that in the Subcontract Schedule of this Subcontract; and
  - IV. receipt of a written request from the Subcontractor for release of remaining Security.
- Boar Group will release and return any remaining Security held by Boar Group.
- c. Except as provided in subclause 2.3b, the Subcontractor shall have no entitlement (including any recovery of loss, damage or expense arising under the Subcontract) as a consequence of the conversion of security into money. The Subcontractor acknowledges that:
- I. Boar Group has a right to convert security which does not consist of money into money at any time;
  - II. In the event of such conversion, the amounts payable by Boar Group under subclause 2.3b above are an adequate remedy for the Subcontractor; and
  - III. The Subcontractor has no entitlement to obtain an injunction preventing Boar Group from converting security which does not consist of money into money.

## 2.4 No Reduction if Litigation

If at the time Security is to be reduced or released, a party has commenced legal proceedings against the other party in relation to a dispute referred to in Clause 15 [Dispute Resolution], Boar Group's obligation to reduce or release Security will be postponed until 20 Business Days after the final determination of those proceedings.

## 2.5 Guarantee

Where the Subcontractor is:

- a. is a related or subsidiary corporation within the meaning of the Corporations Act 2001 (Cth);
  - b. a private company; or
  - c. a partnership,
- if directed by Boar Group to do so (and as a precondition to payment of any amount under the Subcontract), the Subcontractor must procure from guarantor/s acceptable to Boar Group, the execution of the Deed of Guarantee set out in the Subcontract Schedule.

# 3. Indemnity And Insurance

## 3.1 Indemnity

The Subcontractor is solely liable for and indemnifies Boar Group, the Principal and their respective employees against all loss, liability, expense (including legal costs) or damage, in respect of or in connection with:

- a. any injury, illness, personal injury to, or death of, any person involved in the performance of the Subcontract Works caused or contributed to by the Subcontractor or any officer, employee, agent, or Subcontractor of the Subcontractor;
  - b. damage to any property, real or personal (including without limitation, the Subcontract Works, temporary works or any unfixed goods and materials (whether on or off-site) intended for incorporation in the Subcontract Works but not yet incorporated) caused or contributed to by the Subcontractor or any officer, employee, agent or Subcontractor of the Subcontractor including (without limitation) any damage arising from defect rectification;
  - c. claims by any person against Boar Group, including in respect of contamination, nuisance, pollution, unreasonable noise, or disturbance;
  - d. damage to the Subcontractor's constructional plant or vehicles that is not solely caused by Boar Group; and
  - e. a breach of the warranties at subclause 1.14 or any other breach of the Subcontract Documents, including any act or omission of the Subcontractor or any of its officers, employees, agents, Subcontractors or invitees (including but not limited to a breach in respect of which Boar Group exercises a right to terminate this Subcontract or which causes or contributes to a breach of the Head Contract);
- arising out of, or in any way in connection with, the Subcontract, or any negligent acts or omissions of the Subcontractor (or negligent acts or omissions of any secondary Subcontractor engaged in the execution of the work under the Subcontract).



Each indemnity in this Subcontract is a continuing obligation separate and independent from the Subcontractor's other obligations and survives termination of this Subcontract, including and in addition to the indemnity at subclause 1.14c.

### 3.2 Works Insurance

- a. The Subcontractor is required to effect and maintain (and pay all premiums for) a contract works insurance policy with an Australian Prudential Regulatory Authority approved insurer, which covers the whole of the Subcontract Works against loss or damage resulting from any cause whatsoever, until the Subcontractor ceases to be responsible for their care.
- b. The Subcontractor must pay Boar Group's Works Insurance Excess on any claim made under the Head Contract Works contract works insurance policy where the damage or loss to which the claim relates is caused either directly or indirectly by the Subcontractor.

### 3.3 Public Liability

- a. Prior to commencing work on Site, the Subcontractor must effect and maintain and pay all premiums for a public and product liability insurance policy with an Australian Prudential Regulatory Authority approved insurer in the joint names of Boar Group and the Subcontractor which covers Boar Group, the Subcontractor and all secondary Subcontractors employed on occasion in relation to the work under the Subcontract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Subcontractor's liability to Boar Group and Boar Group's liability to the Subcontractor for loss of or damage to property (other than the Subcontract Works) and the death of or injury to any person.
- b. Any policy of insurance effected under paragraph (a) must:
  - I. have a limit of indemnity for each and every occurrence not less than the sum stated in the Subcontract Schedule;
  - II. be effected with a reputable insurer and in terms approved by Boar Group (which approval may be withheld in Boar Group's absolute discretion); and
  - III. be maintained until expiry of the last Defects Liability Period.

### 3.4 Workers Compensation

Prior to commencing work on Site, the Subcontractor must have in place and have paid all premiums for workers compensation and related liability insurance in accordance with the requirements of the Workers Compensation Legislation and WHS Legislation and where possible extended to indemnify Boar Group against statutory liability to persons employed by the Subcontractor. A policy of insurance effected under this Clause must be maintained by the Subcontractor until the expiry of the last Defects Liability Period.

### 3.5 Insurance of motor vehicles and construction equipment

The Subcontractor must ensure it has in place:

- a. third party property damage insurance policy with an Australian Prudential Regulatory Authority approved insurer for all motor vehicles owned, leased, or hired by the Subcontractor, used in connection with the carrying out of the work under the Subcontract; and
- b. material loss or damage insurance covering and for replacement of all Constructional Plant and temporary works, against physical loss, damage, or destruction.

### 3.6 Asbestos

Where the work under the Subcontract involves or may involve the disturbance, removal or disposal of any asbestos, the Subcontractor is required to ensure a policy of insurance in respect of liability for occurrences arising as a result of exposure of any person to any asbestos or any compounds related to asbestos is affected.

### 3.7 Cross Liability

Whenever under the Subcontract an insurance policy is required to be effected by the Subcontractor in joint names the policy must include a cross-liability Clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them.

### 3.8 Certificate of Currency

At the time of entering into the Subcontract, and thereafter whenever requested to do so by Boar Group the Subcontractor must demonstrate that it maintains the insurance policies required to be effected under this subclause 3.8 by production of:

- a. a valid certificate of currency; and
- b. the insurance policy wording and any schedules identifying any endorsements, exclusions, and limitations.

### 3.9 Failure to Insure and Claims

If the Subcontractor fails to provide satisfactory evidence of insurance under subclause 3.8, Boar Group may effect and maintain that insurance and pay the necessary premiums. The cost of the premiums will be a debt due from the Subcontractor to Boar Group. The Subcontractor must inform Boar Group of any occurrence that may give rise to a claim under a policy of insurance referred to in this Clause. Boar Group may also withhold payment in accordance with this Agreement until such evidence is produced by the Subcontractor.

### 3.10 Policy of Insurance

Each policy of insurance required by this Subcontract must:

- a. contain (without limitation) a provision that the insurer does not assert any right of subrogation to the rights of any insured against any of the other insured party;
- b. not include any terms that would adversely affect the likelihood of that policy responding to cover circumstances, losses or damages that may arise in connection with the Subcontract;
- c. not include any terms which operate to avoid or limit the cover available because an insured is entitled to cover under another policy of insurance; and
- d. not apply to a higher level of excess than the excess which would be payable for the same claim if made by the Subcontractor.

### 3.11 Property Insurance

Any policy providing cover in relation to property must indemnify the insured parties against the cost of reinstatement or replacement with new property.

### 3.12 Excess in Claims

The Subcontractor must pay all excess in respect of claims by any party under the policies of insurance effected in accordance with the Subcontract which relate to the Subcontract Works.

## 4. Design Responsibility

**This Clause only applies if the Subcontractor is responsible to 'Design and Construct'.**

### 4.1 Full Design Responsibility

- a. If the Subcontract Schedule indicates that the Subcontractor has Full Design Responsibility, without limiting subclause 1.12 [Shop Drawings], the Subcontractor must:
  - I. produce design documents which will:
    - i. comply with the requirements of the Subcontract;
    - ii. be suitable, appropriate, and adequate to satisfy Boar Group's design requirements for the Project;
    - iii. be fit for the purposes identified for the Project;
    - iv. satisfy all Legislative Requirements;
    - v. be at a standard and level of detail suitable for the purposes of the Project; and
    - vi. be fit for their stated purpose and comply with all requirements of the Subcontract,
  - II. if the Subcontract Documents include design carried out by Boar Group (or the Principal) before the commencement of the Subcontract (*Preliminary Design*), before submitting design documents the Subcontractor (at its own cost) must check and notify Boar Group of any errors or faults in the Preliminary Design;
  - III. (if necessary), amend the Preliminary Design so that the Subcontract Works will be fit for the purposes required by the Subcontract; and
  - IV. accept and adopt the Preliminary Design and Preliminary Design documents as if they were prepared by the Subcontractor (amended by the Subcontractor if necessary) so that they become part of the Subcontractor's design documents;
  - V. undertake all activities and tasks necessary to ensure the design documents are coordinated, consistent and interfaced with each other.
- b. The Subcontractor acknowledges that the Preliminary Design is incomplete and may contain errors or faults or conflict with Legislative Requirements which the Subcontractor is required to comply with.
- c. Boar Group makes no representation concerning the Preliminary Design and the Subcontractor is not entitled to rely on the completeness or accuracy of the Preliminary Design. Boar Group relies on the Subcontractor to identify and remedy errors and faults in the Preliminary Design.
- d. Further, if the Preliminary Design adopted by the Subcontractor contains an error or fault not notified to Boar Group the Subcontractor will not be entitled to an extension of time and will be responsible for the cost of any aborted work arising out of the error or fault and the cost to rectify and the value of any Variation Boar Group may direct (in its absolute discretion) as a result of the error or fault will not include the cost of aborted work.
- e. Unless expressly permitted by the Subcontract the Subcontractor must not depart from the design intent as inferred, shown, evidenced, or contemplated by the Subcontract.



#### 4.2 Intellectual Property Rights

- a. The Subcontractor warrants within the Subcontractor's documents and any related design, materials, documents, and methods of working will not infringe any Intellectual Property Rights and indemnifies Boar Group against any costs, losses, expenses or damages arising out of any infringement.
- b. Ownership of Intellectual Property Rights in all design documents vests in Boar Group on creation and the Subcontractor will have a license to the Intellectual Property Rights in the design documents for any purpose associated with the Subcontract Works.

#### 4.3 Professional indemnity

If the Subcontractor has Full Design Responsibility it must affect and maintain (and ensure any consultant engaged by the Subcontractor in the design of the Subcontract Works effects and maintains), professional indemnity insurance with levels of cover and a run-off period not less than that stated in the Subcontract Schedule.

#### 4.4 Consultants

- a. Any design consultant engaged by the Subcontractor must be suitably qualified and experienced and hold professional indemnity insurance in accordance with subclause 4.3.
- b. If directed by Boar Group to do so, the Subcontractor must accept the novation of and retain Boar Group's Preliminary Design consultants.

