

GOSS & BALFE
STANDARD TERMS AND CONDITIONS FOR SUBCONTRACTORS

1. **INTERPRETATION AND DEFINITIONS**

1.1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context of the Agreement, the following words, terms or phrases have the following meanings:

1.1.1 'Contractor' means "Goss & Balfe (Pty) Ltd" a private company with limited liability, duly established and incorporated in terms of the laws of South Africa;

1.1.2 'Client' or 'Employer' means a person or legal entity with whom the Contractor has an agreement (also referred to as a larger contract or main agreement) to construct, repair, modify, renovate or even demolish something ("*Constructions works*") in an agreed time frame, for an agreed price and to agreed standards;

1.1.3 'Subcontractor' means a legal entity or person that carries out work for the Contractor as part of a larger project and/or the main agreement or who is awarded a portion of the main contract by the contractor;

1.1.4 'Party' or 'Parties' refer jointly to the subcontractor and the contractor relevant to this agreement;

1.1.5 'agreement' means an agreement between parties where the contractor issued to the subcontractor a purchase order;

1.1.6 'Subcontract' means a portion of the construction works awarded to a subcontractor by means of a purchase order issued pursuant to a quotation issued by the sub-contractor and accepted by the contractor;

- 1.1.7 ‘Constructions works’ means the works to construct, repair, modify, renovate or even demolish. These works must be completed within the specifications determined by the client or the contractor;
- 1.1.8 ‘Purchase Order’ means a purchase order issued by the contractor to the subcontractor for the construction works in terms of a quotation provided by the subcontractor, which reflects a date of purchase order, the amount payable to the subcontractor; and duly signed by either the Managing Director or Financial Director for the relevant part of the construction works.
- 1.1.9 ‘Confidential Information’ means the terms of this Agreement; any information concerning either party or its stakeholders and customers including its operations, business and financial affairs and all other matters which relate to the business of either party and in respect of which information is not readily available in the ordinary course of the business to a competitor of such party or in to any third party; proprietary information or secret information;
- 1.1.10 ‘Intellectual Property Rights’ means all rights in and to the intellectual property including, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned.
- 1.2 Any reference to the singular includes the plural and vice versa.
- 1.3 Any reference to natural persons includes legal persons and vice versa.
- 1.4 Any reference to a gender includes the other gender/s.

- 1.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.6 Where any number of days is prescribed in this Agreement same shall be considered to be calendar days and reckoned exclusive of the first and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.7 The use of the word "including" or "includes" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example.
- 1.8 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.
- 1.9 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.10 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub clause.
- 1.11 To the extent that there is a conflict between the provisions contained in the Standard Terms and Conditions of Contract (“STC”) and the provisions contained in the applicable agreement with the client i.e. FIDIC (French acronym for International Federation of Consulting Engineers) 1999, General Conditions of Contract for Construction Works (GCC 2004), JBCC Series 2000 and/or NEC3 family of standard contracts, the STC shall prevail.

- 1.12 However, should the dispute require the contractor to resolve, terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, abbreviations and phrases known in the relevant industry to which this Agreement applies shall be interpreted in accordance with their generally known meanings in such industry.
- 1.13 Any reference to any statute or statutory regulation shall include a reference to any amendments thereto and to the successor/s in title to such statutes and statutory regulations.
- 1.14 Any reference to any organisation, institution, office, body, department, organ or person vested with certain powers and authority shall include a reference to its successor/s in title. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.15 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2. **THE AGREEMENT**

- 2.1 These Standard Terms and Conditions (“STC”) are applicable between the main contractor and the subcontractor and remain in force until the subcontractor has duly completed its portion of the construction works.
- 2.2 Unless otherwise agreed to in writing and signed by both parties, or their authorised representatives; upon the issuing of a purchase order by the contractor, these STC’s shall apply to all subcontractors, and supersede any terms and

conditions stated in the quotation, from which the purchase order emanates or any other standard terms and conditions, which the subcontractor may subscribe too.

2.3 The subcontractor may not negotiate these STC's after five days of issue of the purchase order.

2.4 The date of the agreement is the date on the purchase order.

2.5 Should the contractor subcontract to the subcontractor items to be manufactured, the subcontractor shall only be entitled to payment once the items are manufactured and delivered to the contractor, unless specifically agreed to otherwise by either the Financial Director or Managing Director, and the subcontractor has put up a bank bond/guarantee at its own costs.

2.6 Any further agreements, after the signing of the purchase order, that contradicts this agreement, shall be overridden by the terms in this agreement.

2.7 The terms, conditions and price agreed to at the issuing of the purchase order will remain in effect until the conclusion of the subcontract. Accordingly, the subcontractor may not negotiate with the Project Manager, Quantity Surveyor or any other person after the signing of the purchase order.

3. *DOMICILIUM CITANDI ET EXECUTANDI*

3.1 The parties choose as their *domicilium citandi et executandi* for all purposes under this agreement the following addresses:

3.1.1 **The Contractor:** 26-36 Beechfield Crescent, Springfield Park, Durban, 4001.

3.1.2 **The Subcontractor:** The address provided on the quotation or in the most recent correspondence.

3.2 Either party must notify the other party in writing of its change to its *Domicilium Citandi et Executandi*

4. **VARIATIONS**

4.1 Any variations to the subcontract which would result in an increase to the quoted price which emanated in a purchase order, will require the issuing of a new purchase order.

