
**SUBCONTRACT FOR LABOUR ONLY ENGINEERING
AND CONSTRUCTION WORKS**
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SUBCONTRACT FOR LABOUR ONLY ENGINEERING AND CONSTRUCTION WORKS

This form of contract is recommend for use on small, labour only subcontracts. It is not recommended for use where the subcontractor supplies materials in addition to labour.

This document is intended to be used with the procurement documents prepared in accordance with the provisions of SANS 10403: Formatting and Compilation of Construction Procurement Documents

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General Conditions of Subcontract

1. DEFINITIONS AND INTERPRETATIONS

In this subcontract agreement the following definitions and interpretations shall apply. Defined words and expressions are signified in the agreement by the use of capital initial letters.

1.1 Definitions

Adjudicator

The person named as such in the Subcontract Data.

Contract

The contract entered into between the Employer and the Contractor for the construction of the Works.

Contractor

The juristic or natural person which has entered into the Contract with the Employer to construct the Works.

Employer

The juristic or natural person which requires the Works to be constructed and has entered into the Contract for this purpose.

Employer's Representative

The person appointed by the Employer to act on his behalf in regard to the Contract.

Parties

The Contractor and the Subcontractor.

Programme

The programme laid down and time allowed for completion of the Subcontract Work as set out in the Subcontract Data.

Scope of Work

A document that specifies and describes the Subcontract Work which are to be provided and any other requirements and constraints relating to the manner in which the Subcontract Work is to be performed

Site

The place where the Subcontract Work is to be executed.

Subcontract

The agreement between the Contractor and the Subcontractor for the execution of the Subcontract Work by the latter.

Subcontract Data

Specific data that, together with these General Conditions of Subcontract, collectively describes the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Subcontract.

Subcontractor

The juristic or natural person who enters into the Subcontract with the Contractor.

Subcontract Work

The work to be undertaken in terms of the Subcontract as part of the execution of the Works.

Wastage

The difference between the quantities of materials which are supplied to a Subcontractor and that incorporated into the Works.

Works

The works to be executed in terms of the Contract.

1.2 Interpretation

- 1.2.1 Words importing the singular also include the plural and vice versa and any gender includes the other genders.
- 1.2.2 The law applicable to the Subcontract is that of the Republic of South Africa.
- 1.2.3 The Subcontract constitutes the entire agreement between the Parties and no variation, or amendment, thereto shall have any force, or affect, unless reduced to writing and signed by both Parties.
- 1.2.4 Nothing in the Subcontract shall be construed as indicating a contractual relationship between the Employer and the Subcontractor.
- 1.2.5 If there is any conflict between the provisions of these General Conditions of Subcontract and the Subcontract Data, the provisions of the Subcontract Data shall prevail.

2. PERFORMANCE OF THE SUBCONTRACT WORK

The Subcontractor shall supply sufficient, suitable labour to execute the Subcontract Work in accordance with the Subcontract.

3. LABOUR

All labour supplied by the Subcontractor shall be capable of executing the Subcontract Work efficiently and in accordance with the Scope of Work. Should any worker be, in the opinion of the Contractor, incapable, or unsatisfactory for any other reason, the Contractor may instruct the Subcontractor to remove such worker from the Site and the Subcontractor shall forthwith comply with such instruction and replace the worker concerned.

4. LAWS AND REGULATIONS

- 4.1 The Subcontractor shall be entirely responsible for rendering all returns and paying all amounts due in respect of his employees and himself in terms of all relevant legislation and regulations including, but not confined to, the Unemployment Insurance Act, the Basic Conditions of Employment Act, Unemployment Insurance Act, the Income Tax Act, the Compensation for Occupational Injuries and Diseases Act, and the Skills Development Act. The Subcontractor hereby indemnifies the Contractor against any loss, damage, or claim arising from the former's failure to comply with instructions issued to him in regard to these requirements.
- 4.2 In the execution of the Subcontract Work, the Subcontractor shall comply with all relevant legislation and regulations including, but not confined to, the Occupational Health and Safety Act. The Subcontractor hereby indemnifies the Contractor against any loss, damage, or claim

arising out of the former's failure to comply with instructions issued to him in regard to these requirements.

5. SURETY

The Subcontractor will not be required to furnish a surety against satisfactory completion of the Subcontract.