#### 4.5 Design Review

- a. If requested by Boar Group, the Subcontractor must undertake design review and consider the design with Boar Group's personnel or personnel of the Principal or with the Superintendent. The Subcontractor must further develop the design and Subcontractor's design documents using the outcomes of this review prior to the Subcontractor submitting its design documents in accordance with subclause 1.13.
- b. Notwithstanding any design review and consideration by others the Subcontractor remains fully responsible for all design documents and nothing Boar Group does or omits to do in connection with this Clause makes Boar Group liable for the Subcontractor's design documents.

#### 4.6 Design Check

If the Subcontractor has Full Design Responsibility, when requested by Boar Group (at any time and on occasion), the Subcontractor must provide to Boar Group a design certificate, in a form acceptable to Boar Group, certifying that the Subcontractor's design complies with the Subcontract and is fit for purpose.

#### 4.7 Safe Design

If the Subcontractor is deemed to be a 'designer' for the purposes of the WHS Legislation the Subcontractor must comply with the requirements of WHS Legislation.

#### 4.8 Proprietary Brands

- a. All proprietary brands of materials or equipment must be fixed strictly in accordance with the manufacturer's instructions, directions, or specifications;
- b. Where any ambiguity exists between the Subcontract Documents and the manufacturer's instructions or specifications, the matter must be referred to Boar Group for clarification, prior to implementation; and
- c. Where a trade name appears in the specifications or is shown on the drawings, equal or better materials bearing other trade names may, unless otherwise specified, be used in the Subcontract Works, provided they have been first approved in writing by Boar Group.

## 5. Subcontracting

### 5.1 Secondary Subcontracting

- a. The Subcontractor must not, without the prior written approval of Boar Group (which may be withheld in Boar Group's absolute discretion and for any reason), enter into any secondary Subcontract with a value exceeding 15% of the Subcontract Sum.
- b. If requested to do so by Boar Group, the Subcontractor must supply a copy of the proposed secondary Subcontract without prices.
- c. Approval to enter into a secondary Subcontract may be conditional on the secondary Subcontract including provisions to enable the Subcontractor to fulfil its obligations to Boar Group, including but not limited to contractor general and site-specific inductions, and copies of site and project specific documentation required.
- d. The Subcontractor is responsible for ensuring any Secondary Subcontractor has the capacity and is appropriately insured to indemnify Boar Group and the Subcontractor against any and all incidents directly or indirectly caused by the Secondary Subcontractor while they perform the Subcontract Work.

### 5.2 Responsibility for Secondary Subcontractors

The Subcontractor is liable to Boar Group for the acts and omissions of secondary Subcontractors and employees and agents of secondary Subcontractors as if they were acts or omissions of the Subcontractor and anything in a secondary Subcontractor's control is taken to be in the Subcontractor's control.

### 5.3 Proportionate Liability Legislation

The operation of the Proportionate Liability Legislation is excluded, to the extent permitted by law, in relation to all rights, obligations and liabilities of the parties with respect to any matter to which the Proportionate Liability Legislation would apply but for this provision.

## 6. Site

### 6.1 Site Condition Risk

- a. The Subcontractor has entered into the Subcontract relying on its own investigations of the Site and accepts the Site and any structures on the Site in their present condition.
- b. Boar Group makes no representation and gives no warranty with respect to:
  - I. Site conditions (including sub-surface and geo-technical conditions);
  - II. any structure on the Site;
  - III. works completed by previous Subcontractors; and
  - IV. as to the accuracy, adequacy, suitability, or completeness of any Site information document supplied to the Subcontractor.
- c. The Subcontractor assumes the risk of and acknowledges it will have No Claim against Boar Group arising out of or in connection with the physical conditions and characteristics of the Site and its surrounds.

### 6.2 Prior Works

- a. If the Subcontract Works are dependent on a previous Subcontractor's work the Subcontractor must examine that work prior to commencing its works and notify Boar Group of any defect in that work.
- b. Should the Subcontractor fail to notify Boar Group and it builds over or incorporates into its work any defective work by other Subcontractors then the Subcontractor shall be liable for the costs of rectification of that defective work and shall have No Claim against Boar Group in respect of prior defective work.

### 6.3 WHS

- a. At all times during the undertaking of the work under the Subcontract the Subcontractor must identify and exercise all necessary precautions and take all practicable steps to ensure the health and safety of persons on the Site who may be affected by the work under the Subcontract, and comply with the requirements of the WHS Legislation, including but not limited to the following:
  - I. undertake an assessment of WHS risks associated with the performance of the work under the Subcontract and take all reasonably practicable steps to implement Best Industry Practice risk control measures to eliminate and minimise all such WHS risk;
  - II. prepare and submit to Boar Group a **"Safe Work Method Statement"** prior to commencing any work under the Subcontract;
  - III. consult, cooperate, and coordinate activities with other persons who have a work health and safety duty in relation to the same matter, including to inform Boar Group as to all matters arising of a WHS nature concerning the Works under the Subcontract;
  - IV. immediately notify of any lost time incident or injury; and
  - V. ensure that if any Legislative Requirement requires that a person be authorised or licensed to carry out any work in relation to the Subcontract Works, that person is so authorised or licensed and has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience or a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed.
- b. The Subcontractor acknowledges Boar Group has control of the manner in which the Head Contract Works are performed, and Boar Group is "principal contractor" for the purposes of the WHS Legislation for the Head Contract Works. The Subcontractor must:
  - I. promptly comply with any direction of Boar Group in relation to work health and safety requirements under WHS Legislation;
  - II. comply with any WHS management plan implemented by Boar Group for the Head Contract Works (a copy of which the Subcontractor acknowledges has been provided to it and is available on request) and ensure all persons for whom it is responsible or over whom it is capable of exercising control complies with any applicable WHS management plan; and
  - III. (if and when requested), provide written assurances of its ongoing compliance with WHS Legislation.
- c. The Subcontractor must ensure that all Constructional Plant is maintained in a safe working order. If Boar Group considers that any Constructional Plant is unsafe, Boar Group may direct the Subcontractor to stop using the Constructional Plant, until it has been brought into a safe working order, or to replace the Constructional Plant with Constructional Plant which is in a safe working order.
- d. The Subcontractor must ensure so far as is practicable that it does not by its acts or omissions cause or contribute to any breach by Boar Group of its statutory obligations. The Subcontractor must indemnify Boar Group in respect of any liability, costs, losses, or expenses whatsoever arising in connection with any breach of WHS Legislation by Boar Group to which the Subcontractor has contributed by a breach of this Clause.
- e. The Subcontractor agrees and acknowledges that its obligation to comply with the requirements of the WHS Legislation with respect to the Site as required by this Subcontract will apply during the occupation and/or use of the Site by the Principal after Completion.

### 6.4 Environmental

- a. The Subcontractor must comply with any site-specific environmental management plan or system set out in the Trade Package (including with respect to dust and run-off from the Site) and applicable environmental Legislative Requirements including Environmental Legislation.
- b. The Subcontractor must ensure, in connection with the carrying out of the work under the Subcontract, Boar Group does not become liable in connection with any environmental pollution and the Subcontractor shall



**Fire Boar Pty Ltd. / Training Boar**  
ABN: 36 718 497 624 ACN: 132 208 836  
QBCC: 1148085 Electrical Lic: 70129

**Air Boar Pty Ltd.**  
ABN: 53 660 058 042 ACN: 660 058 042  
QBCC: 15319813  
[www.fireboar.com.au](http://www.fireboar.com.au)  
[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

indemnify Boar Group in respect of any such liability and associated costs, losses or expenses (including authority fines).

- c. The Subcontractor must ensure that in complying with the requirements of subclause 6.4a and 6.4b that:
- I. the Subcontractor must take all measures and action to prevent causing or contributing to any actual or threatened environmental harm or pollution during the course of carrying out Subcontract Works under the Subcontract;
  - II. The Subcontractor must actively identify and remedy any environmental incident caused or contributed to directly or indirectly by the Subcontractor;
  - III. the Subcontractor must take all reasonable steps to minimise any actual or threatened environmental harm or pollution occurring at or near the Site;
  - IV. any and all costs incurred by the Subcontractor associated with compliance with any site-specific environmental management plan or system set out in the Trade Package and any other Environmental Legislation is agreed by the Subcontractor to be included in the Subcontract Sum;
  - V. the Subcontractor indemnifies Boar Group against all claims, penalties, fines, rectification and clean-up costs and any liability, loss and damages arising as a result of the Subcontractor's failure to comply with this subclause 6.4.
  - VI. the Subcontractor must:
    - i. immediately notify Boar Group of any environmental or pollution incidents involving or caused by the Subcontractor, its employees, contractors, or agents, including incidents required to be notified to a government authority and promptly provide Boar Group with details of the event; and
    - ii. prior to dispatch, provide Boar Group with copies of any statutory notices and correspondence of any nature that relates to the Subcontract Works and concerns Environmental Legislation;
  - VII. nothing in this Clause 6.4 will relieve the Subcontractor from its responsibilities with respect to the protection of the environment under the law or any other provision of the Subcontract.

#### 6.5 Archaeological finds

Valuable minerals, fossils, articles, or objects of antiquity or of anthropological or archaeological (including indigenous) interest and articles of value found on the Site shall as between the parties be and remain the property of Boar Group.

Immediately upon the discovery of these things the Subcontractor must:

- a. take precautions to prevent their loss, removal, or damage;
- b. give Boar Group immediate notice of the discovery;
- c. comply with any directions of the Superintendent or relevant authority; and
- d. (to the extent possible), continue to perform its obligations under the Subcontract.

## 7. Construction

### 7.1 Quality of Materials and Workmanship

The Subcontractor must use new and fit for purpose material and carry out work under the Subcontract in accordance with Best Industry Practice.

### 7.2 Quality Management

- a. The Subcontractor must develop / document a Quality Management Plan (QMP) (appropriate for, and in accordance with the scope of works) to assure the quality of the Subcontract Works (using applicable ISO standards as a guide). This documentation must be presented to Boar Group upon request.
- b. The Subcontractor's Quality Management Plan must include an Inspection and Test Plan (ITP) acceptable to Boar Group, where appropriate.
- c. The Subcontractor's Quality Management Plan is to be used as an aid to achieve compliance with the Subcontract and to document such compliance but does not relieve the Subcontractor of the responsibility to comply with the Subcontract.
- d. The treatment of non-conformances is to be approved by Boar Group before continuing the agreed scope of works under the Subcontract.

### 7.3 Inspections

The Subcontractor must comply with an inspection direction issued by Boar Group, the Principal or the Superintendent.

### 7.4 Setting Out

- a. (If applicable), Boar Group will give the Subcontractor the data and like information necessary for the Subcontractor to set out the Subcontract Works, together with those survey marks specified in the Trade Package (if any).
- b. The Subcontractor will keep in their true positions all survey marks supplied by Boar Group for the Subcontract Works (or in place for the Head Contract Works) and promptly notify Boar Group if a survey mark is disturbed. If a disturbance to a survey mark is caused by the Subcontractor, or any of its employees, agents or secondary Subcontractors, the costs incurred by Boar Group in reinstating the survey mark will be a debt due from the Subcontractor to Boar Group.