4.2 Should the subcontractor fail to ensure that a new purchase order is issued, the variation will be deemed invalid, and therefore, the subcontractor shall only be entitled to payment to the value of the most recent valid purchase order.

4.3 Any variations must be approved in writing and signed by either the Financial Director or Managing Director.

5. **CLAIMS PROCEDURE**

5.1 Claims are subject to remeasurement of the construction works.

5.2 Subcontractors will only be paid for the construction works after the contractor has received payment from its client.

5.3 Although in most instances, the contractor will pay the subcontractor within 30 days of receiving a Statement, payment on any invoice only becomes due and payable 7 days after the contractor received payment from client. Accordingly, payment to a

subcontractor by a contractor prior to the contractor receiving payment from client should in no way be construed as an alteration of these terms and conditions.

5.4 The Professional Service Provider, Goods Supplier and Subcontractor shall be entitled to payment upon fulfilling the issuing of a valid tax invoice, which has been issued by the relevant Supplier to the Contractor pursuant to the following supporting documents:

5.4.1 Properly completed time sheets supported by the relevant documents referred to in the time sheets;

5.4.2 The time sheets must be both signed and approved by the quantity surveyor and project manager on site representing the contractor.

5.4.3 Goods Supplier - Signed Delivery Notes and an inventory.

5.4.4 Material and Data Sheets that are the aspect of the work.

5.4.5 Sub-Contractors - Valuations and calculations, done in a level of detail in the reimbursement Unit of measurement and accounting for the Quantity of all Aspects leading to the complete Quantity as per each Item featured on BOQ.

5.4.6 The supporting documents must accompany the tax invoice when submitting to the contractor.

5.4.7 No payment for interest will be entertained unless the client agrees to pay the contractor interest, and pays the contractor interest for any reason.

5.4.8 Payment for standing time:

- (a) Shall be entertained if the delay was caused by the subcontractor, and/or in the event of the standing time being a result of the client and therefore paying the contractor.
- (b) Shall not be paid unless, the subcontractor took reasonable steps to mitigate the payment of the standing time to the subcontractor by the contractor.
- (c) Will not be paid if the subcontractor is required to be mobilised to site, (called the site at a specific point or after a specific task is completed), but arrived on site before being mobilised.
- (d) The mobilisation order from the contractor must be in writing.

5.5 Should the client dispute any payment for the construction works which form part of the subcontract, the contractor shall not be liable to the subcontractor for payment until and unless the client has resolved to pay the disputed works in full or in part. If payment is only made in part, the contractor will only be liable for the part of the payment made by the client.

5.6 In submitting the claim, the following timelines shall apply:

5.6.1 Submission of Claim/ Valuation by the 20th of the Month.

5.6.2 Approval by QS, and amendment's if any by the Subcontractor by latest 25th of the month.

5.6.3 Approval by Site Agent and further amendment's by Subcontractor if any required by the 27th of the month.

5.6.4 Approval by CFO/Accounts, invoice request from Subcontractor between 27th and month end.

5.6.5 Payments will be processed, as per Supplier Agreement, by Accounts 30 days from Statement date.

6. **DISPUTES**

6.1 Disputes between the contractor and the subcontractor that requires the contractor to lodge a dispute with the client must be done timeously to afford the contractor to declare a dispute with the client within the time frames required by the main agreement. Consequently, the subcontractor will not be entitled to payment should the client refuse to entertain the dispute for non-compliance with timeframes.

6.2 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The referral to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.

6.3 A dispute within the meaning of this clause exists once one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.

6.4 Within 10 (ten) business days following such notification, the Parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the Parties for their negotiation and resolution of the dispute.

6.5 The representatives shall be authorised to resolve the dispute. In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Parties resolving the dispute within 10 business days, the parties must

refer the dispute for resolution by way of mediation/adjudication in accordance with the rules of the Arbitration Foundation of Southern Africa (“AFSA”).

- 6.6 In the event of the mediation envisaged in 8.5 failing in terms of the rules of AFSA, the matter must, within 10 days, be referred to arbitration as envisaged in the clauses below.
- 6.7 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.
- 6.8 Each Party agrees that the Arbitration will be held as an expedited arbitration in Durban in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator’s decision.
- 6.9 If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA.
- 6.10 The provisions of this clause 6.2 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 6.11 The references to AFSA shall include its successor or body nominated in writing by it in its stead.
- 6.12 This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

7. FORCE MAJEURE

7.1 Force majeure means any event that is unforeseeable and whose occurrence and consequences are unpreventable or unavoidable after this Contract becomes effective, which include but not limited to, earthquake, typhoon, flood, fire, war, government shut downs, outbreak of contagious diseases, being prevented from performing work on site for whatever reason, etc., which directly affects the performance of this Contract or prevents this Contract from being performed according to specified provisions.

7.2 The prevented party shall forthwith notify the other party and provide the details of such event and related documentary evidence to the other party within 15 days.

7.3 In event of force majeure, both parties shall negotiate for a reasonable resolution and make all their best efforts to alleviate the influence of such event.

7.4 In case that an event of force majeure lasting thirty days, both parties shall negotiate whether to perform or terminate this Contract or not.

8. NON-VARIATION CLAUSE

8.1 No addition to, variation, or agreed cancellation of this agreement or any of the annexures or schedules hereto shall be of any force or effect unless reduced to writing and signed by or on behalf of all the parties.