6. INSURANCE

The Contractor shall ensure that the Subcontract Works are insured to their full value in accordance with the provisions of the Contract relating to insurance of the Works. The Contractor shall, within one week of being so requested, supply to the Subcontractor details of the insurance policy and/or documentary evidence that the insurance is being maintained in force.

The Subcontractor shall be responsible for the payment of all first amounts payable on insurance claims arising from the execution of the Subcontract, except where a claim has arisen as a result of an act, omission or negligence on the part of the Contractor, or the Employer, in which case the Contractor will be responsible for the payment of the first amount.

7. EXECUTION OF THE SUBCONTRACT WORK

The Subcontractor shall execute the Subcontract Work in accordance with the Scope of Work and Programme to the reasonable satisfaction of the Contractor..

Where the Subcontractor fails to achieve and maintain reasonable progress in accordance with the Programme within three working days of a written instruction to do so the Contractor may amend the extent of the Subcontract work and employ others to perform a portion of the Subcontract work in order that the Programme is maintained.

8. INSTRUCTIONS

The Contractor may at any time issue an instruction to the Subcontractor regarding the execution of the Subcontract Work and the Subcontractor shall forthwith comply with such instruction. All such instructions shall be in writing, provided that a verbal instruction will be valid if confirmed by the Contractor in writing not later than the close of the second working day after the day on which the verbal instruction was given.

9. MATERIALS

The Contractor shall timeously supply all materials required for the execution of the Subcontract Work at the places of delivery indicated in the Scope of Work.

The Subcontractor shall give the Contractor not less than three working days notice of the dates on which he will require materials to be delivered.

When the Subcontractor has taken delivery of materials he shall become responsible for the proper handling, storage and use thereof and shall take all reasonable steps to minimise Wastage and prevent the loss of the materials. The Subcontractor shall be liable for the cost of replacing materials where Wastage is in excess of the limits provided for in the Scope of Work, for losses attributable to his negligence, and for his failure to comply with the Scope of Work or instructions issued by the Contractor.

10. SERVICES PROVIDED BY CONTRACTOR

The Contractor shall ensure that all services, which he is to provide to the Subcontractor as listed in the Subcontract Data, are provided timeously.

The Subcontractor shall give the Contractor not less than three working days notice of the dates on which he will require services to be provided and shall be responsible for any loss of or damage to such services though abuse or the incorrect usage thereof.

11. TOOLS

The Subcontractor shall supply all hand tools, other than power-driven tools, which are required by him for the execution of the Subcontract Work.

Should power-driven hand tools be necessary for the execution of the Subcontract Work, these will be supplied by the Contractor for use by the Subcontractor, who shall take reasonable care thereof.

12. DEFECTS

The Contractor shall notify the Subcontractor in writing of any defects in the Subcontract Work and within five working days of such notification, or such extended period as may be agreed to by the Contractor in view of the extent of defective work, the Subcontractor shall, at his own expense, make good the defects to the satisfaction of the Contractor.

13. PAYMENT

13.1 Progress Payments

The Contractor shall, at intervals of two weeks, determine the value of Subcontract Work carried out during the two week period to the end of the preceding week and shall :-

- (a) advise the Subcontractor, not later than the end of the week during which the valuation is undertaken, of the details of the valuation and
- (b) pay the Subcontractor, not later than the end of the week following that during which the valuation was undertaken the amount of the valuation less the retention percentage stated in the Subcontract Data.

The Subcontractor may, not later than the end of the week following that in which he receives details of a valuation from the Contractor, object, in writing, to the valuation and the Contractor shall, forthwith, arrange a meeting between himself and the Subcontractor to resolve the issue. If it proves not possible to resolve the matter to the satisfaction of both Parties, it shall be referred to the Adjudicator as a dispute in terms of Clause 16.

Valuations of Subcontract Work carried out shall be made using the rates and prices contained in the Subcontract, which, if not otherwise indicated in the Subcontract Data, shall be taken as fixed.

13.2 Retention monies

Retention money at the percentage stated in the Subcontract Data shall be deducted from monthly progress payments due to the Subcontractor.

All accumulated retention money shall be paid to the Subcontractor not later than two weeks after the satisfactory completion of the Subcontract Work, including the correction of defects.

14. VARIATIONS

The Contractor may at any time order minor variations in the quantity, extent, or nature of the Subcontract Work and the Subcontractor shall comply therewith.