### 7.5 Testing

- a. The Subcontractor must:

- I. carry out tests as required by the Subcontract; and
  - II. if directed to do so, assist the Superintendent in relation to tests under the Head Contract.
- b. On completion of testing the Subcontractor must make good (where applicable) work under the Subcontract. All costs in connection with testing pursuant to this subclause will be borne by the Subcontractor.

#### 7.6 Working Hours

- a. Unless Boar Group directs otherwise, local authority determined working hours will apply (or hours as specifically set out in the Trade Package) (Working Hours).
- b. If in the interests of safety of the work under the Subcontract, or to protect life or property, the Subcontractor finds it necessary to execute work outside customary working hours, the Subcontractor must immediately notify Boar Group in writing of the circumstances. If inspection or attendance of Boar Group, the Principal or the Superintendent is required, the costs of that inspection or attendance will be borne by the Subcontractor.
- c. The Subcontractor will have No Claim against Boar Group (whatsoever) by reason of the Subcontractor carrying out work under the Subcontract outside the Subcontract Working Hours.

#### 7.7 Site Meetings

The Subcontractor must, from the date of commencement of work on Site, until the Date of Completion, ensure its representative attends Site meetings and if directed by Boar Group to do so, attend project meetings under the Head Contract.

#### 7.8 Signs

The Subcontractor must not, without the prior written approval of Boar Group, affix, display or exhibit on the Site any sign or advertisement.

#### 7.9 Nuisance and Access Ways

- a. The Subcontractor must ensure that no damage, nuisance, or inconvenience is caused to anyone lawfully on the Site and occupiers of adjacent properties or the public by anything including dust, dirt, water, or noise.
- b. The Subcontractor must keep Site access ways clear and unobstructed.

#### 7.10 Industrial relations

- a. The Subcontractor must comply with:
  - I. all applicable, State and Federal, industrial relations Legislative Requirements;
  - II. the terms and conditions of relevant awards; and
  - III. (if applicable) any industry or Site-specific agreement relating to the work under the Subcontract.
- b. With respect to industrial disputes the Subcontractor must:
  - I. take all reasonable steps to avoid any industrial disputes with any employees, secondary Subcontractors, or agents of the Subcontractor;
  - II. minimise the consequences of any industrial dispute, concerning or arising out of the work under the Subcontract; and
  - III. comply with directions of Boar Group issued with the objective of reducing industrial disputes.
- c. The Subcontractor acknowledges and agrees that all costs and expenses associated with complying with its obligations under paragraphs (a) and (b) shall be (and are deemed to be) allowed for in the Subcontract Sum.

#### 7.11 Protection of People and Property

- a. Insofar as compliance with the Subcontract permits, the Subcontractor must take measures necessary to protect people and property.
- b. If the Subcontractor damages property, the Subcontractor must immediately rectify the damage and pay any compensation which a Legislative Requirement requires the Subcontractor to pay.
- c. If the Subcontractor fails to comply with an obligation under this subclause, Boar Group, in addition to any other rights and remedies, may have the obligation performed by others and the costs incurred by Boar Group will be a debt due from the Subcontractor to Boar Group.

#### 7.12 Care of the Works and Reinstatement

- a. The Subcontractor is responsible for care of:
  - I. the whole of the work under the Subcontract from and including the date of commencement of the work under the Subcontract until the Time and Date of Completion; and
  - II. any work being made good or being repaired during the Defects Liability Period and items to be removed from the Site by the Subcontractor after Completion.
- b. The Subcontractor is responsible for the care of, and preservation of things entrusted to the Subcontractor by Boar Group or brought onto the Site by any secondary Subcontractors for executing the work under the Subcontract.
- c. If loss or damage, other than that caused by Boar Group (its employees or agents), occurs to the Subcontract Works during the period of the Subcontractor's care, the Subcontractor must, at its cost, rectify such loss or damage.

#### 7.13 Emergency Works

If urgent action is necessary to protect the work under the Subcontract, other property or people and the Subcontractor fails to act, in addition to any other rights or remedies of Boar Group, Boar Group may take the necessary action without prior notice to the Subcontractor. If the action was action which the Subcontractor should

have taken in the Subcontractor's cost, the costs incurred by Boar Group will be a debt due from the Subcontractor to Boar Group.

#### 7.14 Services

- a. If an existing service obstructs the work and is required to be relocated or diverted, unless expressly permitted by the Subcontract, the Subcontractor will have No Claim against Boar Group in connection with such relocation or diversion.
- b. The Subcontractor must make good, and fully indemnifies Boar Group against, any damage caused to an existing service in the course of carrying out the work under the Subcontract.

#### 7.15 Working Hours/Adjoining and Neighbouring Areas

- a. Where the nature of the work under the Subcontract requires the Subcontractor to carry out work on, or over, an adjoining property the Subcontractor must:
  - I. comply with the terms and conditions of any access agreement obtained by Boar Group or the Principal in connection with access to an adjoining property; and
  - II. make good any loss or damage caused by the Subcontractor to an adjoining property to the satisfaction of the property owner, Boar Group, and the Principal.
- b. Where the nature of the work under the Subcontract requires the Subcontractor to obtain access to or from or work on or near property adjoining or in the vicinity of the Site and in undertaking the Subcontract Works in such a location as required by subclause 7.15 of this Subcontract it will:
  - I. minimise inconvenience or interruptions to businesses that work on or near the property and will have No Claim in complying with this subclause; and
  - II. to minimise inconvenience or interruptions, the Subcontractor may be required to interrupt or discontinue its Subcontract Work and will have No Claim by needing to avoid inconvenience or having the Subcontract Works interrupted.

#### 7.16 Cleaning Up

- a. The Subcontractor must keep those parts of the Site used for work under the Subcontract clean and tidy, remove rubbish and surplus material regularly (and as and when directed by Boar Group) and at Completion, promptly remove any temporary works and Constructional Plant from the Site.
- b. If the Subcontractor fails to comply with its obligations under paragraph (a), Boar Group may have the obligation performed by others and any costs incurred by Boar Group will be a debt due from the Subcontractor to Boar Group.

#### 7.17 Control of personnel

Boar Group may direct the Subcontractor to remove from Site any personnel who, in Boar Group's opinion, is:

- a. negligent or incompetent;
- b. in breach of a management plan; or
- c. engaged in unlawful, riotous, or disorderly conduct.

#### 7.18 Separable Portions

- a. Boar Group may nominate a part of the Subcontract Works as a Separable Portion and direct that it be undertaken separately.
- b. Should Boar Group nominate a Separable Portion under paragraph (a) above, Boar Group will also identify the Date for Completion and liquidated damages for that Separable Portion.
- c. The interpretations of Completion, Date of Completion and Clauses such as subclause 7.16 and subclause 10, and any other relevant Clauses shall apply separately to each Separable Portion and references therein to the Subcontract Works and work under the Subcontract shall mean so much of the Subcontract Works and the work under the Subcontract as is comprised in the Separable Portion.

## 8. Programming and Suspension

### 8.1 General Programming Obligation

- a. The Subcontractor must program the work under the Subcontract:
  - I. to ensure Completion is achieved by the Date for Completion; and
  - II. in compliance with and consistent with the Head Contract Works program (as may be updated on occasion).
- b. The Subcontractor acknowledges that the provision of an updated Head Contract Works program by Boar Group is not a direction by Boar Group and does not relieve the Subcontractor of its obligation to ensure Completion is achieved by the Date for Completion. The purpose of the Head Contract Works program is to facilitate the day-to-day coordination and integration of the work under the Subcontract.

### 8.2 Re-Sequencing

- a. Boar Group may:
  - I. direct in what order and at what times Subcontract activities must be carried out; and
  - II. (if applicable) re-sequence the Head Contract Works Program.  
to ensure that Completion is achieved by the Date for Completion or to accommodate the work under the Head Contract.
- b. Upon receipt of a direction under subclause 8.2a the Subcontractor must immediately comply with the direction.





- c. The Subcontractor acknowledges it will have No Claim against Boar Group due to a re-sequencing direction by Boar Group under subclause 8.2a.

### 8.3 Suspension

- a. Boar Group may at any time and for any reason direct the Subcontractor to suspend the whole or any part of the work under the Subcontract. Boar Group may notify the cause of the suspension.
- b. Following a suspension direction Boar Group will direct the Subcontractor to recommence work on the whole or relevant part of the work under the Subcontract.
- c. Subject to paragraph (d), if the Subcontractor suffers a delay to the Date for Completion as a result of a suspension direction under paragraph (a) by Boar Group, it will be entitled to claim an extension of time under subclause 10.
- d. If Boar Group's direction to suspend the whole or any part of the work under the Subcontract is a result of the Subcontractor's fault or breach of the Subcontract, that suspension is at the cost and risk of the Subcontractor and the Subcontractor acknowledges it will have No Claim against Boar Group.

## 9. Completion and Defects Liability Period

### 9.1 Certificate of Completion

- a. The Subcontractor must give Boar Group written notice five (5) Business Days before it anticipates achieving Completion.
- b. When the Subcontractor is of the opinion that Completion has been achieved, the Subcontractor must make a written request to Boar Group to issue a certificate of Completion.
- c. Upon receipt of a request under paragraph (b) above or if Boar Group independently forms the opinion that Completion has been achieved, Boar Group will give to the Subcontractor:
- I. a notice certifying Completion has been achieved and the Date of Completion; or
  - II. a notice setting out reasons for rejecting the Subcontractor's request for a certificate of Completion (and the provisions of paragraph (b) will reapply).
- In the event that Boar Group gives the Subcontractor written reasons for not giving a certificate of Completion, the Subcontractor must, as soon as practicable, rectify those things stated in the reasons and, when such certificate has been completed, the Subcontractor shall give Boar Group at least ten (10) Business Days written notice of the date upon which the Subcontractor anticipates that Completion will be reached.
- Prior to the Subcontract Works being regarded as reaching Completion (or otherwise as agreed) the Subcontractor must provide to Boar Group, as a condition precedent to any further payment:
- III. any written warranties in favour of Boar Group and the Principal;
  - IV. one copy of all as-built drawings;
  - V. any approvals or certificates from relevant authorities applicable to the Subcontract Works;
  - VI. a Deed of Release and Warranty in the form provided in the Subcontract Schedule the Subcontract;
  - VII. all certifications for essential services; and
  - VIII. any other requirements stipulated within the Trade Package.

### 9.2 Liquidated Damages for Late Completion

- a. If the Subcontractor fails to achieve Completion by the Date for Completion, the Subcontractor must pay to Boar Group:
- I. the liquidated damages stated in the Subcontract Schedule for every day after the Date for Completion until the Date of Completion or termination (whichever occurs first); or
  - II. the costs of Boar Group's on and off-site overheads and any other loss or expense suffered by Boar Group as a result of the Subcontractor's failure to achieve Completion by the Date for Completion
- b. The parties agree the amount for liquidated damages stated in the Subcontract Schedule is an agreed genuine pre-estimate of Boar Group's loss and damages in the event Completion occurs after the Date for Completion.
- c. If the Head Contract Works do not reach Practical Completion by the date for Practical Completion under the Head Contract due to:
- I. a failure of the Subcontractor to reach Completion by the Date for Completion under the Subcontract, or
  - II. due to a breach of any other obligation under the Subcontract by the Subcontractor, the Subcontractor shall indemnify Boar Group against any liquidated damages under the Head Contract or any other damages that Boar Group becomes liable to pay under the Head Contract.
- d. If it is determined that the Subcontractor's liability to pay the liquidated damages is deemed to be, or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), Boar Group may claim general damages for the Subcontractor's failure to achieve Practical Completion by the Date for Practical Completion.

### 9.3 Defective Work

- a. If at any time prior to the expiration of the Defects Liability Period Boar Group becomes aware of work done (or material provided) which is not in accordance with the Subcontract, Boar Group will provide notice to the Subcontractor of that fact and may direct the Subcontractor:
- I. To remove the material from the Site;
  - II. To demolish the work;
  - III. To redesign, reconnect, replace, or correct the material or work; or

- IV. Not to deliver the material or work to Site and specify the time in which the rectification works are to be completed.
- b. If the Subcontractor fails to comply with a notice under 9.3a Boar Group may have the rectification works carried out by others and the costs incurred will be a debt due from the Subcontractor to Boar Group.

#### 9.4 Variation for Defective Work

- a. Boar Group may, instead of instructing the Subcontractor to rectify defects under subclause 9.3, direct a Variation under subclause 11 to overcome the defective work, and the time by which it is to be carried out.
- b. Where a Variation has been instructed and carried out under paragraph (a) Boar Group will:
- I. Price the Variation in accordance with subclause 11.3; and
  - II. Determine the cost of correcting the defective work if the Variation has not been directed.
- c. If:
- I. The value of subclause 9.4b.(I) above is greater than the value of subclause 9.4b.(II) above the Subcontract Sum will be increased by that difference; and
  - II. If the value of subclause 9.4b.(II) is greater than the value of 9.4b.(I) above the Subcontract Sum will be decreased by that difference.
- d. Notwithstanding subclause 10.2, the Subcontractor acknowledges it will not be entitled to claim an extension of time if a Variation is directed under this subclause.

#### 9.5 Defects Liability Period

- a. The defects liability period will commence on the Date of Completion and will expire on expiry of the last defects liability period under the Head Contract.
- b. During the Defects Liability Period Boar Group may give the Subcontractor a direction to rectify a defect and notify a time for commencement and completion of the rectification works (*Rectification Period*).
- c. If the rectification work is not completed by the date notified in a notice given under 9.5b Boar Group may have the rectification works carried out by others (or itself) and the costs incurred by Boar Group will be a debt due from the Subcontractor to Boar Group.
- d. Any defects rectification works carried out by the Subcontractor in accordance with this subclause 9.3 will not give rise to a reference date.

## 10. Delays

### 10.1 Notice of Delay

- a. Within two (2) Business Days of when the Subcontractor first became aware, or should reasonably have first become aware, of an event which has caused or will or is likely to cause any delay and / or disruption to any part of the work under the Subcontract, the Subcontractor must give Boar Group notice of the event, the estimated delay and details of the event and how the critical path to achieving Completion and the Date for Completion are likely to be affected (if at all). The Subcontractor must discuss the matter with Boar Group and must take all practical steps to avoid or minimise any delay and / or disruption that might result from such event.
- b. A notice under paragraph (a) must be in writing and is a condition precedent to the Subcontractor's entitlement to an extension of time.
- c. If the delay exceeds five (5) Business Days, the Subcontractor must update Boar Group by providing further notices weekly (including the details required under paragraph (a)).

### 10.2 Extension of Time Entitlement

If the Subcontractor is delayed in reaching Completion by the Date for Completion by any of the following causes of delay:

- a. a breach of the Subcontract by Boar Group (or other act of prevention not expressly authorised or permitted by the Subcontract); or
- b. a Variation; or
- c. an act or omission of Separate Contractors, the Principal, the Principal's employees, agents or contractors, or the Superintendent; or
- d. a cause of delay giving the Subcontractor an entitlement to claim an extension of time under another Clause of the Subcontract, and the Subcontractor:
- I. has provided the notice/s required under subclause 10.1
  - II. used all reasonable endeavours to mitigate the effects of the delay (inclusive of re-sequencing the work under the Subcontract); and
  - III. submitted a claim pursuant to subclause 10.3, the Subcontractor may be entitled to an extension of time for Completion.

### 10.2 Concurrency

When a delay is attributable to more than one cause and at least one of those is not a subclauses 10.2a, 10.2b, 10.2c, 10.2d cause of delay, then to the extent that there is concurrency, the Subcontractor will not be entitled to an extension of time for Completion.

### 10.3 Extension of Time Claim

- a. If the Subcontractor considers itself entitled to an extension of time for Completion, it must within two (2) Business Days of the occurrence of the delay:



- I. give to Boar Group a written claim for an extension of time together with a statement of the facts upon which the claim is based (including a critical path analysis).
- b. If the Subcontractor is entitled to an extension of time, and there are no concurrent delays caused by event(s) or circumstance(s) which do not entitle the Subcontractor to an extension of time, Boar Group will determine a reasonable extension of time following receipt of the Subcontractor's claim under paragraph (a).

#### 10.4 Delay and Disruption Costs

The right of the Subcontractor to claim an extension of time under this Clause 10 is the Subcontractor's sole remedy in respect of any exclusion, suspension, delay, or disruption arising out of or in connection with the Subcontract, including delay or disruption arising from a breach of the Subcontract by Boar Group. The Subcontractor is not entitled to any increase or adjustment to the Subcontract Sum, or any other compensation or damages, as a result of any exclusion, suspension, delay or disruption arising out of or in connection with the Subcontract.

#### 10.5 Unilateral Right to Extend

Notwithstanding that the Subcontractor is not entitled to, or has not claimed, an extension of time, Boar Group may at any time and on occasion, award an extension of time for any reason. Boar Group is not required to exercise its discretion under this subclause for the benefit of the Subcontractor and must only exercise this discretion for the benefit of Boar Group.

#### 10.6 Bar

The Subcontractor acknowledges that its failure to comply with the requirement of Clause 10 in particular as to the stated time for making a notice of delay and/or a notice of a claim will be a bar to an extension of time claim made by the Subcontractor and the Subcontractor agrees it will have No Claim in respect to the extension of time.

#### 10.7 Acceleration

- a. Boar Group may instruct the Subcontractor to overcome the effects of a delay (including where the Subcontractor is entitled to claim an extension of time for the delay) by accelerating the work under the Subcontract (or part thereof).
- b. If instructed to accelerate under paragraph (a), the Subcontractor must accelerate the work under the Subcontract (or part thereof) by taking those measures necessary to overcome or minimise the extent and effects of the delay (including, if required, in order to achieve Completion by the Date for Completion).
- c. If the Subcontractor would have been entitled to an extension of time if the instruction had not been given, the Subcontractor will be entitled to its reasonable costs incurred in accelerating the work under the Subcontract (or part thereof) plus the amount for Subcontractor Profit and Overhead stated in the Subcontract Schedule.

## 11. Variations

### 11.1 Variation Instruction

- a. Boar Group may at any time direct the Subcontractor to carry out a Variation. A variation includes any alteration, amendment, omission, addition, deduction, or other variation to the Subcontract Works. The Subcontractor must not vary the Subcontract Works or work under the Subcontract unless it has received a written Variation direction from Boar Group (and must immediately carry out the Variation when directed). For the sake of clarity, a 'site instruction' does not constitute a Variation direction.
- b. Where the Subcontractor considers a direction given by Boar Group to constitute a Variation in accordance with subclause 11.1a, if it wishes to make a claim against Boar Group, the Subcontractor must notify Boar Group within five (5) Business Days of receiving that direction.
- c. If a Variation in accordance with Clause subclause 11.1a omits any part of the Subcontract Works Boar Group may have that work carried out by a third party or carry that work out itself.
- d. The Subcontractor may for its convenience request Boar Group direct a Variation. Boar Group may reject the Subcontractor's request (in Boar Group's absolute discretion and for any reason) or approve the request unconditionally or with conditions.
- e. The Subcontractor acknowledges it will have No Claim against Boar Group arising out of a Variation that was not directed under subclause 11.1a

### 11.2 Proposed Variations

- a. Boar Group may request the Subcontractor to price a proposed Variation (*Variation Proposal*).
- b. Within five (5) Business Days of receipt of a Variation Proposal the Subcontractor must provide:
  - I. the estimated cost of the proposed Variation; and
  - II. (if applicable) its likely effect on the Subcontractor's activities and Date for Completion.
  - III. If Boar Group accepts the Subcontractor's estimate the Subcontractor's estimate will become the agreed price of the Variation (*Agreed Variation Price*).

### 11.3 Valuation of Variations

The Subcontract Sum will be increased or decreased for all directed Variations by the Agreed Variation Price, or by the following order of precedence:

- a. prior agreement; or
- b. by an amount determined by Boar Group using any rates or prices set out in a Schedule of Rates; or
- c. should there be no Schedule of Rates, or if the rates or prices set out in the Schedule of Rates are not applicable, Boar Group will determine:



- I. if the Variation involves additional or increased work, a reasonable amount to which will be added the amount for Subcontractor Profit and Overhead stated in the Subcontract Schedule; or
- II. if the Variation involves decreased or omitted work, a reasonable amount (including an amount for off-Site overhead and profit).

#### 11.4 Day Works

- a. Boar Group may direct the Subcontractor to carry out a Variation (or part thereof) as day works.
- b. The Subcontractor must record for each day it has worked on the Variation all resources and present that record to Boar Group for signing the next day (as a precondition to payment).
- c. Unless the subject of a direction pursuant to subclause 11.1 that the Day Works are a Variation to the Subcontract, the signing of Day Work docket is for record purposes only and entitlement to a Variation will be assessed in accordance with the Subcontract.

#### 11.5 Non-Compliance

The Subcontractor acknowledges a failure to comply strictly with the requirements of this Clause 11 in particular as to the stated time for notice or claim or details will bar and invalidate a Variation claim made by the Subcontractor and the Subcontractor agrees it will have No Claim in respect to the Variation.