Changes to the rates, prices, or Programme, arising from a variation shall be based as far as possible on the prevailing Subcontract rates, prices and Programme and should, if possible, be agreed between the Parties before the work, as varied, is proceeded with. If agreement between the Parties cannot be reached, the Subcontractor shall, nevertheless, proceed with the work, as varied, and the matter shall be dealt with as a dispute in terms of Clause 15 hereof as soon as possible.

15. RESOLUTION OF DISPUTES

Should any dispute between the Contractor and the Subcontractor arise out of the provisions of the Subcontract, or the execution of the Subcontract Work, every effort shall be made by the Parties to resolve the matter themselves without the intervention of a third party. Should such resolution not prove possible, either Party may, one week after having advised the other Party of his intention to do so, invoke the services of the Adjudicator.

The Adjudicator shall be free to call any witnesses and request relevant data, information and argument from the Parties, who shall comply with such requests without delay. The Parties shall be represented only by their full-time employees at the adjudication proceedings.

The Adjudicator's opinion as to the fair resolution of the dispute shall be final and binding on both Parties, who shall forthwith implement the provisions of the Adjudicator's opinion. No appeal against the opinion of the Adjudicator will be possible.

Each Party shall bear its own costs in an adjudication and shall be responsible for meeting one-half of the Adjudicator's fees and costs.

This clause shall remain in force until all outstanding disputes have been resolved in the event that the Subcontract is cancelled in terms of Clause 17.

16. CANCELLATION OF SUBCONTRACT

Should either Party be in default of any material term of the Subcontract and fail to remedy such default within three working days of having received a written notice from the other Party to do so, the latter Party may, provided it is not itself in default, declare the Subcontract to be cancelled and advise the other Party accordingly.

Cancellation of the Subcontract under this clause shall not affect the right of either Party to seek compensation for costs, or losses, arising out of the Subcontract, or its cancellation. For this reason the provisions of Clause 16 shall remain in force after cancellation of the Subcontract until all outstanding disputes have been resolved.

SUBCONTRACT DATA

The Conditions of Contract are the *Subcontract for Labour Only (September 2005)* published by the Construction Industry Development Board

Part 1: Data provided by the Contractor

	Guidance notes
The Contractor is	
The authorised and designated representative of the Contractor is: Name:	
The address for receipt of communications is: Telephone: Facsimile: Address: E-mail	
Name of Adjudicator :	(See Clause 1.1)
Postal Address :	
Telephone No. :	
Fax. No. :	
E-mail	
Retainer fee payable to Adjudicator (if applicable) : R. per month	
The site is	(See Clause 1.1)
The Programme and associated time periods is as follows:	(See Clause 1.1)
The requirements for the provision of a surety are	(See Clause 5) Omit if a requirement
First amount payable in respect of insurance of the Subcontract Works arranged by the Contractor is R.	(see Clause 6)
The testing which the Subcontractor is to undertake is as follows:	(See Clause 12)
The percentage retention money to be deducted from progress payments is %	(See clause 14.2) (Usually 5%)

The rates and prices not fixed and are to be adjusted as follows:
.....
(Delete if not required)

(See clause 14.1)

The additional conditions of contract are:

Insert additional conditions of contract or delete row:

Part 2: Data provided by the Subcontractor

The Subcontractor is

Address:

Telephone:

Faxsimile:

E-mail

The authorised and designated representative of the Subcontractor is:

Name:

The address for receipt of communications is:

Telephone:

Faxsimile:

Address:

E-mail

Guidance notes

(See Clause 5.3)

Form of offer and acceptance

Offer

The Contractor, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

.....
The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the Subcontractor under the Subcontract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of subcontract identified in the Contract Data.

The offered total of the Prices inclusive of Value Added Tax is

.....Rand (in words); R(in figures)

This offer may be accepted by the contractor by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the Subcontractor in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

for the

tenderer

.....
(Name and address of organization)

Name and
signature of
witness

Date

Acceptance

By signing this part of this form of offer and acceptance, the Contractor identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the Subcontractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the Contractor and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and contract data, (which includes this agreement)

Part C2 Pricing data

Part C3 Scope of work.

Part C4 Site Information

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C4 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the Contractor's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now Subcontractor) within five working days of the date of such receipt notifies the Contractor in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Signature(s)

Name(s)

Capacity

for the
Contractor

(Name and address of organization)

Name and
signature of
witness

Date

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject _____

Details _____

2 Subject _____

Details _____

3 Subject _____

Details _____

4 Subject _____

Details _____

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or change to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.