## 12. Payment

### 12.1 Project Bank Accounts

The Subcontractor agrees and acknowledges that per Queensland law introduced 1<sup>st</sup> March 2021:

- a. The Head Contractor of projects taking place within Queensland will initiate a Project Bank Account (PBA), which is defined as a set of three bank accounts, operating as a trust:
  - I. General trust account, which the principal makes payments into, and the head contractor pays subcontractors from.
  - II. Retention trust account, which holds subcontractors' retention money.
  - III. Disputed funds trust account, which holds amounts subject to certain payment disputes until they're resolved.
- b. A PBA provides a trust over:
  - I. an amount paid by the principal to the head contractor under a qualifying building contract.
  - II. an amount a subcontractor is entitled to be paid by the head contractor in connection with a first-tier subcontract.
  - III. a retention amount withheld from a subcontractor under a first-tier subcontract.
  - IV. an amount that is the subject of a payment dispute.The funds are held in trust until payments are due, as part of the project.
- c. The parties involved in a PBA are the:
  - I. The Principal, for whom the building work is being carried out under the contract (for phase 1: only the Queensland Government or a statutory authority if it has opted in).
  - II. The Head Contractor, who is carrying out the building work under the contract, including principal consultants, architects and building inspectors if they employ a subcontractor to do all or part of their contract work.
  - III. The Subcontractor, who are first-tier subcontractors subcontracted by the head contractor to carry out work under the contract.
  - IV. Queensland Building and Construction Commission, which monitors PBA compliance and investigates PBA discrepancies and payment concerns raised by a principal or subcontractor.
- d. A first-tier subcontract is a subcontract that contributes directly to the performance of the contract. Therefore, a party to a subcontract for the building contract would be a first-tier subcontractor. For a PBA, a head contractor is responsible for:
  - I. determining whether a project bank account is needed for a building contract.
  - II. setting up a PBA for every contract that needs one.
  - III. operating the PBA according to the law.
- e. The head contractor is the PBA trustee and a beneficiary. Each subcontractor who signs a subcontract also becomes a beneficiary.
  - I. The PBA requirements don't apply to second-tier subcontractors (sub-subcontractors) and a subcontractor doesn't need to establish a PBA or pay sub-subcontractors.
  - II. As beneficiaries, all first-tier subcontractors and the head contractor must be paid from the PBA. No one else can be paid from the PBA.
  - III. Subcontractors cannot opt out of being paid from the PBA.

Further information can be found on the Queensland Government website via:

<https://www.business.qld.gov.au/industries/building-property-development/building-construction/payments-financing/project-bank-accounts/what-is-pba>

### 12.2 General

- a. Prior to commencement the Subcontractor must submit to Boar Group, in a form acceptable to Boar Group, a Subcontract Sum Breakdown which will be used by Boar Group for valuing Payment Claims.
- b. The Subcontract Sum will not be subject to adjustment for rise and fall for any cause whatsoever, including changes in the cost of materials, plant, equipment, labour, or taxation (excluding GST).

### 12.3 Content of Payment Claims/Submissions by the Subcontractor

- a. A claim for payment must set out the details and value of work completed in performance of the Subcontract up to that time, in accordance with the Subcontract Sum Breakdown, together with any other amounts due to the Subcontractor under the Subcontract and must include:
  - I. a completed Subcontractor's Statement in the form set out in the Subcontract Schedule;
  - II. any requirements set out in the Trade Package (inclusive of certificates, reports, ITPs and / or 'as-built's');
  - III. evidence of currency of all insurance policies required by subclause 3.8 of the Subcontract;
  - IV. the amount currently claimed by the Subcontractor in respect of the performance of this Subcontract and since the last Payment Claim;
  - V. the total of all amounts certified in progress certificates issued to the date of the Payment Claim;
  - VI. any other claim in respect of the Subcontract Sum or in connection with the Subcontract Works or the Subcontract;
  - VII. a breakdown of costs into each trade or service covered by the Payment Claim, identifying the items in the Schedule of Rates and the percentage completed of each trade or service covered by the Payment Claim;
  - VIII. an estimate of the percentage of the Subcontract Works yet to be completed;
  - IX. a statement by the Subcontractor in the form of the Subcontract Schedule together with any other information Boar Group may require;
  - X. in addition to the material at subclause 12.3a.(IX) above, satisfactory evidence which in Boar Group's opinion is sufficient to show the Subcontractor has paid every person, contractor, employee, consultant, supplier employed or engaged in anyway by the Subcontractor on the Subcontract Works all amounts that the Subcontractor is legally required to pay in respect of these persons, contractors, employees, consultants and/or suppliers;
  - XI. amounts previously deducted for retention monies (if any) pursuant to the Subcontract;
  - XII. in respect of unfixed plant and materials the amount claimed (if any) being the amount which the Subcontractor may be entitled to claim at that time pursuant to this Subcontract;
  - XIII. such other information as requested by Boar Group;
  - XIV. has remedied any breach of the Subcontract; and
  - XV. if requested by Boar Group, a Deed of Warranty in the form of that in the Subcontract Schedule and duly executed by the Subcontractor;
- b. Payment Claims must be submitted to the following email address: [service@boargroup.com.au](mailto:service@boargroup.com.au) at the times for making Payment Claims under subclause 12.3 below. The Boar Group project team must be copied in on the email of the claim that is being submitted.
- c. (If required to do so) the Subcontractor acknowledges, in addition to the notification and claim requirements of the Subcontract, it will have No Claim against Boar Group arising out of any Variation or extension of time claim that is not recorded in a Variation or extension of time register provided with a Payment Claim.

### 12.4 Time for Making Payment Claims

- a. The Subcontractor may submit a Payment Claim:
  - I. on the 21<sup>st</sup> day of each month up to the Date of Completion;
  - II. on or after ten (10) Business Days from the Date of Completion;
  - III. (if applicable), within twenty (20) Business Days of expiry of the last Defects Liability Period; or
  - IV. If the Subcontract is terminated, within ten (10) Business Days following the date which the Subcontract is terminated.
- b. The Subcontractor acknowledges and agrees that it will be deemed to have elected not to submit a Payment Claim if:
  - I. it does not submit a Payment Claim on or before the relevant date pursuant to 12.4a; or
  - II. it is not in compliance with the requirements of subclause 12.2 (inclusive of being valued in accordance with the Subcontract Sum Breakdown).

For the purpose of determining when a time for submitting a Payment Claim arises under this Subcontract the entitlements of subclauses 12.3a.(I), 12.3a.(II), 12.3a.(III) will not arise unless the Subcontractor submits to Boar Group a claim for the Subcontract Works carried out the previous month and in accordance with Clause 12.2a.

### 12.5 Payment Schedule and Tax Invoice

- a. Within fifteen (15) Business Days of receipt of a Payment Claim, Boar Group will issue a payment schedule:
  - I. identifying the Payment Claim to which it relates;
  - II. stating the amount Boar Group proposes to pay to the Subcontractor or the amount due from the Subcontractor to Boar Group pursuant to the Subcontract (*Scheduled Amount*); and
  - III. if the Scheduled Amount is less than the claimed amount, reasons for the difference.
- b. If the Subcontractor fails to submit a Payment Claim under this Clause Boar Group may nonetheless issue a Payment Schedule and Boar Group or the Subcontractor, as the case may be, must pay the Scheduled Amount.
- c. Boar Group and the Subcontractor both agree that:
  - I. Boar Group can issue Recipient Created Tax Invoices (*RCTI*) in respect of the Subcontract Works;
  - II. the Subcontractor will not issue tax invoices in respect of the Subcontract Works;
  - III. the Subcontractor acknowledges that it is registered for GST when it enters into this Subcontract and that it will notify Boar Group if it ceases to be registered; and



**Fire Boar Pty Ltd. / Training Boar**  
ABN: 36 718 497 624 ACN: 132 208 836  
QBCC: 1148085 Electrical Lic: 70129

**Air Boar Pty Ltd.**  
ABN: 53 660 058 042 ACN: 660 058 042  
QBCC: 15319813  
[www.fireboar.com.au](http://www.fireboar.com.au)  
[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

- IV. Boar Group acknowledges that it is registered for GST when it enters into this Subcontract and that it will notify the Subcontractor if it ceases to be registered.
- V. The parties acknowledge the above is an RCTI agreement which shall apply for the term of this Subcontract.

#### 12.6 Date of Payment

Within twenty-five (25) Business Days following the day on which the Payment Claim is submitted, should an amount be payable to the Subcontractor, Boar Group will pay the Subcontractor the Scheduled Amount. Payment by Boar Group is not an admission that work has been executed satisfactorily but is payment on account only.

#### 12.7 Deed of Release

- a. Within five (5) Business Days of receipt of a Payment Schedule issued in response to a Payment Claim submitted pursuant to subclause 12.3a.(II) following Completion, as a precondition to payment, the Subcontractor must execute and deliver to Boar Group a Deed of Release in the form set out at the Subcontract Schedule.
- b. Within five (5) Business Days of receipt of a Payment Schedule issued in response to a Payment Claim submitted pursuant to subclause 12.3a.III following expiry of the Defects Liability Period, as a precondition to payment, the Subcontractor must execute and deliver to Boar Group a further Deed of Release in the form set out in the Subcontract Schedule.

#### 12.8 Final Payment Claim

- a. After eleven (11) Business Days following the expiry of the Defects Liability Period, Boar Group may at any time issue a final Payment Schedule endorsed 'Final Certificate' which states the amount certified as due and payable, from Boar Group to the Subcontractor or from the Subcontractor to Boar Group arising out of the Subcontract or any alleged breach of the Subcontract except for:
  - I. any claim for which the Subcontractor has lodged a notice of claim pursuant to subclause 14.1 or a Notice of Dispute pursuant to Clause 15.1 within five (5) Business Days of receipt of the Certificate of Completion;
  - II. fraud or dishonesty relating to work under the Subcontract or any part thereof or to any matter dealt with in the Final Certificate;
  - III. any defect or omission in the Subcontract Works or any part thereof which was not apparent at the end of the last Defects Liability Period or which would not have been disclosed upon reasonable inspection at the time of issue of the Final Certificate.
- b. The Final Certificate shall be evidence in any proceedings that the Subcontractor has irrevocably released and discharged Boar Group from all claims whether under the Subcontract or tort, under statute or otherwise at law or in equity except for any amounts or claims stated in the Final Certificate.
- c. The Final Certificate shall be evidence in any proceedings that the Subcontractor has irrevocably released and discharged Boar Group from all claims whether under the Subcontract or tort, under statute or otherwise at law or in equity except for any amounts or claims stated at subclause 12.7b.

#### 12.9 Release

After expiration of the period for submitting a final Payment Claim the Subcontractor releases Boar Group from any claim in respect of any fact matter or thing arising out of or in connection with the Subcontract except for any claim included in a Payment Claim made in accordance with subclause 12.8.

#### 12.10 Provisional Sums

- a. If a Provisional Sum is set out in the Subcontract Schedule, the Subcontractor must comply with a direction by Boar Group to carry out the work or supply the item to which the Provisional Sum relates.
- b. A Provisional Sum included in the Subcontract will not itself be payable by Boar Group but where pursuant to a direction, any part or the whole of the work or item to which the Provisional Sum relates is carried out or supplied by the Subcontractor, the work or item will be priced by Boar Group, and the difference will be added to or deducted from the Subcontract Sum.
- c. The Subcontractor acknowledges the Subcontract Sum includes an amount for profit and overheads in relation to the Provisional Sums and unless otherwise stated, with respect to the supply of Provisional Sum items, includes the costs of supply, delivery, and installation.

#### 12.11 Payment for unincorporated materials

The Subcontractor is not entitled to claim payment for unfixed materials or goods unless Boar Group agrees to pay for such materials or goods prior to their being incorporated into the Subcontract Works and (if directed) the Subcontractor provides an unconditional bank guarantee to Boar Group for 100% of the value of the unfixed materials or goods.

#### 12.12 Right to Set-Off

Without limiting any other right under the Subcontract or otherwise at law, any debt due or other monies due from the Subcontractor to Boar Group, or any other claim to money Boar Group may have or might in the future have against the Subcontractor including if the Subcontractor is in breach of any of its obligations under the Subcontract, if Boar Group is entitled to terminate the Subcontract or if there is a debt due under another contract between the Subcontractor and Boar Group, may be deducted from any monies otherwise payable to the Subcontractor or satisfied by Boar Group calling on any Security provided by the Subcontractor.

#### 12.13 Direct Payment

- a. Where Boar Group is entitled to or is required to make payment to a worker or secondary Subcontractor, Boar Group may make that payment directly to the worker or secondary Subcontractor and the amount paid will be a debt due from the Subcontractor to Boar Group.
- b. If any worker or secondary Subcontractor obtains a court order in respect of monies owed to it by the Subcontractor, Boar Group may pay the amount of the order to the worker or secondary Subcontractor and the amount paid will be a debt due from the Subcontractor to Boar Group.

#### 12.14 Pre-Condition to Payment

Notwithstanding any provision of this Clause 12, Boar Group is not obliged to make any payment to the Subcontractor unless the Subcontractor has:

- a. executed the Subcontract;
- b. executed and returned the Deed of Warranty pursuant to subclause 1.14b;
- c. (if directed by Boar Group) provided a guarantee pursuant to subclause 2.5;
- d. (if directed by Boar Group) provided evidence of insurance pursuant to subclause 3.8;
- e. (if directed by Boar Group) provided as-builts in accordance with subclause 12.2a;
- f. (if directed by Boar Group) an executed Deed of Release pursuant to subclause 12.7 and
- g. has remedied any breach of the Subcontract.

## 13. Termination

### 13.1 Default or Insolvency

- a. If the Subcontractor commits an Event of Default Boar Group may give the Subcontractor a written notice setting out:
  - I. details of the Event of Default; and the date by which the Event of Default must be cured, (*a Default Notice*).
- b. If the Event of Default is not remedied by the time specified in the Default Notice, Boar Group may do one of the following:
  - I. terminate the Subcontract; or
  - II. take over a part or all Subcontract Works (*Step-In*).
- c. If there is an Event of Insolvency Boar Group may terminate the Subcontract (without prior notice) or may Step-In (providing notice to the Subcontractor of Step-In).
- d. If Boar Group terminates the Subcontract under this subclause 13.1:
  - I. Boar Group may:
    - i. in its absolute discretion engage another Subcontractor to complete the work under the Subcontract (or it may complete the work itself);
    - ii. have recourse to Security; and
  - II. without payment of compensation to the Subcontractor, take possession of the Subcontractor's Constructional Plant and other equipment and materials as necessary to complete the Subcontract Works (to be returned on Completion);
  - III. the Subcontractor must assign or novate all contracts (including secondary Subcontracts) concerning the Subcontract Works to Boar Group and do everything and sign all documents necessary to give effect to this subclause; and
  - IV. if the costs to complete the work under the Subcontract exceed that which Boar Group would have paid the Subcontractor, those costs will be a debt due from the Subcontractor to Boar Group.
- e. If Boar Group takes over a part or all of the Subcontract Works under this subclause (exercising its Step-In right):
  - I. the Subcontractor's obligations under the Subcontract are suspended for the period the Subcontractor is prevented from performing the Subcontract by Boar Group exercising its Step-In right;
  - II. the Subcontractor must assist Boar Group to ensure Boar Group is able to exercise its Step-In right effectively and expeditiously; and
  - III. any cost incurred by Boar Group arising out of or in connection with the exercise of its Step-In right will be a debt due from the Subcontractor to Boar Group.

### 13.2 Termination for Convenience

- a. Boar Group may, in its absolute discretion (and for any reason), terminate the Subcontract, effective from the time stated in Boar Group's notice, or if no time and date is stated, at the time the notice is given to the Subcontractor.
- b. Upon receipt of such notice the Subcontractor must comply with directions of Boar Group, not place any further orders in relation to the Subcontract Works and, if requested, make arrangements for the transfer of Constructional Plant and the assignment or novation of all contracts concerning the Subcontract Works to Boar Group.
- c. If Boar Group terminates the Subcontract under this subclause Boar Group may in its absolute discretion engage another Subcontractor to complete the Subcontract Works (or it may complete itself) and will pay to the Subcontractor:
  - I. the amount due to the Subcontractor for the Subcontract Works performed in the relevant period up to the date of termination (as well as any amount for works directed after the date of termination);
  - II. the cost of materials (necessarily and reasonably) ordered prior to the date of termination and which Boar Group is legally bound to pay;



**Fire Boar Pty Ltd. / Training Boar**  
ABN: 36 718 497 624 ACN: 132 208 836  
QBCC: 1148085 Electrical Lic: 70129

**Air Boar Pty Ltd.**  
ABN: 53 660 058 042 ACN: 660 058 042  
QBCC: 15319813  
[www.fireboar.com.au](http://www.fireboar.com.au)  
[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

- III. the Subcontractor's reasonable costs of demobilisation;
  - IV. two percent (2%) of the unpaid balance of the Subcontract Sum to cover indirect costs and opportunity cost; and
  - V. a reasonable amount for Constructional Plant left on site at Boar Group's direction.
- d. Except for the amounts to which the Subcontractor is entitled under this subclause the Subcontractor is not entitled to any other amounts, including for consequential costs (including lost profit), losses or damage under or in connection with the Subcontract.

### 13.3 Termination of Head Contract and Novation

- a. If Boar Group gives the Subcontractor notice requiring that there be a novation of the Subcontract, for any reason, within five (5) Business Days of such notice the Subcontractor must execute a deed of novation in a form acceptable to Boar Group.
- b. Where the novation required under paragraph (a) is due to the Principal terminating the Head Contract due to Boar Group having breached the Head Contract, arising out of or in connection with a breach of the Subcontract by the Subcontractor, without limiting any other provision of the Subcontract, the Subcontractor must indemnify Boar Group against any damage, loss, expense or liability suffered or incurred by Boar Group, arising out of or in connection with the termination of the Head Contract.
- c. For the purposes of effecting a novation directed under 13.3a only, the Subcontractor irrevocably appoints Boar Group to be the Subcontractor's attorney with authority to execute documents on its behalf to give effect to the novation.

### 13.4 Payment Upon Termination

In the event this Subcontract is terminated in accordance with Clause 13, the Subcontractor may issue a Payment Claim, but is only entitled to do so within five (5) Business Days on and from the date the Agreement was terminated.

### 13.5 Quantum Meruit

If Boar Group repudiates the Subcontract and the Subcontractor terminates, the Subcontractor is only entitled to claim damages for breach of contract and not entitled to a quantum meruit. This Clause survives termination of the Subcontract.

### 13.6 Force Majeure

- a. If a party alleges a Force Majeure Event has occurred, it must promptly give the other party notice of the Force Majeure Event as soon as the affected party becomes aware of the occurrence of the Force Majeure Event.
- b. As soon as reasonably practicable after giving notice under 13.6a if the affected party is the Subcontractor, the Subcontractor must give Boar Group full particulars of relevant matters pertaining to the Force Majeure Event including:
  - I. the action that the Subcontractor has taken and/or proposes to take to remedy, overcome or mitigate the situation;
  - II. an estimate of the time during which the Subcontractor will be unable to carry out the affected obligations due to the Force Majeure Event; and
  - III. all insurance monies to which the Subcontractor believes it will be entitled in making good damage caused by the Force Majeure Event.
- c. The parties must meet within five (5) Business Days of delivery of a notice under 13.6a to determine:
  - I. whether a Force Majeure Event has occurred;
  - II. the extent to which the Force Majeure Event is covered by insurance; and
  - III. the estimated duration of the Force Majeure Event.
- d. If a Force Majeure Event occurs and the affected party gives notice under 13.6a, then the affected party's obligations under the Subcontract (other than this subclause) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the affected party from performing those obligations.
- e. Upon the affected party becoming able to recommence performing its obligations which were suspended, subject to a reasonable period in order to remobilise, the affected party must recommence the performance of its obligations. Nothing in this subclause will oblige Boar Group to pay the Subcontract Sum with respect to those Subcontract Works which are not performed due to a Force Majeure Event.
- f. During the period of suspension, the affected party must use reasonable endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling, or implementing appropriate temporary measures.
- g. During the period of suspension, Boar Group may make alternative arrangements for the performance of any suspended obligations of the Subcontractor (without incurring any liability to the Subcontractor).
- h. The affected party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event. Boar Group will not be obliged to provide any financial relief to the Subcontractor during the period of suspension, to the extent of the suspension.
- i. The Subcontractor will only be entitled to an extension of time claim in accordance with Clause 10.3 of the Subcontract if it has complied with subclauses 13.6g and 13.6h.



## 14. Claims

### 14.1 Notice of Intent to Claim

- a. Except for a claim under a provision of the Subcontract that contains its own notice procedure (such as for an extension of time), if the Subcontractor considers itself to be entitled to any claim:
  - I. arising out of or in connection with a breach of the Subcontract by Boar Group;
  - II. arising out of or in connection with the subject matter of the Subcontract Works;
  - III. arising out of or in connection with a direction or approval of Boar Group;
  - IV. arising out of or in connection with a payment made pursuant to section 34A(1)(b) or (d) of the Building Industry Fairness (BIF) Act, or alternatively the content of a 'relevant notice' pursuant to section 67NC of the Queensland Building and Construction Commission (QBCC) Act;
  - V. or otherwise in connection with the Subcontract, the Subcontractor must give to Boar Group within five (5) Business Days after the Subcontractor became aware, or should have reasonably become aware, of the event or circumstance giving rise to the claim, a notice of intent to make a claim.
- b. A notice under 14.1a must be in writing and must include details of the event or circumstance giving rise to the claim (including details of Boar Group's direction (if applicable)).

### 14.2 Detailed Claim

Within five (5) Business Days after giving a written notice in accordance with subclause 14.1, the Subcontractor must submit a written claim, which must include:

- a. detailed particulars concerning the matter or thing, or direction, on which the claim is based;
- b. the legal basis of the claim;
- c. the facts relied on to support the claim; and
- d. details of the amount claimed and how it has been calculated.

### 14.3 Bar

If the Subcontractor submits a notice or a claim in respect of a matter later than the time for submission of such notice or claim stated in the Subcontract, such matter will be time barred and the Subcontractor deemed to have waived its entitlement (if any) in respect of such matter.

## 15. Dispute Resolution

### 15.1 Notice

If a dispute between the Subcontractor and Boar Group arises out of or in connection with the Subcontract, either party may issue to the other party a notice of dispute outlining the details of the dispute (*Notice of Dispute*).

### 15.2 Conference

Within five (5) Business Days after receiving a Notice of Dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

### 15.3 Litigation

If a dispute has not been resolved within fifteen (15) Business Days after the date of receipt of the Notice of Dispute (or such other time as agreed in writing between the parties) either party may refer the dispute to litigation.

### 15.4 Precondition

It is a condition precedent to the referral of a dispute to litigation that the parties confer in accordance with subclause 15.2.

### 15.5 Continue to Perform

Notwithstanding the existence of a dispute the Subcontractor must continue to perform the Subcontract.

### 15.6 Urgent Relief

The Subcontract dispute resolution process does not prevent a party from seeking an urgent declaration or injunction from a court.

### 15.7 Head Contract Disputes

Notwithstanding the provisions of this Clause, if a dispute arises under the Head Contract which concerns work, material, or the performance of work under the Subcontract, Boar Group may give notice to the Subcontractor requiring that the Subcontractor be joined to the Head Contract dispute process.

## 16. Security of Payment

### 16.1 Subcontractor Suspension

- a. When the Subcontractor becomes aware that a Secondary Subcontractor is entitled to suspend work pursuant to the BIF Act, the Subcontractor must promptly and without delay give Boar Group a copy of any written communication of whatever nature in relation to the BIF Act which the Subcontractor receives from a Secondary Subcontractor.

- b. Without limiting the general nature of any provision of the Subcontract, if Boar Group becomes aware that a secondary Subcontractor is entitled to suspend work pursuant to the BIF Act, Boar Group may (in its absolute discretion) pay the secondary Subcontractor such money that is or may be owing to the secondary Subcontractor in respect of that work and any amount paid by Boar Group will be a debt due from the Subcontractor to Boar Group.
- c. The Subcontractor shall indemnify, keep indemnified and hold harmless Boar Group against all damage, expense (including legal costs), loss or liability of any nature suffered or incurred by Boar Group arising out of:
  - I. a suspension by a secondary Subcontractor, or
  - II. a failure by the Subcontractor to comply with this Clause.

## 17. General

### 17.1 Passing of Title

Title to all materials, equipment and other goods delivered to the Site for incorporation in the Subcontract Works shall pass to Boar Group upon delivery, or if payment has been made by Boar Group to the Subcontractor prior to delivery, upon such payment being made. Provided however that risk in the goods (including without limitation, risk for theft and damage to goods) shall remain with the Subcontractor.

### 17.2 Warranties

If the Subcontract requires the Subcontractor to provide any warranty that warranty (unless otherwise advised by Boar Group) must:

- a. be for the benefit of Boar Group and the Principal and in a form acceptable to the Principal;
- b. be for the period required by the Subcontract; and
- c. comply with any applicable Legislative Requirements.

### 17.3 Confidentiality and Media Releases

- a. The Subcontractor must not disclose or publicise details of the Subcontract without Boar Group's prior written consent (which may be withheld in Boar Group's absolute discretion).
- b. The Subcontractor must deliver immediately to Boar Group, if directed or upon termination under the Subcontract, all the confidential information of Boar Group's which it holds.

### 17.4 Laws

- a. The Subcontractor must comply with all Legislative Requirements, except if only Boar Group can comply with such Legislative Requirement.
- b. A change in a Legislative Requirement having effect after the execution of the Subcontract, that necessitates a change to the Subcontract Works or an increase or decrease in a fee payable or payment of a new fee, is in the Subcontractor's risk. The Subcontractor acknowledges it will have No Claim against Boar Group due to a change in a Legislative Requirement.
- c. The Subcontract is governed by and must be construed according to the laws of the relevant State. The parties submit to the non-exclusive jurisdiction of the courts of the relevant State.

### 17.5 Assignment

The Subcontractor must not assign a right or interest under the Subcontract without Boar Group's prior written consent, which may be withheld in Boar Group's absolute discretion. Boar Group may, without the prior consent of the Subcontractor, assign a right or interest under the Subcontract.

### 17.6 Waiver

Waiver, partly or wholly, of any term of the Subcontract will:

- a. be effective only if in writing and signed by Boar Group; and
- b. apply only to a particular occasion (unless otherwise noted).
- c. The non-exercise of, or a delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or future exercise of it or the exercise of any other power or right. Any waiver or consent given by a party will only be effective if given, or confirmed in writing.

### 17.7 Counterparts

- a. If this Subcontract is signed in counterparts, then:
  - I. each counterpart is an original; and
  - II. together they constitute one document.
- b. a scanned and emailed executed copy of this Subcontract may be exchanged.
- c. Where a scanned executed copy of this Subcontract is exchanged, this Subcontract is binding upon exchange of the scanned executed copy.
- d. If this Subcontract is undated and there is no contrary intention stated, the date of this Subcontract is the date of last exchange by a Party.

### 17.8 Entire agreement

The Subcontract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation, or warranty relating to the subject matter is replaced by the Subcontract

and has no further effect. For the sake of clarity any terms that may have been embodied in the Subcontractor's tender or offer are deemed to have been withdrawn in favour of the terms of the Subcontract.

#### 17.9 Amendment

The Subcontract can only be amended by written agreement between the parties.

#### 17.10 Survival of conditions

- a. The parties agree that a construction of the Subcontract that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- b. If, despite the application of this subclause, a provision of the Subcontract is illegal or unenforceable, if the provision would not be illegal or unenforceable if a word or words were omitted, that word or the whole provision is severed, and the remainder of the Subcontract continues in force.

#### 17.11 Reliance by Boar Group

The Subcontractor acknowledges and agrees that in entering into the Subcontract, Boar Group has relied on the representations and warranties given by the Subcontractor in the Subcontract, and that Boar Group would not have entered into the Subcontract, but for the Subcontractor providing those representations and warranties.

#### 17.12 Indemnities

- a. Without limiting this subclause 17.12 all indemnities survive the termination or expiry of the Subcontract.
- b. Each indemnity in the Subcontract is a continuing obligation separate and independent from the other obligations of the party issuing the indemnity.

#### 17.13 Personal Property Securities Act

**For the purposes of this Clause:** 'Financing Statement'; 'Security Interest'; and 'Verification Statement', have the meaning given to those terms under the PPSA.

- a. The Subcontractor acknowledges and agrees subclause 13.1d creates a Security Interest of Boar Group in:
  - I. all Constructional Plant, materials, equipment and other things intended for the work under the Subcontract which are located on-site or off-site (*Collateral*).
- b. The Subcontractor consents to:
  - I. Boar Group registering Boar Group's Security Interest over the Collateral (at any time and in its absolute discretion); and
  - II. undertakes to promptly sign any documents required under the PPSA which Boar Group may require to register a Financing Statement.
- c. The Subcontractor waives its right to receive a Verification Statement under section 157 and any subsequent notification prescribed under sections: 95; 121; 125; 129; 130; 132; 135; 142; and 143 of the PPSA.
- d. The Subcontractor must not permit any third party to register a Financing Statement in respect of the Collateral without the prior written consent of Boar Group.

#### 17.14 GST

If any supply made under this Subcontract is or becomes subject to GST, the party to whom the supply is made (*the Recipient*) will pay to the party making the supply (*the Supplier*), as consideration in addition to any consideration payable or to be provided elsewhere in this Subcontract an additional amount calculated by multiplying the consideration by the applicable rate of GST.

#### 17.15 Privacy Act

- a. In relation to any Personal Information (as defined in the *Privacy Act*) provided or to be provided by the Subcontractor in connection with Works under the Subcontract, the Subcontractor warrants to Boar Group:
- b. the Subcontractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the *Privacy Act*) is provided;
- c. the Subcontractor has or will within the time required by the *Privacy Act* ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by Schedule 1 of the *Privacy Act - Australian Privacy Principles*; and
- d. the Subcontractor will comply with the provisions of the *Privacy Act* in relation to any Personal Information provided to the Subcontractor by Boar Group and any contractor of Boar Group.

#### 17.16 QBCC Act

- a. Where section 67J of the QBCC Act applies the parties agree notice is affected, for the purposes of section 67J, by the inclusion in a Payment Schedule of an amount owed to Boar Group by the Subcontractor.
- b. Where section 67N of the QBCC Act applies, and to the extent that this Subcontract provides that Security withheld by Boar Group shall exceed 2.5% of the Subcontract Sum after Completion, the amount of the excess does not relate to the need to correct the defects identified in the Defects Liability Period, but instead to the recovery by Boar Group of any costs, damages, liabilities or other amounts which may become payable to Boar Group by the Subcontractor under or in connection with the Subcontract, the Subcontractor's performance or any breach of the Subcontract by the Subcontractor.
- c. Boar Group will issue a 'relevant notice' as defined at section 67NC (2) of the QBCC Act to the Subcontractor in accordance with section 67NC (3) and (4) of the QBCC Act.

#### 17.17 Execution



Execution of this Subcontract by a director individually executing this document [or Executing on Behalf of a Company] is taken to be an agreement to provide an individually executed Deed of Guarantee to Boar Group as set out at the Subcontract Schedule.

## 18. Document Control System

**18.1** All documents and/or notices arising out of or in connection with this Subcontract must be made by the Document Control System if stated in the Subcontract Schedule or as otherwise directed by Boar Group, in which case it is deemed to be served or issued when it enters the electronic server of the recipient. For clarity, if any document/and or notice is issued or served in accordance with Clause 1.11 of this Subcontract, it must also be issued or served by the Document Control System.

If a Document Control System is stated in the Subcontract Schedule, the Subcontractor agrees and acknowledges that:

- a. Boar Group intends to implement the Document Control System identified in the Subcontract Schedule;
- b. the Subcontractor will accept and sign up to the standard terms of service for use of the Document Control Systems;
- c. the Subcontractor will pay any charges for the subscription to the Document Control System as directed by Boar Group;
- d. the Subcontractor will have No Claim against Boar Group in relation to the use of or the retainer of the Document Control System; and
- e. if directed by Boar Group, the Subcontractor will do all acts and tasks that are reasonably required to be used;
- f. in accordance with the requirements of the Subcontract.

### 18.2 Modern Slavery Act

The Subcontractor warrants it is aware of the *Modern Slavery Act 2018* (Cth) and will not act (whether by its employees, contractors, or agents) in any way that would negatively impact or cause to the Main Contractor to provide a false or misleading 'modern slavery statement'.

## 19. Definitions And Interpretation

### 19.1 Definitions

In this Subcontract:

**Best Industry Practice** means the practices, methods and acts engaged in by Subcontractors highly experienced in delivering works comparable to the Work under the Subcontract.

**BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017*.

**Business Day** means a day which is not:

- a. a Saturday, Sunday, public holiday, special holiday or bank holiday in the State or Territory in which the Site is located;
- b. any day occurring within any of the following periods-
- c. 22 to 24 December;
- d. 27 to 31 December;
- e. 2 to 10 January; or
- f. a building and construction industry fixed rostered day off in the State or Territory in which the Site is located.

**Constructional Plant** means equipment and things (such as scaffolding and formwork) used in the execution of the work under the Subcontract but not forming part of the Subcontract Works;

**Completion** means that stage in the execution of the work under the Subcontract when in Boar Group's opinion, the Subcontract Works are complete except for minor omissions and minor defects, and all requirements for completion set out in the Trade Package have been met (inclusive of delivery to Boar Group's satisfaction of all as-builts (if required)) and the Subcontractor has delivered to Boar Group any warranties required by the Subcontract);

**Date for Completion** means the date (or period of time) stated in the Subcontract Schedule for Completion (if period of time the last day of that period);

**Date of Completion** means the date certified by Boar Group in a certificate of Completion pursuant to subclause 9.1 to be the date on which Completion was reached;

**Deed of Guarantee** means the deed of guarantee in the form set out in the Subcontract Schedule;

**Deed of Release** means the deed of release in the form set out in the Subcontract Schedule;

**Deed of Warranty** means the warranty deed in favour of Boar Group and the Principal set out in the Subcontract Schedule;

**Defects Liability Period** has the meaning given in subclause 9.5a.



**Fire Boar Pty Ltd. / Training Boar**  
ABN: 36 718 497 624 ACN: 132 208 836  
QBCC: 1148085 Electrical Lic: 70129

**Air Boar Pty Ltd.**  
ABN: 53 660 058 042 ACN: 660 058 042  
QBCC: 15319813  
[www.fireboar.com.au](http://www.fireboar.com.au)  
[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

**Document Control System** means the document control system as indicated in the Subcontract Schedule;

**Environmental Legislation** means the *Environment Protection Act 1994 (QLD)*;

**EPC System** means the electronic payment claim system as indicated in the Subcontract Schedule;

**Event of Default** means any of the following breaches, including and not limited to:

- a. any breach or default of the Subcontractor's obligations under the Subcontract including any breach of a warranty in this Subcontract;
- b. if the Subcontractor abandons or intends to abandon the Subcontract Works;
- c. the Subcontractor failing to pursue the Subcontract Works diligently for a continuous period of five (5) Business Days;
- d. the Subcontractor failing to adhere to quality standards; a breach of WHS Legislation or Environmental Legislation;
- e. or a failure by the Subcontractor to achieve Completion by the Date for Completion;
- f. wrongful suspension of Subcontract Work;
- g. failing to observe and comply with a Legislative Requirement relevant to the Subcontract Works;
- h. failing to lodge a Deed of Guarantee in breach of subclause 2.5.
- i. in respect of Clause 12.3a.(I), providing a statement or record of payment which is false, misleading, or deceptive in any respect.

**Event of Insolvency** means:

- a. an admission of insolvency;
- b. where execution is levied by a creditor;
- c. an act of bankruptcy;
- d. where a bankruptcy petition is filed against the Subcontractor;
- e. the appointment of an administrator, controller, receiver, or liquidator;
- f. a winding up order is made by a court;
- g. the entering into any composition or arrangement with creditors; or
- h. if Boar Group is of the opinion the Subcontractor lacks the financial capacity to complete the Subcontract Works;

**Financially Sound** means the Subcontractor is a going concern and thin the Subcontractor has reasonable grounds to believe that it is able to pay its debts as and when they become due and payable.

**Force Majeure Event** means each of the following events:

- a. earthquake, cyclone, natural disaster, landslide, mudslide, fire, and explosion;
- b. a flood which might be expected to occur once or less in every 50 years;
- c. a "terrorist act" (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth));
- d. war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law, or confiscation by order of any authority;
- e. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; and
- f. the direction by any court or competent authority (including a health authority) that work on the Site cease except to the extent that those events are caused or contributed to by deliberate or negligent act, omission, or default of the Subcontractor or any of its employees, officers, agents or Subcontractors, which is beyond the reasonable control of the affected party and prevents or delays the affected party from performing any of its obligations under the Subcontract where that cause or the consequence of the cause: has not resulted from the affected party breaching a term of the Subcontract; and if the affected party is the Subcontractor, could not have been prevented, avoided, remedied or overcome by the Subcontractor taking those steps which a prudent, experienced and competent contractor would have taken.

**Formal Instrument of Agreement**, means the document titled 'Major Works Subcontract Agreement' to which these Subcontract General Conditions are attached;

**Full Design Responsibility** means complete responsibility for the design of the Subcontract Works as indicated in the Trade Package documents;

**GST** has the meaning set out in *A New tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Head Contract** means the contract between Boar Group and the Principal as amended at the date of execution of the Subcontract;

**Head Contract Works** means the whole of the work to be executed and completed in accordance with the Head Contract (including variations);

**Head Contract Works Program** means the Construction Program of this Subcontract and/or the dates stipulated elsewhere in the Trade Package relating to the Subcontract Works as amended by Boar Group in accordance with Clause 8.

**Intellectual Property Right** means all intellectual property rights, including but not limited to, the following rights:



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QBCC: 1148085 Electrical Lic: 70129

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[www.trainingboar.com.au](http://www.trainingboar.com.au)  
[www.airboar.com.au](http://www.airboar.com.au)

- a. patents, copyright, rights in circuit layouts, registered and unregistered designs, Moral Rights, registered and unregistered trademarks, service marks, trade names and any right to have confidential information kept confidential; and
- b. any application or right to apply for registration of any of the rights referred to in 19.1 Intellectual Property Right (a).

**Legislative Requirements** means:

- a. Acts, Ordinances, regulations, orders, awards and proclamations of the Commonwealth and the relevant State including Australian Standards and the Building Code of Australia any other applicable codes of practice;
- b. local laws, by laws, orders, ordinances, and legal requirements and/or directions of any relevant authority, including a health authority or local government;
- c. approvals, compliance requirements and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Subcontract; and
- d. fees and charges payable in connection with the foregoing;

**Moral Right** means the 'moral right of an author' as defined and conferred under the *Copyright Act 1968* (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the laws of that jurisdiction;

**No Claim** means no entitlement to enforce any right or remedy whatsoever:

- a. under or in connection with the Subcontract including but not limited to an extension of time or payment (including damages); or
- b. at law or at equity (including for unjust enrichment);

**Non-conforming Building Product** means a building product that is a non-conforming building product under section 74AB of the *Queensland Building and Construction Commission Act 1991* (QLD).

**Payment Claim** has the meaning given in subclause 12.3;

**Payment Schedule** has the meaning given in subclause 12.5a;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Practical Completion** means practical completion of the Head Contract Works (as certified by the Principal or the Superintendent as the case may be);

**Principal** means the principal, owner, or client of Boar Group under the Head Contract (as the case may be);

**Privacy Act** means the *Privacy Act 1988* (Cth);

**Proportionate Liability Legislation** means the *Civil Liability Act 2003* (QLD);

**Provisional Sum** has the meaning in subclause 12.10 and includes monetary sum, contingency sum, and prime cost item;

**QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (QLD);

**QM Plan** means a documented quality assurance system prepared in accordance with the QM requirements of the Trade Package, and approved in accordance with subclause 7.2;

**Queensland Building and Construction Amendment** means the *Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017* (QLD);

**Security** means the amounts retained by Boar Group, or bank guarantee/s accepted by Boar Group, pursuant to subclause 2.1

**Separable Portion** means a portion of the Subcontract Works identified as such in the Subcontract or directed by Boar Group pursuant to subclause 7.18

**Separate Contractors** means consultants, agents and other contractors of Boar Group and the Principal;

**Schedule of Rates** means the schedule of rates and prices set out in the Trade Package (if any);

**Site** means the place or places described in the Subcontract Schedule, together with such other places as may be made available to the Subcontractor, on occasion, for the purposes of the Subcontract;

**State** means the state or territory in which the Site is located;

**Subcontract** means the agreement between Boar Group and the Subcontractor comprising the documents referred to in the Formal Instrument of Agreement (Major Works Subcontract Agreement);



**Subcontract General Conditions** means all Clauses of this document (including its schedules);

**Subcontract Schedule** means the table of Subcontract Schedule annexed to the Formal Instrument of Agreement (Major Works Subcontract Agreement);

**Subcontract Sum** means the lump sum amount set out in the Formal Instrument of Agreement (Major Works Subcontract Agreement), including Provisional Sums, but excluding any additions or deductions which may be required to be made under the Subcontract;

**Subcontract Sum Breakdown** means a document that delineates the Subcontract Sum into deliverables to be performed by the Subcontractor, including amounts for each deliverable, the sum of which must equal the Subcontract Sum;

**Subcontractor** means the Subcontractor set out in the Formal Instrument of Agreement (Major Works Subcontract Agreement);

**Subcontractor Overhead and Profit** means the amount stated for Subcontractor overhead and profit in the Subcontract Schedule;

**Subcontractor's Statement** means the form of Subcontractor's statement set out in the Subcontract Schedule;

**Subcontract Works** means the whole of the work to be executed in accordance with the Subcontract, as described or contemplated in the Trade Package including Variations provided for by the Subcontract, to be handed over to Boar Group;

**Superintendent** means the superintendent under the Head Contract;

**Trade Package** means the document(s) titled 'Trade Package' referred to in the Formal Instrument of Agreement (Major Works Subcontract Agreement);

**Boar Group** means the Boar Group entity set out in the Formal Instrument of Agreement (Major Works Subcontract Agreement);

**Boar Group's Works Insurance Excess** means the amount of \$10,000;

**Variation** means any change to the Subcontract Works or the work under the Subcontract including any addition, decrease, omission, deletion, or removal to or from the Subcontract Works; and

**WHS Legislation** means:

- a. the Work Health and Safety Act 2011 (Cth); and
- b. the Work Health and Safety Act 2011 (QLD) and the Work Health and Safety Regulation 2011 (QLD), as amended on occasion;

**Work under the Subcontract** means the work which the Subcontractor is or may be required to execute under the Subcontract and includes Variations, remedial work, Constructional Plant and temporary works;

**Workers Compensation Legislation** means the *Workers' Compensation and Rehabilitation Act 2003* (QLD);

## 19.2 Interpretation

- a. Headings are for convenience only and do not affect interpretation.
- b. Except where the context makes it clear that a rule is not intended to apply a reference to:
  - I. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - II. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced, or novated;
  - III. a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - IV. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - V. anything (including a right, obligation or concept) includes each part of it;
  - VI. a singular word includes the plural, and vice versa;
  - VII. if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning; and
  - VIII. the words subsidiary, and related body corporate have the same meanings as in the Corporations Act.
- c. This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision of it or because that party relies on a provision of this document to protect itself.